

1-1 By: Paxton S.B. No. 1697  
 1-2 (In the Senate - Filed March 11, 2021; March 26, 2021, read  
 1-3 first time and referred to Committee on Education; April 13, 2021,  
 1-4 reported favorably by the following vote: Yeas 11, Nays 0;  
 1-5 April 13, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Taylor	X			
1-8 Lucio	X			
1-9 Bettencourt	X			
1-10 Hall	X			
1-11 Hughes	X			
1-12 Menéndez	X			
1-13 Paxton	X			
1-14 Perry	X			
1-15 Powell	X			
1-16 Schwertner	X			
1-17 West	X			

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to allowing parents and guardians to elect for a student to  
 1-22 repeat or retake a course or grade.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 12.013(b), Education Code, is amended to  
 1-25 read as follows:

1-26 (b) A home-rule school district is subject to:

1-27 (1) a provision of this title establishing a criminal  
 1-28 offense;

1-29 (2) a provision of this title relating to limitations  
 1-30 on liability; and

1-31 (3) a prohibition, restriction, or requirement, as  
 1-32 applicable, imposed by this title or a rule adopted under this  
 1-33 title, relating to:

1-34 (A) the Public Education Information Management  
 1-35 System (PEIMS) to the extent necessary to monitor compliance with  
 1-36 this subchapter as determined by the commissioner;

1-37 (B) educator certification under Chapter 21 and  
 1-38 educator rights under Sections 21.407, 21.408, and 22.001;

1-39 (C) criminal history records under Subchapter C,  
 1-40 Chapter 22;

1-41 (D) student admissions under Section 25.001;

1-42 (E) school attendance under Sections 25.085,  
 1-43 25.086, and 25.087;

1-44 (F) inter-district or inter-county transfers of  
 1-45 students under Subchapter B, Chapter 25;

1-46 (G) elementary class size limits under Section  
 1-47 25.112, in the case of any campus in the district that fails to  
 1-48 satisfy any standard under Section 39.054(e);

1-49 (H) high school graduation under Section 28.025;

1-50 (I) special education programs under Subchapter  
 1-51 A, Chapter 29;

1-52 (J) bilingual education under Subchapter B,  
 1-53 Chapter 29;

1-54 (K) prekindergarten programs under Subchapter E,  
 1-55 Chapter 29;

1-56 (L) safety provisions relating to the  
 1-57 transportation of students under Sections 34.002, 34.003, 34.004,  
 1-58 and 34.008;

1-59 (M) computation and distribution of state aid  
 1-60 under Chapters 31, 43, and 48;

1-61 (N) extracurricular activities under Section

2-1 33.081;

2-2 (O) health and safety under Chapter 38;

2-3 (P) public school accountability under

2-4 Subchapters B, C, D, and J, Chapter 39, and Chapter 39A;

2-5 (Q) options for local revenue levels in excess of

2-6 entitlement under Chapter 49;

2-7 (R) a bond or other obligation or tax rate under

2-8 Chapters 43, 45, and 48; ~~and~~

2-9 (S) purchasing under Chapter 44; and

2-10 (T) parental options to retain a student under

2-11 Section 28.02124.

2-12 SECTION 2. Section 12.056(b), Education Code, is amended to

2-13 read as follows:

2-14 (b) A campus or program for which a charter is granted under

2-15 this subchapter is subject to:

2-16 (1) a provision of this title establishing a criminal

2-17 offense; and

2-18 (2) a prohibition, restriction, or requirement, as

2-19 applicable, imposed by this title or a rule adopted under this

2-20 title, relating to:

2-21 (A) the Public Education Information Management

2-22 System (PEIMS) to the extent necessary to monitor compliance with

2-23 this subchapter as determined by the commissioner;

2-24 (B) criminal history records under Subchapter C,

2-25 Chapter 22;

2-26 (C) high school graduation under Section 28.025;

2-27 (D) special education programs under Subchapter

2-28 A, Chapter 29;

2-29 (E) bilingual education under Subchapter B,

2-30 Chapter 29;

2-31 (F) prekindergarten programs under Subchapter E,

2-32 Chapter 29;

2-33 (G) extracurricular activities under Section

2-34 33.081;

2-35 (H) health and safety under Chapter 38;

2-36 (I) public school accountability under

2-37 Subchapters B, C, D, F, and J, Chapter 39, and Chapter 39A; ~~and~~

2-38 (J) the duty to discharge or refuse to hire

2-39 certain employees or applicants for employment under Section

2-40 12.1059; and

2-41 (K) parental options to retain a student under

2-42 Section 28.02124.

2-43 SECTION 3. Section 12.104(b), Education Code, is amended to

2-44 read as follows:

2-45 (b) An open-enrollment charter school is subject to:

2-46 (1) a provision of this title establishing a criminal

2-47 offense;

2-48 (2) the provisions in Chapter 554, Government Code;

2-49 and

2-50 (3) a prohibition, restriction, or requirement, as

2-51 applicable, imposed by this title or a rule adopted under this

2-52 title, relating to:

2-53 (A) the Public Education Information Management

2-54 System (PEIMS) to the extent necessary to monitor compliance with

2-55 this subchapter as determined by the commissioner;

2-56 (B) criminal history records under Subchapter C,

2-57 Chapter 22;

2-58 (C) reading instruments and accelerated reading

2-59 instruction programs under Section 28.006;

2-60 (D) accelerated instruction under Section

2-61 28.0211;

2-62 (E) high school graduation requirements under

2-63 Section 28.025;

2-64 (F) special education programs under Subchapter

2-65 A, Chapter 29;

2-66 (G) bilingual education under Subchapter B,

2-67 Chapter 29;

2-68 (H) prekindergarten programs under Subchapter E

2-69 or E-1, Chapter 29;

3-1 (I) extracurricular activities under Section  
3-2 33.081;  
3-3 (J) discipline management practices or behavior  
3-4 management techniques under Section 37.0021;  
3-5 (K) health and safety under Chapter 38;  
3-6 (L) public school accountability under  
3-7 Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A;  
3-8 (M) the requirement under Section 21.006 to  
3-9 report an educator's misconduct;  
3-10 (N) intensive programs of instruction under  
3-11 Section 28.0213;  
3-12 (O) the right of a school employee to report a  
3-13 crime, as provided by Section 37.148;  
3-14 (P) bullying prevention policies and procedures  
3-15 under Section 37.0832;  
3-16 (Q) the right of a school under Section 37.0052  
3-17 to place a student who has engaged in certain bullying behavior in a  
3-18 disciplinary alternative education program or to expel the student;  
3-19 (R) the right under Section 37.0151 to report to  
3-20 local law enforcement certain conduct constituting assault or  
3-21 harassment;  
3-22 (S) a parent's right to information regarding the  
3-23 provision of assistance for learning difficulties to the parent's  
3-24 child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);  
3-25 (T) establishment of residency under Section  
3-26 25.001;  
3-27 (U) [~~(T)~~] school safety requirements under  
3-28 Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115,  
3-29 37.207, and 37.2071;  
3-30 (V) [~~(T)~~] the early childhood literacy and  
3-31 mathematics proficiency plans under Section 11.185; [~~and~~]  
3-32 (W) [~~(U)~~] the college, career, and military  
3-33 readiness plans under Section 11.186; and  
3-34 (X) parental options to retain a student under  
3-35 Section 28.02124.  
3-36 SECTION 4. Subchapter B, Chapter 28, Education Code, is  
3-37 amended by adding Section 28.02124 to read as follows:  
3-38 Sec. 28.02124. PARENTAL OPTION FOR STUDENT RETENTION. (a)  
3-39 Subject to Subsection (c), a parent or guardian may elect for a  
3-40 student to:  
3-41 (1) repeat prekindergarten;  
3-42 (2) enroll in prekindergarten, if the student would  
3-43 have been eligible to enroll in prekindergarten during the previous  
3-44 school year under Section 29.153(b) and the student has not yet  
3-45 enrolled in kindergarten;  
3-46 (3) repeat kindergarten;  
3-47 (4) enroll in kindergarten, if the student would have  
3-48 been eligible to enroll in kindergarten in the previous school year  
3-49 and has not yet enrolled in first grade; or  
3-50 (5) for grades one through three, repeat the grade in  
3-51 which the student was enrolled during the previous school year.  
3-52 (a-1) Subject to Subsections (a-3) and (c), a parent or  
3-53 guardian may elect for a student to:  
3-54 (1) for grades four through eight, repeat the grade  
3-55 the student was enrolled in during the previous school year; and  
3-56 (2) for courses taken for high school credit, repeat  
3-57 any course in which the student was enrolled in during the previous  
3-58 school year.  
3-59 (a-2) A parent or guardian may make an election under  
3-60 Subsection (a-1)(1) or (2), or both.  
3-61 (a-3) A parent or guardian may not elect for a student to  
3-62 repeat a course under Subsection (a-1)(2) if the school district or  
3-63 open-enrollment charter school determines the student has met all  
3-64 of the requirements for graduation.  
3-65 (a-4) Subsections (a-1), (a-2), (a-3), and this subsection  
3-66 apply for students who repeat courses from the 2020-2021 school  
3-67 year during the 2021-2022 school year and for students who  
3-68 otherwise enroll during the 2021-2022 school year. Subsections  
3-69 (a-1), (a-2), (a-3), and this subsection expire September 1, 2022.

4-1 (b) An election made by a parent or guardian under this  
4-2 section shall be made in writing to a school district or  
4-3 open-enrollment charter school, as applicable.

4-4 (c) If a school district or an open-enrollment charter  
4-5 school disagrees with an election authorized under this section,  
4-6 the school district or open-enrollment charter school must convene  
4-7 a retention committee and meet with the parent or guardian to  
4-8 discuss retention. A meeting under this subsection shall be  
4-9 conducted in person unless an alternative means is agreeable to the  
4-10 parent or guardian. A student may not be retained for a grade or  
4-11 retake a course under this section if the parent or guardian does  
4-12 not meet with the retention committee.

4-13 (d) A retention committee established under Subsection (c)  
4-14 shall be composed of:

- 4-15 (1) the principal or the principal's designee;
- 4-16 (2) the student's parent or guardian;
- 4-17 (3) the teacher who taught the grade or course for  
4-18 which the parent wants the student retained or repeated; and
- 4-19 (4) additional teachers at the discretion of the  
4-20 principal, if the student will potentially repeat multiple courses.

4-21 (e) A retention committee established under Subsection (c)  
4-22 shall:

- 4-23 (1) discuss the merits of and concerns with  
4-24 advancement and retention; and
- 4-25 (2) review and consider the student's grade in each  
4-26 subject or course, the results of any formative or summative  
4-27 assessments administered to the student, and any other available  
4-28 academic information to determine the student's academic readiness  
4-29 for the next grade or a given course.

4-30 (f) If established under Subsection (c), after the parent or  
4-31 guardian has participated in a retention committee meeting, the  
4-32 parent or guardian shall decide whether the student should be  
4-33 retained or retake a grade or course. The school district or  
4-34 open-enrollment school must abide by the decision of the parent or  
4-35 guardian.

4-36 (g) A student who receives a passing grade or who earns  
4-37 credit for a high school course shall retain a school district's or  
4-38 open-enrollment charter school's original assignment of a grade or  
4-39 award of credit when a student is retained under this section,  
4-40 unless the school district or open-enrollment charter school adopts  
4-41 a policy to a different effect.

4-42 (h) Except as provided by this section or other law,  
4-43 retention of a student pursuant to a parent's or guardian's election  
4-44 under this section shall be considered the same as retention of a  
4-45 student by a school district or open-enrollment charter school.

4-46 (i) The rights of a parent or guardian under this section  
4-47 transfer to a student if the student is 18 years of age or older or  
4-48 has had the disabilities of a minor removed, unless the student is  
4-49 under a form of guardianship imposed by law or court order that  
4-50 continues after the student turns 18 years of age.

4-51 (j) The commissioner may adopt rules to implement this  
4-52 section.

4-53 SECTION 5. Section 29.081, Education Code, is amended by  
4-54 reenacting and amending Subsection (d), as amended by Chapters 403  
4-55 (S.B. 1746), 1060 (H.B. 1051), and 597 (S.B. 668), Acts of the 86th  
4-56 Legislature, Regular Session, 2019, and adding Subsection (h) to  
4-57 read as follows:

4-58 (d) For purposes of this section, "student at risk of  
4-59 dropping out of school" includes each student who:

- 4-60 (1) is under 26 years of age and who:
  - 4-61 (A) except as provided by Subsection (h) or if  
4-62 retained for prekindergarten under Section 28.02124, was not  
4-63 advanced from one grade level to the next for one or more school  
4-64 years;

- 4-65 (B) if the student is in grade 7, 8, 9, 10, 11, or  
4-66 12, did not maintain an average equivalent to 70 on a scale of 100 in  
4-67 two or more subjects in the foundation curriculum during a semester  
4-68 in the preceding or current school year or is not maintaining such  
4-69 an average in two or more subjects in the foundation curriculum in

5-1 the current semester;

5-2 (C) did not perform satisfactorily on an

5-3 assessment instrument administered to the student under Subchapter

5-4 B, Chapter 39, and who has not in the previous or current school

5-5 year subsequently performed on that instrument or another

5-6 appropriate instrument at a level equal to at least 110 percent of

5-7 the level of satisfactory performance on that instrument;

5-8 (D) if the student is in prekindergarten,

5-9 kindergarten, or grade 1, 2, or 3, did not perform satisfactorily on

5-10 a readiness test or assessment instrument administered during the

5-11 current school year;

5-12 (E) is pregnant or is a parent;

5-13 (F) has been placed in an alternative education

5-14 program in accordance with Section 37.006 during the preceding or

5-15 current school year;

5-16 (G) has been expelled in accordance with Section

5-17 37.007 during the preceding or current school year;

5-18 (H) is currently on parole, probation, deferred

5-19 prosecution, or other conditional release;

5-20 (I) was previously reported through the Public

5-21 Education Information Management System (PEIMS) to have dropped out

5-22 of school;

5-23 (J) is a student of limited English proficiency,

5-24 as defined by Section 29.052;

5-25 (K) is in the custody or care of the Department of

5-26 Family and Protective Services or has, during the current school

5-27 year, been referred to the department by a school official, officer

5-28 of the juvenile court, or law enforcement official;

5-29 (L) is homeless, as defined by 42 U.S.C. Section

5-30 11302, and its subsequent amendments;

5-31 (M) resided in the preceding school year or

5-32 resides in the current school year in a residential placement

5-33 facility in the district, including a detention facility, substance

5-34 abuse treatment facility, emergency shelter, psychiatric hospital,

5-35 halfway house, cottage home operation, specialized child-care

5-36 home, or general residential operation; or

5-37 (N) has been incarcerated or has a parent or

5-38 guardian who has been incarcerated, within the lifetime of the

5-39 student, in a penal institution as defined by Section 1.07, Penal

5-40 Code; or

5-41 (2) regardless of the student's age, participates in

5-42 an adult education program provided under a high school diploma and

5-43 industry certification charter school program under Section

5-44 29.259.

5-45 (h) The agency shall study whether students retained under

5-46 Section 28.02124 should be considered at-risk. The commissioner

5-47 may adopt a rule excluding students retained by a parent or guardian

5-48 under Section 28.02124 from being considered a "student at risk of

5-49 dropping out of school" under Subsection (d)(1)(A).

5-50 SECTION 6. Section 48.005(m), Education Code, is amended to

5-51 read as follows:

5-52 (m) The commissioner shall adopt rules necessary to

5-53 implement this section, including rules that:

5-54 (1) establish the minimum amount of instructional time

5-55 per day that allows a school district or charter school to be

5-56 eligible for full average daily attendance, which may differ based

5-57 on the instructional program offered by the district or charter

5-58 school;

5-59 (2) establish the requirements necessary for a school

5-60 district or charter school to be eligible for one-half of average

5-61 daily attendance, which may differ based on the instructional

5-62 program offered by the district or charter school; ~~and~~

5-63 (3) proportionally reduce the average daily

5-64 attendance for a school district if any campus or instructional

5-65 program in the district provides fewer than the required minimum

5-66 minutes of instruction to students; and

5-67 (4) allow a grade or course repeated under Section

5-68 28.02124 to qualify for average daily attendance even if the

5-69 student previously passed or earned credit for the grade or course,

6-1 if the grade or course would otherwise be eligible.

6-2 SECTION 7. This Act takes effect immediately if it receives  
6-3 a vote of two-thirds of all the members elected to each house, as  
6-4 provided by Section 39, Article III, Texas Constitution. If this  
6-5 Act does not receive the vote necessary for immediate effect, this  
6-6 Act takes effect September 1, 2021.

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