

By: King of Hemphill, Pacheco

H.B. No. 3557

A BILL TO BE ENTITLED

1 AN ACT

2 relating to allowing parents and guardians to elect for a student to  
3 repeat or retake a course or grade.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 12.013(b), Education Code, is amended to  
6 read as follows:

7 (b) A home-rule school district is subject to:

8 (1) a provision of this title establishing a criminal  
9 offense;

10 (2) a provision of this title relating to limitations  
11 on liability; and

12 (3) a prohibition, restriction, or requirement, as  
13 applicable, imposed by this title or a rule adopted under this  
14 title, relating to:

15 (A) the Public Education Information Management  
16 System (PEIMS) to the extent necessary to monitor compliance with  
17 this subchapter as determined by the commissioner;

18 (B) educator certification under Chapter 21 and  
19 educator rights under Sections 21.407, 21.408, and 22.001;

20 (C) criminal history records under Subchapter C,  
21 Chapter 22;

22 (D) student admissions under Section 25.001;

23 (E) school attendance under Sections 25.085,  
24 25.086, and 25.087;

- 1 (F) inter-district or inter-county transfers of  
2 students under Subchapter B, Chapter 25;
- 3 (G) elementary class size limits under Section  
4 25.112, in the case of any campus in the district that fails to  
5 satisfy any standard under Section 39.054(e);
- 6 (H) high school graduation under Section 28.025;
- 7 (I) special education programs under Subchapter  
8 A, Chapter 29;
- 9 (J) bilingual education under Subchapter B,  
10 Chapter 29;
- 11 (K) prekindergarten programs under Subchapter E,  
12 Chapter 29;
- 13 (L) safety provisions relating to the  
14 transportation of students under Sections 34.002, 34.003, 34.004,  
15 and 34.008;
- 16 (M) computation and distribution of state aid  
17 under Chapters 31, 43, and 48;
- 18 (N) extracurricular activities under Section  
19 33.081;
- 20 (O) health and safety under Chapter 38;
- 21 (P) public school accountability under  
22 Subchapters B, C, D, and J, Chapter 39, and Chapter 39A;
- 23 (Q) options for local revenue levels in excess of  
24 entitlement under Chapter 49;
- 25 (R) a bond or other obligation or tax rate under  
26 Chapters 43, 45, and 48; ~~and~~
- 27 (S) purchasing under Chapter 44; and

1                    (T) parental options to retain a student under  
2 Section 28.02124.

3            SECTION 2. Section 12.056(b), Education Code, is amended to  
4 read as follows:

5            (b) A campus or program for which a charter is granted under  
6 this subchapter is subject to:

7                    (1) a provision of this title establishing a criminal  
8 offense; and

9                    (2) a prohibition, restriction, or requirement, as  
10 applicable, imposed by this title or a rule adopted under this  
11 title, relating to:

12                            (A) the Public Education Information Management  
13 System (PEIMS) to the extent necessary to monitor compliance with  
14 this subchapter as determined by the commissioner;

15                            (B) criminal history records under Subchapter C,  
16 Chapter 22;

17                            (C) high school graduation under Section 28.025;

18                            (D) special education programs under Subchapter  
19 A, Chapter 29;

20                            (E) bilingual education under Subchapter B,  
21 Chapter 29;

22                            (F) prekindergarten programs under Subchapter E,  
23 Chapter 29;

24                            (G) extracurricular activities under Section  
25 33.081;

26                            (H) health and safety under Chapter 38;

27                            (I) public school accountability under

1 Subchapters B, C, D, F, and J, Chapter 39, and Chapter 39A; ~~and~~

2 (J) the duty to discharge or refuse to hire  
3 certain employees or applicants for employment under Section  
4 12.1059; and

5 (K) parental options to retain a student under  
6 Section 28.02124.

7 SECTION 3. Section 12.104(b), Education Code, as amended by  
8 Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943  
9 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, is  
10 reenacted and amended to read as follows:

11 (b) An open-enrollment charter school is subject to:

12 (1) a provision of this title establishing a criminal  
13 offense;

14 (2) the provisions in Chapter 554, Government Code;  
15 and

16 (3) a prohibition, restriction, or requirement, as  
17 applicable, imposed by this title or a rule adopted under this  
18 title, relating to:

19 (A) the Public Education Information Management  
20 System (PEIMS) to the extent necessary to monitor compliance with  
21 this subchapter as determined by the commissioner;

22 (B) criminal history records under Subchapter C,  
23 Chapter 22;

24 (C) reading instruments and accelerated reading  
25 instruction programs under Section 28.006;

26 (D) accelerated instruction under Section  
27 28.0211;

- 1 (E) high school graduation requirements under  
2 Section 28.025;
- 3 (F) special education programs under Subchapter  
4 A, Chapter 29;
- 5 (G) bilingual education under Subchapter B,  
6 Chapter 29;
- 7 (H) prekindergarten programs under Subchapter E  
8 or E-1, Chapter 29;
- 9 (I) extracurricular activities under Section  
10 33.081;
- 11 (J) discipline management practices or behavior  
12 management techniques under Section 37.0021;
- 13 (K) health and safety under Chapter 38;
- 14 (L) public school accountability under  
15 Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A;
- 16 (M) the requirement under Section 21.006 to  
17 report an educator's misconduct;
- 18 (N) intensive programs of instruction under  
19 Section 28.0213;
- 20 (O) the right of a school employee to report a  
21 crime, as provided by Section 37.148;
- 22 (P) bullying prevention policies and procedures  
23 under Section 37.0832;
- 24 (Q) the right of a school under Section 37.0052  
25 to place a student who has engaged in certain bullying behavior in a  
26 disciplinary alternative education program or to expel the student;
- 27 (R) the right under Section 37.0151 to report to

1 local law enforcement certain conduct constituting assault or  
2 harassment;

3 (S) a parent's right to information regarding the  
4 provision of assistance for learning difficulties to the parent's  
5 child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

6 (T) establishment of residency under Section  
7 25.001;

8 (U) [~~(T)~~] school safety requirements under  
9 Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115,  
10 37.207, and 37.2071;

11 (V) [~~(T)~~] the early childhood literacy and  
12 mathematics proficiency plans under Section 11.185; [~~and~~]

13 (W) [~~(U)~~] the college, career, and military  
14 readiness plans under Section 11.186; and

15 (X) parental options to retain a student under  
16 Section 28.02124.

17 SECTION 4. Subchapter B, Chapter 28, Education Code, is  
18 amended by adding Section 28.02124 to read as follows:

19 Sec. 28.02124. PARENTAL OPTION FOR STUDENT RETENTION. (a)  
20 Subject to Subsection (c), a parent or guardian may elect for a  
21 student to:

22 (1) repeat prekindergarten;

23 (2) enroll in prekindergarten, if the student would  
24 have been eligible to enroll in prekindergarten during the previous  
25 school year under Section 29.153(b) and the student has not yet  
26 enrolled in kindergarten;

27 (3) repeat kindergarten;

1           (4) enroll in kindergarten, if the student would have  
2 been eligible to enroll in kindergarten in the previous school year  
3 and has not yet enrolled in first grade; or

4           (5) for grades one through three, repeat the grade in  
5 which the student was enrolled during the previous school year.

6           (a-1) Subject to Subsections (a-3) and (c), a parent or  
7 guardian may elect for a student to:

8           (1) for grades four through eight, repeat the grade  
9 the student was enrolled in during the previous school year; and

10           (2) for courses taken for high school credit, repeat  
11 any course in which the student was enrolled in during the previous  
12 school year.

13           (a-2) A parent or guardian may make an election under  
14 Subsection (a-1)(1) or (2), or both.

15           (a-3) A parent or guardian may not elect for a student to  
16 repeat a course under Subsection (a-1)(2) if the school district or  
17 open-enrollment charter school determines the student has met all  
18 of the requirements for graduation.

19           (a-4) Subsections (a-1), (a-2), (a-3), and this subsection  
20 apply for students who repeat courses from the 2020-2021 school  
21 year during the 2021-2022 school year and for students who  
22 otherwise enroll during the 2021-2022 school year. Subsections  
23 (a-1), (a-2), (a-3), and this subsection expire September 1, 2022.

24           (b) An election made by a parent or guardian under this  
25 section shall be made in writing to a school district or  
26 open-enrollment charter school, as applicable.

27           (c) If a school district or an open-enrollment charter

1 school disagrees with an election authorized under this section,  
2 the school district or open-enrollment charter school must convene  
3 a retention committee and meet with the parent or guardian to  
4 discuss retention. A meeting under this subsection shall be  
5 conducted in person unless an alternative means is agreeable to the  
6 parent or guardian. A student may not be retained for a grade or  
7 retake a course under this section if the parent or guardian does  
8 not meet with the retention committee.

9 (d) A retention committee established under Subsection (c)  
10 shall be composed of:

- 11 (1) the principal or the principal's designee;  
12 (2) the student's parent or guardian;  
13 (3) the teacher who taught the grade or course for  
14 which the parent wants the student retained or repeated; and  
15 (4) additional teachers at the discretion of the  
16 principal, if the student will potentially repeat multiple courses.

17 (e) A retention committee established under Subsection (c)  
18 shall:

- 19 (1) discuss the merits of and concerns with  
20 advancement and retention; and  
21 (2) review and consider the student's grade in each  
22 subject or course, the results of any formative or summative  
23 assessments administered to the student, and any other available  
24 academic information to determine the student's academic readiness  
25 for the next grade or a given course.

26 (f) If established under Subsection (c), after the parent or  
27 guardian has participated in a retention committee meeting, the



1 parent or guardian shall decide whether the student should be  
2 retained or retake a grade or course. The school district or  
3 open-enrollment school must abide by the decision of the parent or  
4 guardian.

5 (g) A student who receives a passing grade or who earns  
6 credit for a high school course shall retain a school district's or  
7 open-enrollment charter school's original assignment of a grade or  
8 award of credit when a student is retained under this section,  
9 unless the school district or open-enrollment charter school adopts  
10 a policy to a different effect.

11 (h) Except as provided by this section or other law,  
12 retention of a student pursuant to a parent's or guardian's election  
13 under this section shall be considered the same as retention of a  
14 student by a school district or open-enrollment charter school.

15 (i) The rights of a parent or guardian under this section  
16 transfer to a student if the student is 18 years of age or older or  
17 has had the disabilities of a minor removed, unless the student is  
18 under a form of guardianship imposed by law or court order that  
19 continues after the student turns 18 years of age.

20 (j) The commissioner may adopt rules to implement this  
21 section.

22 SECTION 5. Section 29.081, Education Code, is amended by  
23 reenacting and amending Subsection (d), as amended by Chapters 403  
24 (S.B. 1746), 1060 (H.B. 1051), and 597 (S.B. 668), Acts of the 86th  
25 Legislature, Regular Session, 2019, and adding Subsection (h) to  
26 read as follows:

27 (d) For purposes of this section, "student at risk of

1 dropping out of school" includes each student who:

2 (1) is under 26 years of age and who:

3 (A) except as provided by Subsection (h) or if  
4 retained for prekindergarten under Section 28.02124, was not  
5 advanced from one grade level to the next for one or more school  
6 years;

7 (B) if the student is in grade 7, 8, 9, 10, 11, or  
8 12, did not maintain an average equivalent to 70 on a scale of 100 in  
9 two or more subjects in the foundation curriculum during a semester  
10 in the preceding or current school year or is not maintaining such  
11 an average in two or more subjects in the foundation curriculum in  
12 the current semester;

13 (C) did not perform satisfactorily on an  
14 assessment instrument administered to the student under Subchapter  
15 B, Chapter 39, and who has not in the previous or current school  
16 year subsequently performed on that instrument or another  
17 appropriate instrument at a level equal to at least 110 percent of  
18 the level of satisfactory performance on that instrument;

19 (D) if the student is in prekindergarten,  
20 kindergarten, or grade 1, 2, or 3, did not perform satisfactorily on  
21 a readiness test or assessment instrument administered during the  
22 current school year;

23 (E) is pregnant or is a parent;

24 (F) has been placed in an alternative education  
25 program in accordance with Section 37.006 during the preceding or  
26 current school year;

27 (G) has been expelled in accordance with Section

1 37.007 during the preceding or current school year;

2 (H) is currently on parole, probation, deferred  
3 prosecution, or other conditional release;

4 (I) was previously reported through the Public  
5 Education Information Management System (PEIMS) to have dropped out  
6 of school;

7 (J) is a student of limited English proficiency,  
8 as defined by Section 29.052;

9 (K) is in the custody or care of the Department of  
10 Family and Protective Services or has, during the current school  
11 year, been referred to the department by a school official, officer  
12 of the juvenile court, or law enforcement official;

13 (L) is homeless, as defined by 42 U.S.C. Section  
14 11302, and its subsequent amendments;

15 (M) resided in the preceding school year or  
16 resides in the current school year in a residential placement  
17 facility in the district, including a detention facility, substance  
18 abuse treatment facility, emergency shelter, psychiatric hospital,  
19 halfway house, cottage home operation, specialized child-care  
20 home, or general residential operation; or

21 (N) has been incarcerated or has a parent or  
22 guardian who has been incarcerated, within the lifetime of the  
23 student, in a penal institution as defined by Section 1.07, Penal  
24 Code; or

25 (2) regardless of the student's age, participates in  
26 an adult education program provided under a high school diploma and  
27 industry certification charter school program under Section

1 29.259.

2 (h) The agency shall study whether students retained under  
3 Section 28.02124 should be considered at-risk. The commissioner  
4 may adopt a rule excluding students retained by a parent or guardian  
5 under Section 28.02124 from being considered a "student at risk of  
6 dropping out of school" under Subsection (d)(1)(A).

7 SECTION 6. Section 48.005(m), Education Code, is amended to  
8 read as follows:

9 (m) The commissioner shall adopt rules necessary to  
10 implement this section, including rules that:

11 (1) establish the minimum amount of instructional time  
12 per day that allows a school district or charter school to be  
13 eligible for full average daily attendance, which may differ based  
14 on the instructional program offered by the district or charter  
15 school;

16 (2) establish the requirements necessary for a school  
17 district or charter school to be eligible for one-half of average  
18 daily attendance, which may differ based on the instructional  
19 program offered by the district or charter school; ~~and~~

20 (3) proportionally reduce the average daily  
21 attendance for a school district if any campus or instructional  
22 program in the district provides fewer than the required minimum  
23 minutes of instruction to students; and

24 (4) allow a grade or course repeated under Section  
25 28.02124 to qualify for average daily attendance even if the  
26 student previously passed or earned credit for the grade or course,  
27 if the grade or course would otherwise be eligible.

1           SECTION 7. This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution. If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect September 1, 2021.