



JULY 2021

NO. 21-01

Student Retention, Grade Changes & Graduation Options

Assembly Bill 104

Important Information and Necessary Actions for School Agencies

On July 1, 2021, the much anticipated Assembly Bill 104 was finally signed by Governor Newsom as urgency legislation. It is effective immediately and requires school agencies, including school districts, county offices of education, and charter schools, to take a number of quick actions over the summer.

AB 104 enacts three main changes. One, it supplements the process for handling retention requests for eligible students. Two, it provides a mechanism for high school students during the 2020-2021 school year to request grade changes from a letter grade to Pass or No Pass. And third, it provides additional options for graduation for students who were in 11th and 12th grade during the 2020-2021 school year and not on track to graduate in four years.

With school calendars set for the 2021-2022 school year, limited staff on hand over the summer, and statutory timelines that must be observed, we have summarized the requirements of the bill and provide considerations and suggested actions to ensure ease of compliance and coordination with the new requirements to implement AB 104.

RETENTION

AB 104 (new Education Code §48071) requires school agencies to permit parents of eligible students to request retention in the student's 2020-2021 grade for the 2021-2022 school year.

Key Components and Timelines:

- Only applies to eligible students:
 - *students in grades K through 11 who, during the 20-21 school year, received deficient grades (a D, F, No Pass, or as otherwise defined by the school agency) in at least half of their courses*
- School must offer a retention consultation meeting to be held within 30 calendar days of receipt of request which shall include:
 - *Discussion of all available learning recovery options;*
 - *Discussion about research on the effects of retention and the benefits of particular interventions and supports for students; and*
 - *Consideration of the student's academic data and any other information relevant to whether retention is in the student's best interests both academically and socially.*

- School must issue decision on retention request within 10 calendar days of consultation meeting
- Students who are retained must be offered specified supplemental interventions and supports
- Students who are not retained must be offered the same specified supplemental interventions and supports, in addition to access to prior semester courses in which the student received a D or F, some other form of credit recovery, or other specified supports

Again, this is only applicable to eligible students and notably does not require that any student be retained.

Considerations and Implications:

School agencies should anticipate the need for these summer consultation meetings (which could be conducted either in-person or virtually) and adjust school employee work year calendars accordingly.

As these consultation meetings require the participation of a teacher, review of relevant collective bargaining agreement language concerning selection and appropriate compensation, will need to be completed. Notably, the legislation does not require that the consulting teacher be a teacher of the student.

What does this mean for students on IEPs? The legislation does not explicitly require that the school agency convene an IEP meeting; however, the legislation does require school agencies to ensure that the retention decision is consistent with a student's IEP. Therefore, it is recommended that as part of the retention decision-making process, that the school administrator review the student's IEP to determine if the IEP team previously addressed retention during the 2020-2021 school year.

To the extent that retention decisions may impact student assignments, including the need to add/delete classes at various grade levels or schools, and/or create combination classes, it is recommended that school agencies carefully review collective bargaining agreement language to ensure compliance with any and all timelines and other requirements applicable to providing notice to employees of assignments for the ensuing 2021-2022 school year, transfer/reassignment decisions, and/or provision of required release time, additional supports, etc.

HIGH SCHOOL STUDENT GRADE CHANGES TO PASS/NO PASS

An additional component of AB 104 (new Education Code section §49066.5) is the ability of parents/guardians and adult students to request that high school grades earned during the 20-21 school year be changed from a letter grade to Pass or No Pass.

Grade change requests made pursuant to this bill must be implemented even if to do so conflicts with other Education Code provisions. There is also no limit to the number of courses to which a grade change request may be made but under no circumstances, shall such changes negatively affect a student's GPA.

Key Components and Timelines:

- Within 15 calendar days of the CDE's posting of the grade change application template, all school agencies serving high school students must post notice on their website and send written notice to all high school students and their parents/guardians of the option to request a grade change. Notices must include:
 - *Application form to request a grade change;*
 - *List of postsecondary schools accepting Pass or No Pass grade in lieu of a letter grade for admission purposes; and*
 - *Statement that some postsecondary institutions, including those in other states, may not accept a Pass or No Pass grade in lieu of a letter grade for admission purposes.*

- The deadline for students to submit a grade change request is fifteen (15) calendar days from the date of the educational agency's website posting and written notice to parents/guardians.
- The bill explicitly prohibits school agencies from accepting grade change applications after the deadline.
- Requested grade changes must be implemented by the school agency with written confirmation sent to the student and their parent/guardian(s) within fifteen (15) calendar days of receipt of the application.

Considerations and Implications:

Given that most post-secondary institutions are no longer requiring or considering SAT and/or ACT scores, college admissions will be focusing more on student transcripts. Although the bill requires that the Cal State University system not penalize students for Pass/No Pass grades for admission purposes, there is no corresponding requirement for the University of California or any other public or private institutions. Acknowledging the extremely short window of time provided for this process, we strongly recommend that school agencies be ready with clear information and the ability to have candid discussions with parents/guardians regarding the potentially negative impact such grade changes may have on their student's college admission prospects.

School agencies are also encouraged to review collective bargaining agreements to ensure that compliance with AB 104 does not inadvertently conflict with negotiated language concerning grade changes, teacher rights, etc., and as necessary, engage with labor partners to ensure notice and educator understanding of the requirements of this legislation.

To the extent that grade change requests must be implemented with fifteen (15) calendar days of receipt, it is strongly recommended that school agencies ensure that appropriate staff (e.g. school counselors and registrars) are available to process and update student transcripts.

GRADUATION REQUIREMENTS FOR 11TH AND 12TH GRADE STUDENTS

Acknowledging the impact of COVID-19 on high school students, particularly on meeting graduation requirements, AB 104 further mandates that school agencies exempt all students who were in the 11th and 12th grade during the 2020-2021 school year and not on track to graduate in four years, from any and all local graduation requirements in excess of the statewide requirements specified in Education Code §51225.3. The bill also requires school agencies to provide these students with additional opportunities to complete the statewide coursework required for graduation, which may include credit recovery, a fifth year of instruction, etc.

Considerations and Implications:

School agencies have discretion in determining how they may satisfy the requirements of this bill in terms of providing additional opportunities for students to complete required coursework. What is unclear, however, is how these required opportunities might impact labor agreements, and, if a fifth year of high school instruction is offered, what type of additional funding, if any, will be provided for this purpose.

The state has not provided any specific procedures or required notices to parents/guardians and/or student in connection with this option. Accordingly, we recommend that school agencies take immediate action to identify those students to whom this legislation applies and, based on the number of eligible students and relative needs, identify and plan educational opportunities accordingly. Depending on the situation, we anticipate that implementation of additional credit recovery programs, etc. may have impacts or effects on employee working conditions which will require notice and appropriate negotiations with relevant labor unions.

If you have any questions regarding this legislation and how it affects your agency, please call one of our six offices.

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