

AN ACT

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

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

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

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

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

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

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

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

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

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

(D) student admissions under Section 25.001;

(E) school attendance under Sections 25.085, 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, is amended to  
8 read as follows:

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

10 (1) a provision of this title establishing a criminal  
11 offense;

12 (2) the provisions in Chapter 554, Government Code;  
13 and

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

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

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

22 (C) reading instruments and accelerated reading  
23 instruction programs under Section 28.006;

24 (D) accelerated instruction under Section  
25 28.0211;

26 (E) high school graduation requirements under  
27 Section 28.025;

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

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

4 (T) establishment of residency under Section  
5 25.001;

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

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

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

13 (X) parental options to retain a student under  
14 Section 28.02124.

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

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

20 (1) repeat prekindergarten;

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

25 (3) repeat kindergarten;

26 (4) enroll in kindergarten, if the student would have  
27 been eligible to enroll in kindergarten in the previous school year

1 and has not yet enrolled in first grade; or

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

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

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

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

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

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

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

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

25 (c) If a school district or an open-enrollment charter  
26 school disagrees with an election authorized under this section,  
27 the school district or open-enrollment charter school must convene

1 a retention committee and meet with the parent or guardian to  
2 discuss retention. A meeting under this subsection shall be  
3 conducted in person unless an alternative means is agreeable to the  
4 parent or guardian. A student may not be retained for a grade or  
5 retake a course under this section if the parent or guardian does  
6 not meet with the retention committee.

7 (d) A retention committee established under Subsection (c)  
8 shall be composed of:

9 (1) the principal or the principal's designee;

10 (2) the student's parent or guardian;

11 (3) the teacher who taught the grade or course for  
12 which the parent wants the student retained or repeated; and

13 (4) additional teachers at the discretion of the  
14 principal, if the student will potentially repeat multiple courses.

15 (e) A retention committee established under Subsection (c)  
16 shall:

17 (1) discuss the merits of and concerns with  
18 advancement and retention; and

19 (2) review and consider the student's grade in each  
20 subject or course, the results of any formative or summative  
21 assessments administered to the student, and any other available  
22 academic information to determine the student's academic readiness  
23 for the next grade or a given course.

24 (f) If established under Subsection (c), after the parent or  
25 guardian has participated in a retention committee meeting, the  
26 parent or guardian shall decide whether the student should be  
27 retained or retake a grade or course. The school district or



1 open-enrollment school must abide by the decision of the parent or  
2 guardian.

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

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

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

18 (j) The commissioner may adopt rules to implement this  
19 section.

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

25 (d) For purposes of this section, "student at risk of  
26 dropping out of school" includes each student who:

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

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

5 (B) if the student is in grade 7, 8, 9, 10, 11, or  
6 12, did not maintain an average equivalent to 70 on a scale of 100 in  
7 two or more subjects in the foundation curriculum during a semester  
8 in the preceding or current school year or is not maintaining such  
9 an average in two or more subjects in the foundation curriculum in  
10 the current semester;

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

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

21 (E) is pregnant or is a parent;

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

25 (G) has been expelled in accordance with Section  
26 37.007 during the preceding or current school year;

27 (H) is currently on parole, probation, deferred

1 prosecution, or other conditional release;

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

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

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

11 (L) is homeless, as defined by 42 U.S.C. Section  
12 11302, and its subsequent amendments;

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

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

23 (2) regardless of the student's age, participates in  
24 an adult education program provided under a high school diploma and  
25 industry certification charter school program under Section  
26 29.259.

27 (h) The agency shall study whether students retained under

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

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

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

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

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

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

22 (4) allow a grade or course repeated under Section  
23 28.02124 to qualify for average daily attendance even if the  
24 student previously passed or earned credit for the grade or course,  
25 if the grade or course would otherwise be eligible.

26 SECTION 7. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

S.B. No. 1697

1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2021.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1697 passed the Senate on  
April 23, 2021, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1697 passed the House on  
May 25, 2021, by the following vote: Yeas 147, Nays 0, one  
present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor