

Authority Regarding Student Assessment

<p>SUBCHAPTER B. ASSESSMENT OF ACADEMIC SKILLS</p>		
<p>Sec. 39.021. ESSENTIAL SKILLS AND KNOWLEDGE</p>	<p>The State Board of Education (SBOE) has authority to establish the TEKS that all students should learn to achieve the goals provided under TEC, §4.002.</p>	
<p>Sec. 39.022. ASSESSMENT PROGRAM</p>	<p>The SBOE must adopt rules to create and implement a statewide assessment program that is knowledge- and skills-based to ensure school accountability for student achievement.</p> <p>After adopting rules, the SBOE must consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.</p>	<p>“We conclude that the power granted the State Board is that of creating and implementing the program generally. The legislature, however, has given the specific responsibility to "adopt or develop appropriate criterion-referenced assessment instruments" not to the State Board, but to the TEA, <i>see id.</i> § 39.023(a), and has given to the Commissioner the authority to "adopt rules for the implementation" of section 39.023.”Tex. Atty. Gen JC-0478</p>
<p>Sec. 39.023. ADOPTION AND ADMINISTRATION OF INSTRUMENTS</p>	<p>The SBOE may adopt rules to designate sections of a mathematics assessment for a grade level that:</p> <ol style="list-style-type: none"> (1) may be completed with the aid of technology; and (2) must be completed without the aid of technology. <p>A school district must comply with SBOE rules regarding administration of assessments that TEA adopts.</p> <p>The SBOE must administer the state assessments. An end-of-course assessment may be administered in multiple parts over more than one day. The SBOE must adopt a schedule for the administration of EOC assessments that ensures the assessments are not administered on the first instructional day of a week.</p> <p>The SBOE must adopt rules to require TEA, every third year, to release the questions and answer keys to each assessment, excluding any assessment administered to a student for the purpose of retaking the assessment, after the last time the assessment is administered for that school year.</p> <p>The SBOE may adopt one appropriate, nationally recognized, norm-referenced assessment in reading and</p>	<p>Before September 1, 2021: TEA must adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science.</p> <p>Effective on September 01, 2021: TEA must adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, mathematics, social studies, and science.</p> <p>TEA must develop required assessments in a manner that allows, to the extent practicable:</p> <ol style="list-style-type: none"> (1) the score a student receives to provide reliable information relating to a student's satisfactory performance for each performance standard; and (2) an appropriate range of performances to serve as a valid indication of growth in student achievement. <p>TEA may not adopt or develop a criterion-referenced assessment based on common core state standards. College Board AP tests or IB exams are not prohibited.</p>

	<p>mathematics to be administered to a selected sample of students in the spring.</p> <p>The SBOE must adopt rules for the administration of the assessments in Spanish to students in grades three through five who are English learners, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment.</p>	<p>TEA must develop or adopt appropriate criterion-referenced alternative assessments to be administered to each student in a special education program, for whom a general assessment, even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's ARD committee, including assessment instruments approved by the commissioner that measure growth.</p> <p>TEA, in conjunction with appropriate interested persons, must redevelop assessments for administration to significantly cognitively disabled students in a manner consistent with federal law.</p> <p>TEA must also adopt EOC assessments for secondary-level courses in Algebra I, biology, English I, English II, and United States history.</p> <p>TEA must develop any assessment in a manner that allows for the measurement of annual improvement in student achievement.</p> <p>TEA may adopt EOC assessment instruments for courses that are not required. A student's performance on an optional EOC assessment is not subject to the performance requirements established in statute.</p> <p>To the extent practicable and subject to statute, TEA must ensure that each EOC assessment is:</p> <ol style="list-style-type: none"> (1) developed in a manner that measures a student's performance under the college readiness standards; and (2) validated by national postsecondary education experts for college readiness content and performance standards. <p>In adopting an EOC assessment, TEA must consider the use of an existing assessment that is currently available. TEA may only use an existing assessment that is</p>
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		<p>currently available if it is aligned with the TEKS of the subject being assessed and allows for the measurement of annual improvement in student achievement.</p> <p>The commissioner may participate in multistate efforts to develop voluntary standardized EOC assessments. The commissioner by rule may require a school district to administer an EOC assessment developed through the multistate efforts. The ARD committee of a student in a special education program, must determine whether any allowable modification is necessary in administering to the student an EOC assessment.</p> <p>The United States history EOC assessment must include 10 questions randomly selected by TEA from the civics test administered by the United States Citizenship and Immigration Services as part of the naturalization process under the federal Immigration and Nationality Act. TEA must:</p> <ul style="list-style-type: none">(1) ensure that the questions included in the assessment instrument align with the essential knowledge and skills adopted for the United States history course for which the instrument is administered; and(2) annually issue a report providing the questions included in the assessment under this subsection and the answers to those questions, and detailing student performance on the questions included in the assessment under this subsection, both statewide and disaggregated by school district and campus. <p>Under rules adopted by the SBOE, every third year, TEA must release the questions and answer keys to each administered assessment, excluding any assessment administered to a student for the purpose of retaking the assessment, after the last time the assessment is administered for that school year. TEA may defer releasing assessment questions and answer keys to the extent necessary to develop additional assessment instruments.</p>
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		(4) the corresponding scale scores.
Sec. 39.02302. ADVISORY COMMITTEES FOR ASSESSMENT INSTRUMENTS		<p>The commissioner must appoint a technical advisory committee to advise the commissioner and TEA regarding the development of valid and reliable assessments. The members of the committee must be experts on educational assessments and psychometrics.</p> <p>The commissioner must appoint an educator advisory committee to advise the commissioner and TEA regarding the development of academically appropriate assessments. The members of the committee must include experts in curriculum and instruction.</p>
Sec. 39.0231. REPORTING OF RESULTS OF CERTAIN ASSESSMENTS		TEA must ensure that each assessment administered as part of the SSI retest opportunities is scored and that the results are returned to the appropriate school district not later than 10 days after receipt of the test materials by TEA or its test contractor.
Sec. 39.0232. USE OF END-OF-COURSE ASSESSMENT INSTRUMENT AS PLACEMENT INSTRUMENT; CERTAIN USES PROHIBITED		To the extent practicable, TEA must ensure that any high school EOC assessment developed by TEA is developed in such a manner that the assessment may be used to determine the appropriate placement of a student in a course of the same subject matter at an institution of higher education.
Sec. 39.0233. SPECIAL-PURPOSE QUESTIONS INCLUDED IN END-OF-COURSE ASSESSMENT INSTRUMENTS		<p>TEA, in coordination with the Texas Higher Education Coordinating Board, must adopt a series of questions to be included in an EOC assessment to be used for purposes of the postsecondary Texas Success Initiative.</p> <p>In addition to these questions, TEA must adopt a series of questions to be included in an EOC assessment) to be used for purposes of identifying students who are likely to succeed in an advanced high school course.</p>
Sec. 39.0234. ELECTRONIC ADMINISTRATION OF ASSESSMENT INSTRUMENTS		TEA must ensure that assessments are capable of being administered electronically.
Sec. 39.02341. TRANSITION TO ELECTRONIC ADMINISTRATION OF ASSESSMENT INSTRUMENTS	TEA, in consultation with the SBOE, must develop a transition plan to administer all assessments	TEA, in consultation with the SBOE, must develop a transition plan to administer all assessments

	electronically beginning not later than the 2022-2023 school year.	<p>electronically beginning not later than the 2022-2023 school year.</p> <p>TEA must implement the transition plan beginning on September 1, 2021. In order to ensure legislative approval of the transition plan, this subsection expires August 31, 2021.</p> <p>Not later than December 1, 2020, TEA must submit to the governor, the lieutenant governor, and the members of the legislature a report on the plan.</p>
Sec. 39.0236. INTEGRATED FORMATIVE ASSESSMENT PILOT PROGRAM		<p>TEA must establish a pilot program in which participating school districts administer to students integrated formative assessment instruments for subjects or courses for a grade level subject to state assessments.</p> <p>Not later than December 1 of each even-numbered year, TEA must submit to the governor, the lieutenant governor, and the members of the legislature a report on the pilot program that includes:</p> <p>(1) an analysis of whether the administration of integrated formative assessments under the pilot program provided any improvement in instructional support during the preceding two school years; and</p> <p>(2) a determination of the feasibility of replacing the required state assessments with integrated formative assessments.</p>
Sec. 39.0238. ADOPTION AND ADMINISTRATION OF POSTSECONDARY READINESS ASSESSMENT INSTRUMENTS	In adopting a schedule for the administration of postsecondary readiness assessments, the SBOE must require the annual administration of the postsecondary readiness assessments to occur not earlier than the second full week in May.	<p>In addition to other adopted and developed assessment instruments, TEA must adopt or develop appropriate postsecondary readiness assessment instruments for Algebra II and English III that a school district may administer at the district's option.</p> <p>To the extent practicable, TEA must ensure that each postsecondary readiness assessment:</p> <p>(1) assesses TEKS and growth;</p> <p>(2) is developed in a manner that measures a student's performance under the established college readiness standards; and</p>

		<p>(3) is validated by national postsecondary education experts for college readiness content and performance standards.</p> <p>TEA must adopt a policy requiring each school district that elects to administer postsecondary readiness assessments to annually:</p> <p>(1) administer the applicable postsecondary readiness assessment to each student enrolled in a course for which a postsecondary readiness assessment is adopted or developed, including applied Algebra II; and</p> <p>(2) report the results of the postsecondary readiness assessment instruments to TEA.</p> <p>TEA must annually deliver a report to the governor and the legislature. The report must include a summary of student performance on the preceding year's postsecondary readiness assessment.</p> <p>TEA must acknowledge a school district that elects to administer the postsecondary readiness assessment.</p>
<p>Sec. 39.024. MEASURE OF COLLEGE READINESS</p>		<p>TEA must gather data and conduct research to substantiate any correlation between a certain level of performance by students on EOC assessments and success in:</p> <p>(1) military service; or</p> <p>(2) a workforce training, certification, or other credential program at a postsecondary educational institution that primarily offers associate degrees or certificates or credentials other than baccalaureate or advanced degrees.</p>
<p>Sec. 39.0241. PERFORMANCE STANDARDS</p>		<p>The commissioner must determine the level of performance considered to be satisfactory on the assessments.</p> <p>The commissioner, in collaboration with the commissioner of higher education, must determine the level of performance necessary to indicate college readiness.</p>

		<p>Using funds appropriated for this purpose, TEA may develop study guides for the assessments.</p> <p>Using funds appropriated for this purpose, TEA must develop and make available teacher training materials and other teacher training resources to assist teachers in enabling students of limited English proficiency to meet state performance expectations.</p>
<p>Sec. 39.025. SECONDARY-LEVEL PERFORMANCE REQUIRED</p>		<p>The commissioner must adopt rules requiring a student in the foundation high school program to be administered an EOC assessment only for a course in which the student is enrolled and for which an EOC assessment is administered. A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner, on each EOC assessment administered to the student. For each required scale score that is not based on a 100-point scale scoring system, the commissioner must provide for conversion, in accordance with commissioner rule, of the scale score to an equivalent score based on a 100-point scale scoring system.</p> <p>The commissioner must determine a method by which a student's satisfactory performance on an AP test, an IB examination, an SAT Subject Test, the SAT, the ACT, or any nationally recognized norm-referenced assessment used by institutions of higher education to award course credit must be used to satisfy the requirements concerning an EOC assessment instrument in an equivalent course. The commissioner must determine a method by which a student's satisfactory performance on the PSAT or the ACT-Plan must be used to satisfy the requirements concerning an EOC assessment instrument in an equivalent course. A student who fails to perform satisfactorily on a test or other assessment, other than the PSAT or the ACT-Plan, may retake that test or other assessment or may take the appropriate EOC assessment instrument. A student who fails to perform satisfactorily on the PSAT or the ACT-Plan must take the appropriate EOC assessment. The</p>

		<p>commissioner must adopt rules as necessary for the administration of EOC assessments.</p> <p>A school district must provide each student who fails to perform satisfactorily as determined by the commissioner on an EOC assessment with accelerated instruction in the subject assessed by the assessment instrument.</p> <p>A school district may administer to a student who failed to perform satisfactorily on an assessment an alternate assessment instrument designated by the commissioner. The commissioner must determine the level of performance considered to be satisfactory on an alternate assessment instrument. The district may not administer to the student an assessment or a part of an assessment that assesses a subject that was not assessed in an assessment applicable to the student. The commissioner must make available to districts information necessary to administer the alternate assessment. The commissioner's determination regarding designation of an appropriate alternate assessment and the performance required on the assessment instrument is final and may not be appealed.</p> <p>The commissioner by rule must adopt one or more alternative nationally recognized norm referenced assessments to administer to a student to qualify for a high school diploma if the student enrolls after January 1 of the school year in which the student is otherwise eligible to graduate for the first time in a public school in Texas or after an absence of at least four years from any public school in Texas.</p> <p>The commissioner must establish a required performance level for an assessment that is at least as rigorous as the performance level required to be met on EOC assessments.</p>
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		(e-1) Nothing in statute prohibits the administration of an EOC assessment to a student enrolled below the high school level who is enrolled in the course for which the assessment is adopted. The commissioner must adopt rules necessary to ensure that the student's performance on the assessment is considered in the same manner as the performance of a student enrolled at the high school level.
Sec. 39.026. LOCAL OPTION	In addition to the assessment instruments adopted by TEA and administered by the SBOE, a school district may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level. A norm-referenced assessment instrument adopted under this section must be economical, nationally recognized, and state-approved.	In addition to the assessment instruments adopted by TEA and administered by the SBOE, a school district may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level. A norm-referenced assessment instrument adopted under this section must be economical, nationally recognized, and state-approved.
Sec. 39.0263. ADMINISTRATION OF DISTRICT-REQUIRED BENCHMARK ASSESSMENT INSTRUMENTS TO PREPARE STUDENTS FOR STATE-ADMINISTERED ASSESSMENT INSTRUMENTS		A parent or guardian of a student who has special needs, as determined in accordance with commissioner rule, may request administration to the student of additional benchmark assessment instruments.
Sec. 39.027. EXEMPTION	The SBOE must adopt rules under which a dyslexic student who is not exempt under Subsection (a) may use procedures including oral examinations if appropriate or may be allowed additional time or the materials or technology necessary for the student to demonstrate the student's mastery of the competencies the assessment instruments are designed to measure.	The commissioner must develop and adopt a process for reviewing the exemption process of a school district or shared services arrangement that gives an exemption as follows: (1) to more than five percent of the students in the special education program, in the case of a district or shared services arrangement with an average daily attendance of at least 1,600; (2) to more than 10 percent of the students in the special education program, in the case of a district or shared services arrangement with an average daily attendance of at least 190 and not more than 1,599; or (3) to the greater of more than 10 percent of the students in the special education program or to at least five students in the special education program, in the

		<p>case of a district or shared services arrangement with an average daily attendance of not more than 189.</p> <p>The commissioner must develop an assessment system that must be used for evaluating the academic progress, including reading proficiency in English, of all students of limited English proficiency.</p>
Sec. 39.029. MIGRATORY CHILDREN	The SBOE by rule may provide alternate dates for the administration of the assessment instruments to a student who is a migratory child as defined by 20 U.S.C. Section 6399. The alternate dates may be chosen following a consideration of migrant work patterns, and the dates selected may afford maximum opportunity for the students to be present when the assessments are administered.	
Sec. 39.030. CONFIDENTIALITY; PERFORMANCE REPORTS	In adopting academic skills assessments, the SBOE or a school district must ensure the security of the instruments and tests in their preparation, administration, and grading. Meetings or portions of meetings held by the SBOE or a school district at which individual assessment instruments or assessment instrument items are discussed or adopted are not open to the public and the assessment instruments or assessment instrument items are confidential.	
Sec. 39.0301. SECURITY IN ADMINISTRATION OF ASSESSMENT INSTRUMENTS		<p>The commissioner:</p> <p>(1) must establish procedures for the administration of assessments, including procedures designed to ensure the security of the assessment instruments; and</p> <p>(2) may establish record retention requirements for school district records related to the security of assessments.</p> <p>In establishing procedures for the administration of assessments, the commissioner must ensure that the procedures are designed to minimize disruptions to school operations and the classroom environment. In implementing the established procedures for the administration of assessments, a school district must</p>

		<p>minimize disruptions to school operations and the classroom environment.</p> <p>The commissioner may develop and implement statistical methods and standards for identifying potential violations of established procedures to ensure the security of assessments. In developing the statistical methods and standards, the commissioner may include indicators of potential violations that are monitored annually and patterns of inappropriate assessment practices that occur over time.</p> <p>The commissioner may establish one or more advisory committees to advise the commissioner and agency regarding the monitoring of assessment practices and the use of statistical methods and standards for identifying potential violations of assessment security, including standards to be established by the commissioner for selecting school districts for investigation for a potential assessment security violation. The commissioner may not appoint an agency employee to an advisory committee.</p> <p>TEA may conduct an investigation of a school district for a potential violation of assessment security. Each school year, after completing all investigations of school districts selected for investigation, TEA must disclose the identity of each district selected for investigation and the statistical methods and standards used to select the district.</p> <p>At any time, the commissioner may authorize the audit of a random sample of school districts to determine the compliance of the districts with established procedures. The identity of each school district selected for audit is confidential and not subject to disclosure, except that TEA must disclose the identity of each district after completion of the audit.</p>
Sec. 39.0302. ISSUANCE OF SUBPOENAS		During an agency investigation or audit of a school district, an accreditation investigation, a compliance

		<p>review, or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment security procedure, the commissioner may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in Texas.</p> <p>If a person fails to comply with a subpoena, the commissioner, acting through the attorney general, may file suit to enforce the subpoena in a district court in Texas. On finding that good cause exists for issuing the subpoena, the court must order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.</p>
Sec. 39.0304. TRAINING IN ASSESSMENT INSTRUMENT ADMINISTRATION		<p>To ensure that each administration of assessments is valid, reliable, and in compliance with the requirements of statute, the commissioner may require training for school district employees involved in the administration of the assessments.</p> <p>The commissioner may adopt rules necessary to implement this section.</p>
Sec. 39.031. COST		<p>The cost of preparing, administering, or grading the assessments and releasing the question and answer keys must be paid from amounts appropriated to TEA.</p>
Sec. 39.032. ASSESSMENT INSTRUMENT STANDARDS; CIVIL PENALTY	<p>State and national norms of averages must be computed using data that are not more than eight years old at the time the assessment is administered and that are representative of the group of students to whom the assessment is administered.</p> <p>The standardization norms must be:</p> <ol style="list-style-type: none"> (1) based on a national probability sample that meets accepted standards for educational and psychological testing; and (2) updated at least every eight years using proven psychometric procedures approved by the SBOE. 	<p>The eight-year limitation on data to compute norms does not apply if only data older than eight years is available for an assessment. The commissioner by rule may limit the exception based on the type of assessment.</p>

	The SBOE must adopt rules for the implementation of this section and for the maintenance of the security of the contents of all assessment instruments.	
Sec. 39.033. VOLUNTARY ASSESSMENT OF PRIVATE SCHOOL STUDENTS	A private school must reimburse TEA for the cost of administering an assessment. The SBOE must determine the cost. The per-student cost may not exceed the cost of administering the same assessment to a student enrolled in a public school district.	<p>Under an agreement with TEA, a private school may administer an assessment instrument adopted under this subchapter to students at the school.</p> <p>An agreement must require the private school to:</p> <p>(1) as determined appropriate by the commissioner, provide to the commissioner the information related to indicators of achievement related to performance on assessments and indicators of achievement related to high school graduation; and</p> <p>(2) maintain confidentiality.</p>
Sec. 39.034. MEASURE OF ANNUAL IMPROVEMENT IN STUDENT ACHIEVEMENT		<p>The commissioner must determine a method by which TEA may measure annual improvement in student achievement from one school year to the next on an assessment.</p> <p>For students of limited English proficiency, TEA must use a student's performance data on reading proficiency assessments in English and one other language to calculate the student's progress toward dual language proficiency.</p> <p>TEA must use a student's previous years' performance data on an assessment to determine the student's expected annual improvement. TEA must report that expected level of annual improvement and the actual level of annual improvement achieved to the district. The report must state whether the student fell below, met, or exceeded TEA's expectation for improvement.</p> <p>TEA must determine the necessary annual improvement required each year for a student to be prepared to perform satisfactorily on, as applicable:</p> <p>(1) the grade five assessments;</p> <p>(2) the grade eight assessments; and</p> <p>(3) the EOC assessments required for graduation.</p>

		TEA must report the necessary annual improvement to the district. Each year, the report must state whether the student fell below, met, or exceeded the necessary target for improvement.
Sec. 39.035. LIMITATION ON FIELD TESTING OF ASSESSMENT INSTRUMENTS		TEA may conduct field testing of questions for any administered assessment that is separate from the administration of the assessment not more frequently than every other school year. Before the beginning of each school year, TEA must notify each school district regarding the required participation of the district in field testing activities during that school year.
Sec. 39.036. VERTICAL SCALE FOR CERTAIN ASSESSMENT INSTRUMENTS		TEA must develop a vertical scale for assessing student performance on state assessments in a manner that allows TEA to compare the performance of a student on the assessments from one grade level to the next. The commissioner must adopt rules necessary to implement this section.