

SECOND REGULAR SESSION

# HOUSE BILL NO. 2461

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DIECKHAUS (Sponsor), KOENIG, McNARY, NIEVES,  
CALLOWAY, SMITH (14), JONES (89), NASHEED, SCHARNHORST AND STREAM (Co-sponsors).

4344L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 167.640 and 167.645, RSMo, and to enact in lieu thereof one new section relating to student progression.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 167.640 and 167.645, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 167.650, to read as follows:

**167.650. 1. Each district school board shall establish a comprehensive program for student progression which shall include:**

**(1) Standards for evaluating each student's performance, including how well he or she masters the performance standards approved by the state board of education;**

**(2) Specific level of reading performance for each grade level, including the levels of performance on statewide assessments, below which a student shall receive remediation or be retained within an intensive program that is different from the previous year's program and that takes into account the student's learning style; and**

**(3) Appropriate alternative placement for a student who has been retained two or more years.**

**2. District school boards shall allocate remedial and supplemental instruction resources to students in the following priority:**

**(1) Students who are not reading at grade level by the end of third grade;**

**(2) Students who fail to meet performance levels required for promotion consistent with the district school board's plan for student progression required in subdivision (2) of subsection 3 of this section.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           **3. (1) Each student shall participate in the statewide assessment tests required by**  
18 **section 160.518. Each student who does not meet specific levels of performance as**  
19 **determined by the district school board in reading for each grade level or who scores below**  
20 **proficient in reading shall be provided with additional diagnostic assessments to determine**  
21 **the nature of the student's difficulty and strategies for appropriate intervention and**  
22 **instruction as described in subdivision (2) of this subsection.**

23           **(2) The school in which the student is enrolled shall, in consultation with the**  
24 **student's parents, develop and implement a progress monitoring plan. A progress**  
25 **monitoring plan shall provide flexibility for the school in meeting the academic needs of**  
26 **the student and reduce paperwork. A student who is not meeting the school district or**  
27 **state requirements for proficiency in reading shall be covered by one of the following plans**  
28 **to target instruction and identify ways to improve his or her academic achievement:**

- 29           **(a) A federally required student plan such as an individual education plan;**  
30           **(b) A schoolwide system of progress monitoring for all students; or**  
31           **(c) An individualized progress monitoring plan.**

32

33 **The plan chosen shall be designed to assist the student's school in meeting state and district**  
34 **expectations for proficiency. If the student has been identified as having a deficiency in**  
35 **reading, the K-12 comprehensive literacy plan required by the school improvement**  
36 **standards shall include instructional and support services to be provided to meet the**  
37 **desired levels of performance. District school boards may require low-performing students**  
38 **to attend remediation programs held before or after regular school hours or during the**  
39 **summer if transportation is provided.**

40           **(3) Upon subsequent evaluation, if the documented deficiency has not been**  
41 **remediated, the student may be retained. Every student who does not meet the minimum**  
42 **performance grade-level expectations for reading shall continue to be provided with**  
43 **remedial or supplemental instruction until the expectations are met or the student**  
44 **graduates from high school or is no longer subject to compulsory school attendance.**

45           **4. (1) Any student who exhibits a substantial deficiency in reading, based upon**  
46 **locally determined or statewide assessments conducted in kindergarten or first grade,**  
47 **second grade, or third grade, or through teacher observations, shall be given intensive**  
48 **reading instruction immediately following the identification of the reading deficiency. The**  
49 **student's reading proficiency shall be reassessed by locally determined assessments or**  
50 **through teacher observations at the beginning of the grade following the intensive reading**  
51 **instruction. The student shall continue to be provided with intensive reading instruction**  
52 **until the reading deficiency is remedied.**

53           (2) Beginning with the 2012-2013 school year, if the student's reading deficiency,  
54 as identified in subdivision (1) of this subsection, is not remedied by the end of third grade,  
55 as demonstrated by scoring at proficient or higher on the statewide assessment test in  
56 reading for third grade, the student shall be retained.

57           (3) The parent of any student who exhibits a substantial deficiency in reading, as  
58 described in subdivision (1) of this subsection, shall be notified in writing of the following:

59           (a) That his or her child has been identified as having a substantial deficiency in  
60 reading;

61           (b) A description of the current services that are provided to the child;

62           (c) A description of the proposed supplemental instructional services and supports  
63 that will be provided to the child that are designed to remediate the identified area of  
64 reading deficiency;

65           (d) That if the child's reading deficiency is not remediated by the end of third  
66 grade, the child shall be retained unless he or she is exempt from mandatory retention for  
67 good cause;

68           (e) Strategies for parents to use in helping their child succeed in reading  
69 proficiency;

70           (f) That the state assessment program is not the sole determiner of promotion and  
71 that additional evaluations, portfolio reviews, and assessments are available to the child  
72 to assist parents and the school district in knowing when a child is reading at or above  
73 grade level and ready for grade promotion; and

74           (g) The district's specific criteria and policies for midyear promotion. Midyear  
75 promotion means promotion of a retained student at any time during the year of retention  
76 once the student has demonstrated ability to read at grade level.

77           5. (1) No student may be assigned to a grade level based solely on age or other  
78 factors that constitute social promotion, which is defined for the purpose of this section as  
79 the progression from one grade to a higher grade without substantial evidence of a  
80 student's ability to perform at grade level.

81           (2) The district school board may only exempt students from mandatory retention,  
82 as provided in subdivision (2) of subsection 4 of this section, for good cause. Good cause  
83 exemptions shall be limited to the following:

84           (a) Limited English proficient students who have had less than three years of  
85 instruction in a program of English for speakers of other languages;

86           (b) Students with disabilities whose individual education plan indicates that  
87 participation in the statewide assessment program is not appropriate, consistent with the  
88 requirements of the state board of education;

89 (c) Students who demonstrate an acceptable level of performance on the alternative  
90 reading assessment approved by the state board of education;

91 (d) Students who demonstrate, through a student portfolio, that the student is  
92 reading on grade level as evidenced by demonstration of mastery of the state standards in  
93 reading equal to at least a proficient performance on the statewide assessment;

94 (e) Students with disabilities who participate in the statewide assessment and who  
95 have an individual education plan or a Section 504 plan that reflects that the student has  
96 received intensive remediation in reading for more than two years but still demonstrates  
97 a deficiency in reading and was previously retained in kindergarten, first grade, second  
98 grade, or third grade;

99 (f) Students who have received intensive remediation in reading for two or more  
100 years but still demonstrate a deficiency in reading and who were previously retained in  
101 kindergarten, first grade, second grade, or third grade for a total of two years. Intensive  
102 reading instruction for students so promoted shall include an altered instructional day that  
103 includes specialized diagnostic information and specific reading strategies for each student.  
104 The district school board shall assist schools and teachers to implement reading strategies  
105 that research has shown to be successful in improving reading among low-performing  
106 readers.

107 (3) Requests for good cause exemptions for students from the mandatory retention  
108 requirement as described in paragraphs (c) and (d) of subdivision (2) of this subsection  
109 shall be made consistent with the following:

110 (a) Documentation shall be submitted from the student's teacher to the school  
111 principal that indicates that the promotion of the student is appropriate and is based upon  
112 the student's academic record. In order to minimize paperwork requirements, such  
113 documentation shall consist only of the existing progress monitoring plan, individual  
114 educational plan, if applicable, or student portfolio;

115 (b) The school principal shall review and discuss such recommendation with the  
116 teacher and make the determination as to whether the student should be promoted or  
117 retained. If the school principal determines that the student should be promoted, the  
118 school principal shall make such recommendation in writing to the district school  
119 superintendent, which recommendation shall include documentation of the school district's  
120 agreed-upon criteria upon which the recommendation was based. The district school  
121 superintendent shall accept or reject the school principal's recommendation in writing.

122 6. (1) Students retained under the provisions of subdivision (2) of subsection 4 of  
123 this section shall be provided intensive interventions in reading to ameliorate the student's  
124 specific reading deficiency, as identified by a valid and reliable diagnostic assessment. This

125 **intensive intervention shall include effective instructional strategies, participation in a**  
126 **school district's summer reading program, and appropriate teaching methodologies**  
127 **necessary to assist those students in becoming successful readers, able to read at or above**  
128 **grade level, and ready for promotion to the next grade.**

129 **(2) Beginning with the 2014-2015 school year, each school district shall:**

130 **(a) Conduct a review of student progress monitoring plans for all students who did**  
131 **not score above the basic level on the reading portion of the state assessment or its**  
132 **equivalent and did not meet the criteria for one of the good cause exemptions in**  
133 **subdivision (2) of subsection 5 of this section. The review shall address additional supports**  
134 **and services, as described in this subsection, needed to remediate the identified areas of**  
135 **reading deficiency;**

136 **(b) Provide students who are retained under the provisions of subdivision (2) of**  
137 **subsection 4 of this section with intensive instructional services and supports to remediate**  
138 **the identified areas of reading deficiency, including a minimum of ninety minutes of daily,**  
139 **scientifically research-based reading instruction as suggested by the department and other**  
140 **strategies prescribed by the school district, which may include but are not limited to:**

141 **a. Small group instruction;**

142 **b. Reduced teacher-student ratios;**

143 **c. More frequent progress monitoring;**

144 **d. Tutoring or mentoring;**

145 **e. Transition classes containing third and fourth grade students;**

146 **f. Extended school day, week, or year; and**

147 **g. Summer reading camps.**

148 **(c) Provide written notification to the parent of any student who is retained under**  
149 **the provisions of subdivision (2) of subsection 4 of this section that his or her child has not**  
150 **met the proficiency level required for promotion and the reasons the child is not eligible**  
151 **for a good cause exemption as provided in subdivision (2) of subsection 5 of this section.**  
152 **The notification shall include a description of proposed interventions and supports that**  
153 **will be provided to the child to remediate the identified areas of reading deficiency;**

154 **(d) Implement a policy for the midyear promotion of any student retained under**  
155 **the provisions of subdivision (2) of subsection 4 of this section who can demonstrate that**  
156 **he or she is a successful and independent reader, reading at or above grade level, and ready**  
157 **to be promoted to fourth grade. Tools that school districts may use in reevaluating any**  
158 **student retained may include subsequent assessments, alternative assessments, and**  
159 **portfolio reviews, in accordance with rules of the state board of education. Students**  
160 **promoted during the school year after November first shall demonstrate proficiency above**

161 that required to score at the basic level of the third grade statewide assessment, as  
162 determined by the state board of education. The state board of education shall adopt  
163 standards that provide a reasonable expectation that the student's progress is sufficient to  
164 master appropriate fourth grade level reading skills;

165 (e) Provide students who are retained under the provisions of subdivision (2) of  
166 subsection 4 of this section with a high-performing teacher as determined by student  
167 performance data and above-satisfactory performance appraisals;

168 (f) In addition to required reading enhancement and acceleration strategies,  
169 provide parents of students to be retained with at least one of the following instructional  
170 options:

171 a. Supplemental tutoring in scientifically research-based reading services in  
172 addition to the regular reading block, including tutoring before or after school;

173 b. A "Read at Home" plan outlined in a parental contract, including participation  
174 in "Families Building Better Readers Workshops" and regular parent-guided home  
175 reading;

176 c. A mentor or tutor with specialized reading training;

177 (g) Establish a Reading Enhancement and Acceleration Development (READ)  
178 Initiative. The focus of the READ initiative shall be to prevent the retention of third grade  
179 students and to offer intensive accelerated reading instruction to third grade students who  
180 failed to meet standards for promotion to fourth grade and to each K-3 student who is  
181 assessed as exhibiting a reading deficiency. The READ initiative shall:

182 a. Be provided to all K-3 students at risk of retention as identified by an assessment  
183 system approved by the department. The assessment shall measure phonemic awareness,  
184 phonics, fluency, vocabulary, and comprehension;

185 b. Be provided during regular school hours in addition to the regular reading  
186 instruction;

187 c. Provide a state-identified reading curriculum that has been reviewed by a  
188 reading research center housed at a public higher education institution within the state  
189 selected by the state board of education and meets, at a minimum, the following  
190 specifications:

191 (i) Assists students assessed as exhibiting a reading deficiency in developing the  
192 ability to read at grade level;

193 (ii) Provides skill development in phonemic awareness, phonics, fluency,  
194 vocabulary, and comprehension;

195 (iii) Provides scientifically based and reliable assessment;

196 (iv) Provides initial and ongoing analysis of each student's reading progress;

- 197 (v) Is implemented during regular school hours;
- 198 (vi) Provides a curriculum in core academic subjects to assist the student in  
199 maintaining or meeting proficiency levels for the appropriate grade in all academic  
200 subjects;
- 201 (h) Establish at each school, where applicable, an intensive acceleration class for  
202 retained third grade students who subsequently score at the below basic level on the  
203 reading portion of the statewide assessment. The focus of the intensive acceleration class  
204 shall be to increase a child's reading level at least two grade levels in one school year. The  
205 intensive acceleration class shall:
- 206 a. Be provided to any student in third grade who scores at the below basic level on  
207 the reading portion of the statewide assessment and who was retained in third grade the  
208 prior year because of scoring at the below basic level on the reading portion of the  
209 statewide assessment;
- 210 b. Have a reduced teacher-student ratio;
- 211 c. Provide uninterrupted reading instruction for the majority of student contact  
212 time each day and incorporate opportunities to master the fourth grade level expectations  
213 in other core subject areas;
- 214 d. Use a reading program that is scientifically research-based and has proven  
215 results in accelerating student reading achievement within the same school year;
- 216 e. Provide intensive language and vocabulary instruction using a scientifically  
217 research-based program, including use of a speech-language therapist;
- 218 f. Include weekly progress monitoring measures to ensure progress is being made;  
219 and
- 220 g. Report to the department, in the manner described by the department, the  
221 progress of students in the class at the end of the first semester;
- 222 (i) Report to the state board of education, as requested, on the specific intensive  
223 reading interventions and supports implemented at the school district level. The  
224 commissioner of education shall annually prescribe the required components of requested  
225 reports; and
- 226 (j) Provide a student who has been retained in third grade and has received  
227 intensive instructional services but is still not ready for promotion, as determined by the  
228 school district, the option of being placed in a transitional instructional setting. Such  
229 setting shall specifically be designed to produce learning gains sufficient to meet fourth  
230 grade level performance expectations while continuing to remediate the areas of reading  
231 deficiency.

232           **7. (1) In addition to the requirements in subdivision (2) of subsection 4 of this**  
233 **section, each district school board shall annually report to the parent of each student the**  
234 **progress of the student toward achieving state and district expectations for proficiency in**  
235 **reading. The district school board shall report to the parent the student's results on each**  
236 **assessment that was used in making the determination of proficiency, which shall be based**  
237 **upon the student's classroom work, observations, tests, district and state assessments, and**  
238 **other relevant information. Progress reporting shall be provided to the parent in writing**  
239 **in a format adopted by the district school board.**

240           **(2) Each district school board shall annually publish and report in writing to the**  
241 **state board of education each year the following information on the prior school year**  
242 **under section 160.522:**

243           **(a) The provisions of this section relating to public school student progression and**  
244 **the district school board's policies and procedures on student retention and promotion;**

245           **(b) By grade, the number and percentage of all students retained in grades 1**  
246 **through 8, to the extent permitted by federal law;**

247           **(c) Information on the total number of students who were promoted for good cause,**  
248 **by each category of good cause as specified in subdivision (2) of subsection 5 of this section;**

249           **(d) Any revisions to the district school board's policy on student retention and**  
250 **promotion from the prior year.**

251           **8. (1) The state board of education shall have authority as provided in section**  
252 **161.092 to enforce this section.**

253           **(2) Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
254 **created under the authority delegated in this section shall become effective only if it**  
255 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
256 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
257 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
258 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
259 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2010,**  
260 **shall be invalid and void.**

261           **9. The department shall provide technical assistance as needed to aid district school**  
262 **boards in administering this section.**

2           [167.640. 1. School districts may adopt a policy with regard to student  
3 promotion which may require remediation as a condition of promotion to the next  
4 grade level for any student identified by the district as failing to master skills and  
5 competencies established for that particular grade level by the district board of  
6 education. School districts may also require parents or guardians of such students  
to commit to conduct home-based tutorial activities with their children or, in the

7 case of a student with disabilities eligible for services pursuant to sections  
8 162.670 to 162.1000, RSMo, the individual education plan shall determine the  
9 nature of parental involvement consistent with the requirements for a free,  
10 appropriate public education.

11 2. Such remediation shall recognize that different students learn  
12 differently and shall employ methods designed to help these students achieve at  
13 high levels. Such remediation may include, but shall not necessarily be limited  
14 to, a mandatory summer school program focused on the areas of deficiency or  
15 other such activities conducted by the school district outside of the regular school  
16 day. Decisions concerning the instruction of a child who receives special  
17 educational services pursuant to sections 162.670 to 162.1000, RSMo, shall be  
18 made in accordance with the child's individualized education plan.

19 3. School districts providing remediation pursuant to this section outside  
20 of the traditional school day may count extra hours of instruction in the  
21 calculation of average daily attendance as defined in section 163.011, RSMo.]  
22

[167.645. 1. For purposes of this section, the following terms mean:

2 (1) "Reading assessment", a recognized method of judging a student's  
3 reading ability, with results expressed as reading at a particular grade level. The  
4 term reading assessment shall include, but is not limited to, standard checklists  
5 designed for use as a student reads out loud, paper-and-pencil tests promulgated  
6 by nationally recognized organizations and other recognized methods of  
7 determining a student's reading accuracy, expression, fluency and comprehension  
8 in order to make a determination of the student's grade-level reading ability.  
9 Assessments which do not give a grade-level result may be used in combination  
10 with other assessments to reach a grade-level determination. Districts are  
11 encouraged but not required to select assessment methods identified pursuant to  
12 section 167.346. Districts are also encouraged to use multiple methods of  
13 assessment;

14 (2) "Summer school", for reading instruction purposes, a minimum of  
15 forty hours of reading instruction and practice. A school district may arrange the  
16 hours and days of instruction to coordinate with its regular program of summer  
17 school.

18 2. For purposes of this section, methods of reading assessment shall be  
19 determined by each school district. Unless a student has been determined in the  
20 current school year to be reading at grade level or above, each school district shall  
21 administer a reading assessment or set of assessments to each student within  
22 forty-five days of the end of the third-grade year, except that the provisions of  
23 this subsection shall not apply to students receiving special education services  
24 under an individualized education plan pursuant to sections 162.670 to 162.999,  
25 RSMo, to students receiving services pursuant to Section 504 of the  
26 Rehabilitation Act of 1973 whose services plan includes an element addressing  
27 reading or to students determined to have limited English proficiency or to

28 students who have been determined, prior to the beginning of any school year, to  
29 have a cognitive ability insufficient to meet the reading requirement set out in this  
30 section, provided that districts shall provide reading improvement plans for  
31 students determined to have such insufficient cognitive ability. The assessment  
32 required by this subsection shall also be required for students who enter a school  
33 district in grades four, five or six unless such student has been determined in the  
34 current school year to be reading at grade level or above.

35 3. Beginning with school year 2002-03, for each student whose  
36 third-grade reading assessment determines that such student is reading below  
37 second-grade level, the school district shall design a reading improvement plan  
38 for the student's fourth-grade year. Such reading improvement plan shall include,  
39 at a minimum, thirty hours of additional reading instruction or practice outside  
40 the regular school day during the fourth-grade year. The school district shall  
41 determine the method of reading instruction necessary to enforce this subsection.  
42 The school district may also require the student to attend summer school for  
43 reading instruction as a condition of promotion to fourth grade. The department  
44 of elementary and secondary education may, from funds appropriated for the  
45 purpose, reimburse school districts for additional instructional personnel costs  
46 incurred in the implementation and execution of the thirty hours of additional  
47 reading instruction minus the revenue generated by the school district through the  
48 foundation formula for the additional reading instruction average daily  
49 attendance.

50 4. Each student for whom a reading improvement plan has been designed  
51 pursuant to subsection 3 of this section shall be given another reading  
52 assessment, to be administered within forty-five days of the end of such student's  
53 fourth-grade year. If such student is determined to be reading below third-grade  
54 level, the student shall be required to attend summer school to receive reading  
55 instruction. At the end of such summer school instruction, such student shall be  
56 given another reading assessment. If such student is determined to be reading  
57 below third-grade level, the district shall notify the student's parents or guardians,  
58 and the student shall not be promoted to fifth grade. No student shall be denied  
59 promotion more than once solely for inability to meet the reading standards set  
60 out in this section.

61 5. The process described in subsections 3 and 4 of this section shall be  
62 repeated as necessary through the end of the sixth grade, with the target grade  
63 level rising accordingly. Mandatory retention in grade shall not apply to grades  
64 subsequent to fourth grade.

65 6. The mandatory process of additional reading instruction pursuant to  
66 this section shall cease at the end of the sixth grade. The permanent record of  
67 students who are determined to be reading below the fifth-grade level at the end  
68 of sixth grade shall carry a notation advising that such student has not met  
69 minimal reading standards. The notation shall stay on the student's record until

70 such time as the district determines that a student has met minimal reading  
71 standards.

72 7. Each school district shall be required to offer summer school reading  
73 instruction to any student with a reading improvement plan. Districts may fulfill  
74 the requirement of this section through cooperative arrangements with  
75 neighboring districts; provided that such districts shall timely make all payments  
76 provided pursuant to such cooperative agreements.

77 8. A school district may adopt a policy that requires retention in grade of  
78 any student who has been determined to require summer school instruction in  
79 reading and who does not fulfill the summer school attendance requirement.

80 9. Nothing in this section shall preclude a school district from retaining  
81 any student in grade when a determination is made in accordance with district  
82 policy that retention is in the best interests of the student.

83 10. The state board of education shall not incorporate information about  
84 the number of students receiving additional instruction pursuant to this section  
85 into any element of any standard of the Missouri school improvement program  
86 or its successor accreditation program; provided, however, each district shall  
87 make available, upon the request of any parent, patron, or media outlet within the  
88 district, the number and percentage of students receiving remediation pursuant  
89 to this section. The information shall be presented in a way that does not permit  
90 personal identification of any student or educational personnel.

91 11. Each school district shall make a systematic effort to inform parents  
92 of the methods and materials used to teach reading in kindergarten through fourth  
93 grade, in terms understandable to a layperson and shall similarly inform parents  
94 of students for whom a reading improvement plan is required pursuant to this  
95 section.]

✓