

By: Pacheco

H.B. No. 382

A BILL TO BE ENTITLED

AN ACT

relating to eliminating the requirement to use public school assessment instruments as a criterion for promotion or graduation.

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

SECTION 1. Section 18.005(c), Education Code, is amended to read as follows:

(c) A Job Corps diploma program shall:

(1) develop educational programs specifically designed for persons eligible for enrollment in a Job Corps training program established by the United States Department of Labor;

(2) coordinate educational programs and services in the diploma program with programs and services provided by the United States Department of Labor and other federal and state agencies and local political subdivisions and by persons who provide programs and services under contract with the United States Department of Labor;

(3) provide a course of instruction that includes the required curriculum under Subchapter A, Chapter 28; and

~~(4) [require that students enrolled in the diploma program satisfy the requirements of Section 39.025 before receiving a diploma under this chapter, and~~

~~(5)]~~ comply with a requirement imposed under this title or a rule adopted under this title relating to the Public

1 Education Information Management System (PEIMS) to the extent  
2 necessary to determine compliance with this chapter, as determined  
3 by the commissioner.

4 SECTION 2. Section 19.0043(b), Education Code, is amended  
5 to read as follows:

6 (b) A student may graduate and receive a diploma from a  
7 Windham School District educational program if:

8 (1) the student successfully completes the curriculum  
9 requirements identified by the State Board of Education under  
10 Section 28.025(a) [~~and complies with Section 39.025~~]; or

11 (2) the student successfully completes the curriculum  
12 requirements under Section 28.025(a) as modified by an  
13 individualized education program developed under Section 29.005.

14 SECTION 3. Section 25.005(b), Education Code, is amended to  
15 read as follows:

16 (b) A reciprocity agreement must:

17 (1) address procedures for:

18 (A) transferring student records; and

19 (B) awarding credit for completed course work;

20 and

21 [~~(C) permitting a student to satisfy the  
22 requirements of Section 39.025 through successful performance on  
23 comparable end-of-course or other exit-level assessment  
24 instruments administered in another state, and]~~

25 (2) include appropriate criteria developed by the  
26 agency.

27 SECTION 4. Section 28.021, Education Code, is amended by

1 adding Subsection (a-1) and amending Subsection (c) to read as  
2 follows:

3 (a-1) A student demonstrates proficiency of the subject  
4 matter of a course or grade level for purposes of promotion if the  
5 student performs satisfactorily on an assessment instrument  
6 administered for the subject matter of the course or grade level  
7 regardless of whether the student received a passing score in the  
8 subject matter of the course or grade level.

9 (c) In determining promotion under Subsection (a), a school  
10 district shall consider:

- 11 (1) the recommendation of the student's teacher;
- 12 (2) the student's grade in each subject or course; and
- 13 (3) ~~[the student's score on an assessment instrument~~  
14 ~~administered under Section 39.023(a), (b), or (l), to the extent~~  
15 ~~applicable; and~~
- 16 ~~[(4)]~~ any other necessary academic information, as  
17 determined by the district.

18 SECTION 5. The heading to Section 28.0211, Education Code,  
19 is amended to read as follows:

20 Sec. 28.0211. ~~[SATISFACTORY PERFORMANCE ON ASSESSMENT~~  
21 ~~INSTRUMENTS REQUIRED.]~~ ACCELERATED INSTRUCTION.

22 SECTION 6. Sections 28.0211(a-1), (c), (d), (i), and (k),  
23 Education Code, are amended to read as follows:

24 (a-1) Each time a student fails to perform satisfactorily on  
25 an assessment instrument administered under Section 39.023(a) ~~[in~~  
26 ~~the third, fourth, fifth, sixth, seventh, or eighth grade]~~, the  
27 school district in which the student attends school shall provide

1 to the student accelerated instruction in the applicable subject  
2 area. Accelerated instruction may require participation of the  
3 student before or after normal school hours and may include  
4 participation at times of the year outside normal school  
5 operations.

6 (c) ~~[Each time a student fails to perform satisfactorily on~~  
7 ~~an assessment instrument specified under Subsection (a), the school~~  
8 ~~district in which the student attends school shall provide to the~~  
9 ~~student accelerated instruction in the applicable subject area,~~  
10 ~~including reading instruction for a student who fails to perform~~  
11 ~~satisfactorily on a reading assessment instrument. After a student~~  
12 ~~fails to perform satisfactorily on an assessment instrument a~~  
13 ~~second time, a grade placement committee shall be established to~~  
14 ~~prescribe the accelerated instruction the district shall provide to~~  
15 ~~the student before the student is administered the assessment~~  
16 ~~instrument the third time. The grade placement committee shall be~~  
17 ~~composed of the principal or the principal's designee, the~~  
18 ~~student's parent or guardian, and the teacher of the subject of an~~  
19 ~~assessment instrument on which the student failed to perform~~  
20 ~~satisfactorily. The district shall notify the parent or guardian~~  
21 ~~of the time and place for convening the grade placement committee~~  
22 ~~and the purpose of the committee.]~~ An accelerated instruction  
23 group administered by a school district under this section may not  
24 have a ratio of more than 10 students for each teacher.

25 (d) In addition to providing accelerated instruction to a  
26 student under Subsection (a-1) ~~[(c)]~~, the district shall notify the  
27 student's parent or guardian of:

1 (1) the student's failure to perform satisfactorily on  
2 the assessment instrument; and

3 (2) the accelerated instruction program to which the  
4 student is assigned[~~, and~~

5 [~~(3) the possibility that the student might be~~  
6 ~~retained at the same grade level for the next school year]~~.

7 (i) The admission, review, and dismissal committee of a  
8 student who participates in a district's special education program  
9 under Subchapter A, Chapter 29, and who does not perform  
10 satisfactorily on an assessment instrument [~~specified under~~  
11 ~~Subsection (a) and~~] administered under Section 39.023(a) or (b)  
12 must meet before the student is administered the assessment  
13 instrument for the second time. The committee shall determine[~~,~~

14 [~~(1)~~] the manner in which the student will participate  
15 in an accelerated instruction program under this section[~~, and~~

16 [~~(2) whether the student will be promoted in~~  
17 ~~accordance with Subsection (i-1) or retained under this section]~~.

18 (k) The commissioner shall adopt rules as necessary to  
19 implement this section[~~, including rules concerning when school~~  
20 ~~districts shall administer assessment instruments required under~~  
21 ~~this section and which administration of the assessment instruments~~  
22 ~~will be used for purposes of Section 39.054]~~.

23 SECTION 7. Section 28.025, Education Code, is amended by  
24 amending Subsections (b-7), (c), and (e) and adding Subsection  
25 (c-9) to read as follows:

26 (b-7) The State Board of Education, in coordination with the  
27 Texas Higher Education Coordinating Board, shall adopt rules to

1 ensure that a student may comply with the curriculum requirements  
2 under the foundation high school program or for an endorsement  
3 under Subsection (c-1) by successfully completing appropriate  
4 courses in the core curriculum of an institution of higher  
5 education under Section 61.822. Notwithstanding Subsection (b-15)  
6 or (c) [~~of this section, Section 39.025,~~] or any other provision of  
7 this code and notwithstanding any school district policy, a student  
8 who has completed the core curriculum of an institution of higher  
9 education under Section 61.822, as certified by the institution in  
10 accordance with commissioner rule, is considered to have earned a  
11 distinguished level of achievement under the foundation high school  
12 program and is entitled to receive a high school diploma from the  
13 appropriate high school as that high school is determined in  
14 accordance with commissioner rule. A student who is considered to  
15 have earned a distinguished level of achievement under the  
16 foundation high school program under this subsection may apply for  
17 admission to an institution of higher education for the first  
18 semester or other academic term after the semester or other  
19 academic term in which the student completes the core curriculum.

20 (c) A person may receive a diploma if the person is eligible  
21 for a diploma under Section 28.0251. In other cases, a student may  
22 graduate and receive a diploma only if:

23 (1) the student successfully completes the curriculum  
24 requirements identified by the State Board of Education under  
25 Subsection (a) and complies with Section [~~Sections~~] 28.0256 [~~and~~  
26 ~~39.025~~]; or

27 (2) the student successfully completes an

1 individualized education program developed under Section 29.005.

2 (c-9) For purposes of Subsection (c)(1), a student  
3 successfully completes curriculum requirements identified by the  
4 State Board of Education if the student performs satisfactorily on  
5 an end-of-course assessment instrument administered for the course  
6 regardless of whether the student received a passing score in the  
7 course.

8 (e) Each school district shall report the academic  
9 achievement record of students who have completed the foundation  
10 high school program on transcript forms adopted by the State Board  
11 of Education. [~~The transcript forms adopted by the board must be~~  
12 ~~designed to clearly identify whether a student received a diploma~~  
13 ~~or a certificate of coursework completion.~~]

14 SECTION 8. Section 28.0255(g), Education Code, is amended  
15 to read as follows:

16 (g) A student is entitled to a high school diploma if the  
17 student[+

18 [~~(1)~~] successfully complies with the curriculum  
19 requirements specified under Subsection (e)[, and

20 [~~(2)~~ performs satisfactorily, as determined by the  
21 commissioner under Subsection (h), on end-of-course assessment  
22 instruments listed under Section 39.023(c) for courses in which the  
23 student was enrolled].

24 SECTION 9. Section 29.081(b-1), Education Code, is amended  
25 to read as follows:

26 (b-1) Each school district shall offer before the next  
27 scheduled administration of the assessment instrument, without

1 cost to the student, additional accelerated instruction to each  
2 student in any subject in which the student failed to perform  
3 satisfactorily on an end-of-course assessment instrument listed in  
4 Section 39.023(c) [~~required for graduation~~].

5 SECTION 10. Section 29.259(g), Education Code, is amended  
6 to read as follows:

7 (g) A person who is at least 18 years of age and not more  
8 than 50 years of age is eligible to enroll in the adult education  
9 program under this section if the person:

10 (1) has failed to complete the curriculum requirements  
11 for high school graduation; or

12 (2) has failed to perform satisfactorily on an  
13 assessment instrument that, before the 2021-2022 school year, was  
14 required for high school graduation.

15 SECTION 11. Section 29.402(c), Education Code, is amended  
16 to read as follows:

17 (c) A public junior college under this section shall:

18 (1) design a dropout recovery curriculum that includes  
19 career and technology education courses that lead to industry or  
20 career certification;

21 (2) integrate into the dropout recovery curriculum  
22 research-based strategies to assist students in becoming able  
23 academically to pursue postsecondary education, including:

24 (A) high quality, college readiness instruction  
25 with strong academic and social supports;

26 (B) secondary to postsecondary bridging that  
27 builds college readiness skills, provides a plan for college



1 completion, and ensures transition counseling; and

2 (C) information concerning appropriate supports  
3 available in the first year of postsecondary enrollment to ensure  
4 postsecondary persistence and success, to the extent funds are  
5 available for the purpose;

6 (3) offer advanced academic and transition  
7 opportunities, including dual credit courses and college  
8 preparatory courses, such as advanced placement courses; and

9 (4) coordinate with each partnering school district to  
10 provide in the articulation agreement that the district retains  
11 accountability for student attendance and~~[,]~~ student completion of  
12 high school course requirements~~[, and student performance on~~  
13 ~~assessment instruments]~~ as necessary for the student to receive a  
14 diploma from a high school of the partnering school district.

15 SECTION 12. Section 30.021(e), Education Code, is amended  
16 to read as follows:

17 (e) The school shall cooperate with public and private  
18 agencies and organizations serving students and other persons with  
19 visual impairments in the planning, development, and  
20 implementation of effective educational and rehabilitative service  
21 delivery systems associated with educating students with visual  
22 impairments. To maximize and make efficient use of state  
23 facilities, funding, and resources, the services provided in this  
24 area may include conducting a cooperative program with other  
25 agencies to serve students who have graduated from high school by  
26 completing all academic requirements applicable to students in  
27 regular education~~[, excluding satisfactory performance under~~

1 ~~Section 39.025,~~] who are younger than 22 years of age on September 1  
2 of the school year and who have identified needs related to  
3 vocational training, independent living skills, orientation and  
4 mobility, social and leisure skills, compensatory skills, or  
5 remedial academic skills.

6 SECTION 13. Section 30.104(b), Education Code, is amended  
7 to read as follows:

8 (b) A student may graduate and receive a diploma from a  
9 department educational program if:

10 (1) the student successfully completes the curriculum  
11 requirements identified by the State Board of Education under  
12 Section 28.025(a) [~~and complies with Section 39.025~~]; or

13 (2) the student successfully completes the curriculum  
14 requirements under Section 28.025(a) as modified by an  
15 individualized education program developed under Section 29.005.

16 SECTION 14. Section 32.258(b), Education Code, is amended  
17 to read as follows:

18 (b) The system established under Subsection (a) shall  
19 provide a means for a student or the student's parent or other  
20 person standing in parental relation [~~relationship~~] to track the  
21 student's progress on end-of-course assessment instruments  
22 administered under Section 39.023(c) [~~instrument requirements for~~  
23 ~~graduation~~].

24 SECTION 15. Section 39.023(c-2), Education Code, is amended  
25 to read as follows:

26 (c-2) The agency may adopt end-of-course assessment  
27 instruments for courses not listed in Subsection (c). A student's

1 performance on an end-of-course assessment instrument adopted  
2 under this subsection is not subject to any ~~[the]~~ performance  
3 requirements ~~[established under Subsection (c) or Section 39.025]~~.

4 SECTION 16. The heading to Section 39.025, Education Code,  
5 is amended to read as follows:

6 Sec. 39.025. USE OF END-OF-COURSE ASSESSMENT INSTRUMENT  
7 ~~[SECONDARY-LEVEL PERFORMANCE REQUIRED]~~.

8 SECTION 17. Section 39.025(a), Education Code, is amended  
9 to read as follows:

10 (a) The commissioner shall adopt rules requiring a student  
11 in the foundation high school program under Section 28.025 to be  
12 administered an end-of-course assessment instrument listed in  
13 Section 39.023(c) only for a course in which the student is enrolled  
14 and for which an end-of-course assessment instrument is  
15 administered. Each student's performance on an end-of-course  
16 assessment instrument shall be evaluated to determine whether the  
17 [A] student achieved [is required to achieve] a scale score that  
18 indicates satisfactory performance, as determined by the  
19 commissioner under Section 39.0241(a) [ , on each end-of-course  
20 assessment instrument administered to the student]. The results of  
21 the administration of an end-of-course assessment instrument  
22 required under this subsection may not be used as criteria for  
23 graduation. The results may be used only for the purpose of  
24 diagnosing the academic strengths and deficiencies of a student and  
25 guiding specific instruction to the student. [For each scale score  
26 required under this subsection that is not based on a 100-point  
27 scale scoring system, the commissioner shall provide for

1 ~~conversion, in accordance with commissioner rule, of the scale~~  
2 ~~score to an equivalent score based on a 100-point scale scoring~~  
3 ~~system. A student may not receive a high school diploma until the~~  
4 ~~student has performed satisfactorily on end-of-course assessment~~  
5 ~~instruments in the manner provided under this subsection. This~~  
6 ~~subsection does not require a student to demonstrate readiness to~~  
7 ~~enroll in an institution of higher education.]~~

8 SECTION 18. Section 39.034(d), Education Code, is amended  
9 to read as follows:

10 (d) The agency shall determine the necessary annual  
11 improvement required each year for a student to be prepared to  
12 perform satisfactorily on, as applicable:

- 13 (1) the grade five assessment instruments;  
14 (2) the grade eight assessment instruments; and  
15 (3) the end-of-course assessment instruments listed  
16 in Section 39.023(c) [~~required under this subchapter for~~  
17 ~~graduation~~].

18 SECTION 19. Section 39.053(c), Education Code, is amended  
19 to read as follows:

20 (c) School districts and campuses must be evaluated based on  
21 three domains of indicators of achievement adopted under this  
22 section that include:

23 (1) in the student achievement domain, indicators of  
24 student achievement that must include:

25 (A) for evaluating the performance of districts  
26 and campuses generally:

27 (i) an indicator that accounts for the

1 results of assessment instruments required under Sections  
2 39.023(a), (c), and (l), as applicable for the district and campus,  
3 [~~including the results of assessment instruments required for~~  
4 ~~graduation retaken by a student,~~] aggregated across grade levels by  
5 subject area, including:

6 (a) for the performance standard  
7 determined by the commissioner under Section 39.0241(a), the  
8 percentage of students who performed satisfactorily on the  
9 assessment instruments, aggregated across grade levels by subject  
10 area; and

11 (b) for the college readiness  
12 performance standard as determined under Section 39.0241, the  
13 percentage of students who performed satisfactorily on the  
14 assessment instruments, aggregated across grade levels by subject  
15 area; and

16 (ii) an indicator that accounts for the  
17 results of assessment instruments required under Section  
18 39.023(b), as applicable for the district and campus, including the  
19 percentage of students who performed satisfactorily on the  
20 assessment instruments, as determined by the performance standard  
21 adopted by the agency, aggregated across grade levels by subject  
22 area; and

23 (B) for evaluating the performance of high school  
24 campuses and districts that include high school campuses,  
25 indicators that account for:

26 (i) students who satisfy the Texas Success  
27 Initiative (TSI) college readiness benchmarks prescribed by the

1 Texas Higher Education Coordinating Board under Section [51.334](#) on  
2 an assessment instrument in reading or mathematics designated by  
3 the coordinating board under that section;

4 (ii) students who satisfy relevant  
5 performance standards on advanced placement tests or similar  
6 assessments;

7 (iii) students who earn dual course credits  
8 in the dual credit courses;

9 (iv) students who enlist in the armed  
10 forces of the United States;

11 (v) students who earn industry  
12 certifications;

13 (vi) students admitted into postsecondary  
14 industry certification programs that require as a prerequisite for  
15 entrance successful performance at the secondary level;

16 (vii) students whose successful completion  
17 of a course or courses under Section [28.014](#) indicates the student's  
18 preparation to enroll and succeed, without remediation, in an  
19 entry-level general education course for a baccalaureate degree or  
20 associate degree;

21 (viii) students who successfully met  
22 standards on a composite of indicators that through research  
23 indicates the student's preparation to enroll and succeed, without  
24 remediation, in an entry-level general education course for a  
25 baccalaureate degree or associate degree;

26 (ix) high school graduation rates, computed  
27 in accordance with standards and definitions adopted in compliance

1 with the Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.)  
2 subject to the exclusions provided by Subsections (g), (g-1),  
3 (g-2), and (g-3);

4 (x) students who successfully completed an  
5 OnRamps dual enrollment course;

6 (xi) students who successfully completed a  
7 practicum or internship approved by the State Board of Education;  
8 and

9 (xii) students who are awarded an associate  
10 degree;

11 (2) in the school progress domain, indicators for  
12 effectiveness in promoting student learning, which must include:

13 (A) for assessment instruments, including  
14 assessment instruments under Subdivisions (1)(A)(i) and (ii), the  
15 percentage of students who met the standard for improvement, as  
16 determined by the commissioner; and

17 (B) for evaluating relative performance, the  
18 performance of districts and campuses compared to similar districts  
19 or campuses; and

20 (3) in the closing the gaps domain, the use of  
21 disaggregated data to demonstrate the differentials among students  
22 from different racial and ethnic groups, socioeconomic  
23 backgrounds, and other factors, including:

24 (A) students formerly receiving special  
25 education services;

26 (B) students continuously enrolled; and

27 (C) students who are mobile.

1 SECTION 20. Section 39.301(c), Education Code, is amended  
2 to read as follows:

3 (c) Indicators for reporting purposes must include:

4 (1) the percentage of graduating students who meet the  
5 course requirements established by State Board of Education rule  
6 for:

7 (A) the foundation high school program;

8 (B) the distinguished level of achievement under  
9 the foundation high school program; and

10 (C) each endorsement described by Section  
11 28.025(c-1);

12 (2) the results of the SAT, ACT, and certified  
13 workforce training programs described by Chapter 311, Labor Code;

14 (3) for students who have failed to perform  
15 satisfactorily, under each performance standard under Section  
16 39.0241, on an assessment instrument ~~[required]~~ under Section  
17 39.023(a) or (c), the performance of those students on subsequent  
18 assessment instruments ~~[required]~~ under those sections, aggregated  
19 by grade level and subject area;

20 (4) for each campus, the number of students,  
21 disaggregated by major student subpopulations, that take courses  
22 under the foundation high school program and take additional  
23 courses to earn an endorsement under Section 28.025(c-1),  
24 disaggregated by type of endorsement;

25 (5) the percentage of students, aggregated by grade  
26 level, provided accelerated instruction under Section 28.0211  
27 ~~[28.0211(c), the results of assessment instruments administered~~



1 ~~under that section, the percentage of students promoted through the~~  
2 ~~grade placement committee process under Section 28.0211], the~~  
3 subject of the assessment instrument on which each student failed  
4 to perform satisfactorily under each performance standard under  
5 Section 39.0241, and the performance of those students in the  
6 following school year [~~following that promotion~~] on the assessment  
7 instruments [~~required~~] under Section 39.023;

8 (6) the percentage of students of limited English  
9 proficiency exempted from the administration of an assessment  
10 instrument under Sections 39.027(a)(1) and (2);

11 (7) the percentage of students in a special education  
12 program under Subchapter A, Chapter 29, assessed through assessment  
13 instruments developed or adopted under Section 39.023(b);

14 (8) the percentage of students who satisfy the college  
15 readiness measure;

16 (9) the measure of progress toward dual language  
17 proficiency under Section 39.034(b), for students of limited  
18 English proficiency, as defined by Section 29.052;

19 (10) the percentage of students who are not  
20 educationally disadvantaged;

21 (11) the percentage of students who enroll and begin  
22 instruction at an institution of higher education in the school  
23 year following high school graduation; and

24 (12) the percentage of students who successfully  
25 complete the first year of instruction at an institution of higher  
26 education without needing a developmental education course.

27 SECTION 21. Effective September 1, 2021, the following

1 provisions of the Education Code are repealed:

2 (1) Section 19.0043(c);

3 (2) Sections 28.0211(a), (a-2), (b), (e), (f), (g),  
4 (i-1), (i-2), (n), (o), and (p);

5 (3) Section 28.025(d);

6 (4) Section 28.0255(h);

7 (5) Section 28.0256(d);

8 (6) Section 30.104(c); and

9 (7) Sections 39.025(a-1), (a-2), (a-3), (a-4), (b),  
10 (c), (c-1), (c-2), (d), (e), (f), (f-1), (f-2), and (g).

11 SECTION 22. This Act applies beginning with the 2021-2022  
12 school year.

13 SECTION 23. Except as otherwise provided by this Act, this  
14 Act takes effect immediately if it receives a vote of two-thirds of  
15 all the members elected to each house, as provided by Section 39,  
16 Article III, Texas Constitution. If this Act does not receive the  
17 vote necessary for immediate effect, this Act takes effect  
18 September 1, 2021.