

By: Taylor

S.B. No. 2094

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the commissioner of education's authority regarding the  
3 assessment of public school students and providing accelerated  
4 instruction for students who fail to achieve satisfactory  
5 performance on certain assessment instruments.

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

7 SECTION 1. Section 12.104(b), Education Code, as amended by  
8 Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943  
9 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, is  
10 reenacted and amended to read as follows:

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

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

14 (2) the provisions in Chapter 554, Government Code;  
15 and

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

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

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

24 (C) reading instruments and accelerated reading

- 1 instruction programs under Section [28.006](#);
- 2 (D) accelerated learning committees, accelerated  
3 instruction, and modified teacher assignments under Section  
4 [28.0211](#);
- 5 (E) high school graduation requirements under  
6 Section [28.025](#);
- 7 (F) special education programs under Subchapter  
8 [A](#), Chapter [29](#);
- 9 (G) bilingual education under Subchapter [B](#),  
10 Chapter [29](#);
- 11 (H) prekindergarten programs under Subchapter E  
12 or E-1, Chapter [29](#);
- 13 (I) extracurricular activities under Section  
14 [33.081](#);
- 15 (J) discipline management practices or behavior  
16 management techniques under Section [37.0021](#);
- 17 (K) health and safety under Chapter [38](#);
- 18 (L) public school accountability under  
19 Subchapters [B](#), [C](#), [D](#), [F](#), [G](#), and [J](#), Chapter [39](#), and Chapter [39A](#);
- 20 (M) the requirement under Section [21.006](#) to  
21 report an educator's misconduct;
- 22 (N) intensive programs of instruction under  
23 Section [28.0213](#);
- 24 (O) the right of a school employee to report a  
25 crime, as provided by Section [37.148](#);
- 26 (P) bullying prevention policies and procedures  
27 under Section [37.0832](#);

1 (Q) the right of a school under Section 37.0052  
2 to place a student who has engaged in certain bullying behavior in a  
3 disciplinary alternative education program or to expel the student;

4 (R) the right under Section 37.0151 to report to  
5 local law enforcement certain conduct constituting assault or  
6 harassment;

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

10 (T) establishment of residency under Section  
11 25.001*i*;

12 (U) [~~(T)~~] school safety requirements under  
13 Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115,  
14 37.207, and 37.2071*i*;

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

17 (W) [~~(U)~~] the college, career, and military  
18 readiness plans under Section 11.186.

19 SECTION 2. The heading to Section 28.0211, Education Code,  
20 is amended to read as follows:

21 Sec. 28.0211. ACCELERATED LEARNING COMMITTEE [~~SATISFACTORY~~  
22 ~~PERFORMANCE ON ASSESSMENT INSTRUMENTS REQUIRED~~]; ACCELERATED  
23 INSTRUCTION; MODIFIED TEACHER ASSIGNMENT.

24 SECTION 3. Section 28.0211, Education Code, is amended by  
25 amending Subsections (a), (a-1), (a-2), (a-3), (c), (f), (i), (k),  
26 and (n) and adding Subsections (a-4), (a-5), (f-1), (f-2), (f-3),  
27 (f-4), and (f-5) to read as follows:

1           (a) A school district shall establish an accelerated  
2 learning committee described by Subsection (c) for each student who  
3 does not perform satisfactorily on:

4                 (1) the third grade mathematics or reading assessment  
5 instrument under Section 39.023;

6                 (2) [~~Except as provided by Subsection (b) or (c), a~~  
7 ~~student may not be promoted to:~~

8                     [~~(1) the sixth grade program to which the student would~~  
9 ~~otherwise be assigned if the student does not perform~~  
10 ~~satisfactorily on] the fifth grade mathematics or [~~and~~] reading  
11 assessment instrument [~~instruments~~] under Section 39.023; or~~

12                 (3) [~~(2) the ninth grade program to which the student~~  
13 ~~would otherwise be assigned if the student does not perform~~  
14 ~~satisfactorily on] the eighth grade mathematics or [~~and~~] reading  
15 assessment instrument [~~instruments~~] under Section 39.023.~~

16           (a-1) Each time a student fails to perform satisfactorily on  
17 an assessment instrument administered under Section 39.023(a) in  
18 the third, fourth, fifth, sixth, seventh, or eighth grade, the  
19 school district in which the student attends school shall either:

20                 (1) provide to the student accelerated instruction in  
21 the applicable subject area during the subsequent summer or school  
22 year; or

23                 (2) assign the student a classroom teacher who has  
24 been certified as a master, exemplary, or recognized teacher under  
25 Section 21.3521 for the subsequent school year in the applicable  
26 subject area.

27           (a-2) Accelerated instruction provided during the following

1 school year under Subsection (a-1)(1) may require participation of  
2 the student before or after normal school hours [~~and may include~~  
3 ~~participation at times of the year outside normal school~~  
4 ~~operations~~].

5 (a-3) Accelerated instruction provided by a district under  
6 Subsection (a-1)(1) must:

7 (1) include instruction in all of the essential  
8 knowledge and skills for the foundation school curriculum adopted  
9 under Section 28.002 for the grade level in which the student is  
10 enrolled and targeted instruction in the essential knowledge and  
11 skills needed for previous grade levels;

12 (2) be provided in addition to instruction normally  
13 provided to students in the grade level in which the student is  
14 enrolled;

15 (3) be provided for no less than 30 total hours during  
16 the following summer and school year and include instruction no  
17 less than once per week, unless the instruction is provided fully  
18 during summer or school holidays;

19 (4) be designed to assist the student in achieving  
20 satisfactory performance on the subsequent assessment instrument  
21 administered under Section 39.023(a) in the applicable subject  
22 area;

23 (5) be provided to a student individually or in a group  
24 of no more than three students, unless the parent or guardian of  
25 each student in the group authorizes a larger group;

26 (6) be provided by a classroom teacher with training  
27 and experience in the applicable subject area and in assisting

1 students in achieving satisfactory performance on the applicable  
2 assessment instrument administered under Section 39.023(a); and  
3 (7) to the extent possible, be provided by one  
4 classroom teacher.

5 ~~[(a-2) A student who fails to perform satisfactorily on an~~  
6 ~~assessment instrument specified under Subsection (a) and who is~~  
7 ~~promoted to the next grade level must complete accelerated~~  
8 ~~instruction required under Subsection (a-1) before placement in the~~  
9 ~~next grade level. A student who fails to complete required~~  
10 ~~accelerated instruction may not be promoted.]~~

11 (a-4) If there is more than one classroom teacher available  
12 to provide the student accelerated instruction under Subsection  
13 (a-1)(1) or to whom the student could be assigned under a modified  
14 teacher assignment under Subsection (a-1)(2), the student's parent  
15 or guardian may choose the teacher who will provide the applicable  
16 instruction to the student.

17 (a-5) [~~(a-3)~~] The commissioner shall provide guidelines to  
18 school districts on research-based best practices and effective  
19 strategies that a district may use in developing an accelerated  
20 instruction program and may provide resources to districts to  
21 assist in the provision of an accelerated instruction program.

22 (c) ~~[Each time a student fails to perform satisfactorily on~~  
23 ~~an assessment instrument specified under Subsection (a), the school~~  
24 ~~district in which the student attends school shall provide to the~~  
25 ~~student accelerated instruction in the applicable subject area,~~  
26 ~~including reading instruction for a student who fails to perform~~  
27 ~~satisfactorily on a reading assessment instrument.]~~ After a student

1 fails to perform satisfactorily on an assessment instrument  
2 specified under Subsection (a), an accelerated learning [~~a second~~  
3 ~~time, a grade placement~~] committee shall be established [~~to~~  
4 ~~prescribe the accelerated instruction the district shall provide to~~  
5 ~~the student before the student is administered the assessment~~  
6 ~~instrument the third time~~]. The accelerated learning [~~grade~~  
7 ~~placement~~] committee shall be composed of the principal or the  
8 principal's designee, the student's parent or guardian, and the  
9 teacher of the subject of an assessment instrument on which the  
10 student failed to perform satisfactorily. The district shall notify  
11 the parent or guardian of the time and place for convening the  
12 accelerated learning [~~grade placement~~] committee and the purpose of  
13 the committee. [~~An accelerated instruction group administered by a~~  
14 ~~school district under this section may not have a ratio of more than~~  
15 ~~10 students for each teacher.~~]

16 (f) An accelerated learning [~~A school district shall~~  
17 ~~provide to a student who, after three attempts, has failed to~~  
18 ~~perform satisfactorily on an assessment instrument specified under~~  
19 ~~Subsection (a) accelerated instruction during the next school year~~  
20 ~~as prescribed by an educational plan developed for the student by~~  
21 ~~the student's grade placement~~] committee described by [~~established~~  
22 ~~under~~] Subsection (c) shall, as soon as possible after the student  
23 fails to perform satisfactorily on an assessment instrument  
24 specified under Subsection (a) but not later than the start of the  
25 subsequent school year, develop an [~~The district shall provide~~  
26 ~~that accelerated instruction regardless of whether the student has~~  
27 ~~been promoted or retained. The~~] educational plan for the student

1 that provides the necessary accelerated instruction [~~must be~~  
2 ~~designed~~] to enable the student to perform at the appropriate grade  
3 level by the conclusion of the school year.

4 (f-1) The educational plan under Subsection (f) must be  
5 documented in writing, and a copy must be provided to the student's  
6 parent or guardian.

7 (f-2) During the school year, the student shall be monitored  
8 to ensure that the student is progressing in accordance with the  
9 plan developed under Subsection (f). The district shall administer  
10 to the student the assessment instrument for the grade level in  
11 which the student is placed at the time the district regularly  
12 administers the assessment instruments for that school year.

13 (f-3) The board of trustees of each school district shall  
14 adopt a policy consistent with the grievance procedure adopted  
15 under Section 26.011 to allow a parent to contest the content or  
16 implementation of an educational plan developed under Subsection  
17 (f).

18 (f-4) If a student who fails to perform satisfactorily on an  
19 assessment instrument specified under Subsection (a) fails in the  
20 subsequent school year to perform satisfactorily on an assessment  
21 instrument in the same subject, the superintendent of the district,  
22 or the superintendent's designee, shall meet with the student's  
23 accelerated learning committee to:

24 (1) identify the reason the student did not perform  
25 satisfactorily; and

26 (2) determine, in order to ensure the student performs  
27 satisfactorily on the assessment instrument at the next



1 administration of the assessment instrument, whether:

2 (A) the educational plan developed for the  
3 student under Subsection (f) must be modified to provide the  
4 necessary accelerated instruction for that student; and

5 (B) any additional resources are required for  
6 that student.

7 (f-5) The superintendent's designee under Subsection (f-4):

8 (1) may be an employee of a regional education service  
9 center; and

10 (2) may not be a person who served on the student's  
11 accelerated learning committee.

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

19 [(1)] the manner in which the student will participate  
20 in an accelerated instruction program under this section[+ and

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

23 (k) The commissioner may [~~shall~~] adopt rules as necessary to  
24 implement this section [~~, including rules concerning when school~~  
25 ~~districts shall administer assessment instruments required under~~  
26 ~~this section and which administration of the assessment instruments~~  
27 ~~will be used for purposes of Section 39.054].~~

1 (n) A student who fails to perform satisfactorily on an  
2 assessment instrument specified under Subsection (a) and is  
3 promoted to the next grade level [~~by a grade placement committee~~  
4 ~~under this section~~] must be assigned in the subsequent school year  
5 in each subject in which the student failed to perform  
6 satisfactorily on an assessment instrument specified under  
7 Subsection (a) to a teacher who meets all state and federal  
8 qualifications to teach that subject and grade.

9 SECTION 4. Section 28.0217, Education Code, is amended to  
10 read as follows:

11 Sec. 28.0217. ACCELERATED INSTRUCTION FOR HIGH SCHOOL  
12 STUDENTS. (a) Each time a student fails to perform satisfactorily  
13 on an assessment instrument administered under Section 39.023(c),  
14 the school district in which the student attends school shall  
15 provide to the student accelerated instruction in the applicable  
16 subject area [~~, using funds appropriated for accelerated~~  
17 ~~instruction under Section 28.0211~~].

18 (b) Accelerated instruction provided under this section:

19 (1) may require participation of the student before or  
20 after normal school hours and may include participation at times of  
21 the year outside normal school operations; and

22 (2) must comply with the requirements for accelerated  
23 instruction provided under Section 28.0211.

24 SECTION 5. Section 33.0812(a), Education Code, is amended  
25 to read as follows:

26 (a) The commissioner [~~State Board of Education~~] by rule  
27 shall prohibit participation in a University Interscholastic

1 League area, regional, or state competition:

2 (1) on Monday through Thursday of the school week in  
3 which the primary administration of assessment instruments under  
4 Section 39.023(a), (c), or (1) occurs; or

5 (2) if the primary administration of the assessment  
6 instruments is completed before Thursday of the school week,  
7 beginning on Monday and ending on the last school day on which the  
8 assessment instruments are administered.

9 SECTION 6. Section 39.022(a), Education Code, is amended to  
10 read as follows:

11 (a) The commissioner [~~State Board of Education~~] by rule  
12 shall create and implement a statewide assessment program that is  
13 knowledge- and skills-based to ensure school accountability for  
14 student achievement that achieves the goals provided under Section  
15 4.002. After adopting rules under this section, the commissioner  
16 [~~State Board of Education~~] shall consider the importance of  
17 maintaining stability in the statewide assessment program when  
18 adopting any subsequent modification of the rules.

19 SECTION 7. Sections 39.023(a-4), (c), (c-3), (e), (g), and  
20 (1), Education Code, are amended to read as follows:

21 (a-4) For purposes of Subsection (a)(1), the commissioner  
22 [~~State Board of Education~~] by rule must require the mathematics  
23 assessment instrument for a grade level to align with the  
24 technology expectations included in the essential knowledge and  
25 skills for that grade level and may designate sections of a  
26 mathematics assessment instrument for a grade level that:

27 (1) may be completed with the aid of technology; and

1 (2) must be completed without the aid of technology.

2 (c) The agency shall also adopt end-of-course assessment  
3 instruments for secondary-level courses in Algebra I, biology,  
4 English I, English II, and United States history. The Algebra I  
5 end-of-course assessment instrument must be administered with the  
6 aid of technology, but may include one or more parts that prohibit  
7 the use of technology. The English I and English II end-of-course  
8 assessment instruments must each assess essential knowledge and  
9 skills in both reading and writing and must provide a single score.  
10 A school district shall comply with commissioner [~~State Board of~~  
11 ~~Education~~] rules regarding administration of the assessment  
12 instruments listed in this subsection. If a student is in a special  
13 education program under Subchapter A, Chapter 29, the student's  
14 admission, review, and dismissal committee shall determine whether  
15 any allowable modification is necessary in administering to the  
16 student an assessment instrument required under this subsection.  
17 The commissioner [~~State Board of Education~~] shall administer the  
18 assessment instruments. An end-of-course assessment instrument may  
19 be administered in multiple parts over more than one day. The  
20 commissioner, in consultation with school districts, [~~State Board~~  
21 ~~of Education~~] shall adopt a schedule for the administration of  
22 end-of-course assessment instruments that complies with the  
23 requirements of Subsection (c-3).

24 (c-3) Except as provided by Subsection (c-7), as added by  
25 Chapter 1315 (H.B. 3906), Acts of the 86th Legislature, Regular  
26 Session, 2019, in adopting a schedule for the administration of  
27 assessment instruments under this section, the commissioner [~~State~~

1 ~~Board of Education~~] shall ensure that assessment instruments  
2 administered under Subsection (a) or (c) are not administered on  
3 the first instructional day of a week unless the superintendent of a  
4 school district applies to the commissioner for a waiver of the  
5 requirement under this subsection due to local conditions which  
6 have significantly affected the district's ability to comply with  
7 the requirement of this subsection.

8 (e) At least ~~[Under rules adopted by the State Board of~~  
9 ~~Education,~~] every third year, the agency shall release the  
10 questions and answer keys to each assessment instrument  
11 administered under Subsection (a), (b), (c), (d), or (l), excluding  
12 any assessment instrument administered to a student for the purpose  
13 of retaking the assessment instrument, after the last time the  
14 instrument is administered for that school year. To ensure a valid  
15 bank of questions for use each year, the agency is not required to  
16 release a question that is being field-tested and was not used to  
17 compute the student's score on the instrument. The agency shall  
18 also release~~[, under board rule,~~ each question that is no longer  
19 being field-tested and that was not used to compute a student's  
20 score. ~~[During the 2014-2015 and 2015-2016 school years, the agency~~  
21 ~~shall release the questions and answer keys to assessment~~  
22 ~~instruments as described by this subsection each year.]~~

23 (g) The commissioner ~~[State Board of Education]~~ may adopt  
24 one appropriate, nationally recognized, norm-referenced assessment  
25 instrument in reading and mathematics to be administered to a  
26 selected sample of students in the spring. If adopted, a  
27 norm-referenced assessment instrument must be a secured test. The

1 state may pay the costs of purchasing and scoring the adopted  
2 assessment instrument and of distributing the results of the  
3 adopted instrument to the school districts. A district that  
4 administers the norm-referenced test adopted under this subsection  
5 shall report the results to the agency in a manner prescribed by the  
6 commissioner.

7 (1) The commissioner [~~State Board of Education~~] shall adopt  
8 rules for the administration of the assessment instruments adopted  
9 under Subsection (a) in Spanish to students in grades three through  
10 five who are of limited English proficiency, as defined by Section  
11 29.052, whose primary language is Spanish, and who are not  
12 otherwise exempt from the administration of an assessment  
13 instrument under Section 39.027(a)(1) or (2). Each student of  
14 limited English proficiency whose primary language is Spanish,  
15 other than a student to whom Subsection (b) applies, may be assessed  
16 using assessment instruments in Spanish under this subsection for  
17 up to three years or assessment instruments in English under  
18 Subsection (a). The language proficiency assessment committee  
19 established under Section 29.063 shall determine which students are  
20 administered assessment instruments in Spanish under this  
21 subsection.

22 SECTION 8. Section 39.02341(a), Education Code, is amended  
23 to read as follows:

24 (a) The agency [~~in consultation with the State Board of~~  
25 ~~Education,~~] shall develop a transition plan to administer all  
26 assessment instruments required under Section 39.023  
27 electronically beginning not later than the 2022-2023 school year.

1 The plan must:

2 (1) evaluate the availability of Internet access for  
3 each school district in this state;

4 (2) identify changes to state law or policy necessary  
5 to improve the availability of Internet access described by  
6 Subdivision (1);

7 (3) evaluate the state's experience with administering  
8 online assessment instruments, including the occurrence or effects  
9 of power outages or other types of disruptions of Internet service,  
10 and actions taken by the state to mitigate the occurrence and effect  
11 of those disruptions; and

12 (4) identify and evaluate actions taken by the state  
13 to improve the administration of online assessment instruments.

14 SECTION 9. Section 39.025(b-1), Education Code, is amended  
15 to read as follows:

16 (b-1) A school district shall provide each student who fails  
17 to perform satisfactorily as determined by the commissioner under  
18 Section 39.0241(a) on an end-of-course assessment instrument with  
19 accelerated instruction under Section 28.0217 in the subject  
20 assessed by the assessment instrument.

21 SECTION 10. Section 39.026, Education Code, is amended to  
22 read as follows:

23 Sec. 39.026. LOCAL OPTION. In addition to the assessment  
24 instruments adopted and administered by the agency [~~and~~  
25 ~~administered by the State Board of Education,~~] a school district  
26 may adopt and administer criterion-referenced or norm-referenced  
27 assessment instruments, or both, at any grade level. A

1 norm-referenced assessment instrument adopted under this section  
2 must be economical, nationally recognized, and state-approved.

3 SECTION 11. Section 39.027(b), Education Code, is amended  
4 to read as follows:

5 (b) The commissioner [~~State Board of Education~~] shall adopt  
6 rules under which a dyslexic student who is not exempt under  
7 Subsection (a) may use procedures including oral examinations if  
8 appropriate or may be allowed additional time or the materials or  
9 technology necessary for the student to demonstrate the student's  
10 mastery of the competencies the assessment instruments are designed  
11 to measure.

12 SECTION 12. Section 39.029, Education Code, is amended to  
13 read as follows:

14 Sec. 39.029. MIGRATORY CHILDREN. The commissioner [~~State  
15 Board of Education~~] by rule may provide alternate dates for the  
16 administration of the assessment instruments to a student who is a  
17 migratory child as defined by 20 U.S.C. Section 6399. The alternate  
18 dates may be chosen following a consideration of migrant work  
19 patterns, and the dates selected may afford maximum opportunity for  
20 the students to be present when the assessment instruments are  
21 administered.

22 SECTION 13. Section 39.030(a), Education Code, is amended  
23 to read as follows:

24 (a) In adopting academic skills assessment instruments  
25 under this subchapter, the commissioner [~~State Board of Education~~]  
26 or a school district shall ensure the security of the instruments  
27 and tests in their preparation, administration, and grading.



1 Meetings or portions of meetings held by the commissioner [~~State~~  
2 ~~Board of Education~~] or a school district at which individual  
3 assessment instruments or assessment instrument items are  
4 discussed or adopted are not open to the public under Chapter 551,  
5 Government Code, and the assessment instruments or assessment  
6 instrument items are confidential.

7 SECTION 14. Sections 39.032(c-1) and (e), Education Code,  
8 are amended to read as follows:

9 (c-1) The standardization norms computed under Subsection  
10 (c) shall be:

11 (1) based on a national probability sample that meets  
12 accepted standards for educational and psychological testing; and

13 (2) updated at least every eight years using proven  
14 psychometric procedures approved by the commissioner [~~State Board~~  
15 ~~of Education~~].

16 (e) The commissioner [~~State Board of Education~~] shall adopt  
17 rules for the implementation of this section and for the  
18 maintenance of the security of the contents of all assessment  
19 instruments.

20 SECTION 15. Section 39.033(c), Education Code, is amended  
21 to read as follows:

22 (c) A private school must reimburse the agency for the cost  
23 of administering an assessment instrument under this section. The  
24 commissioner [~~State Board of Education~~] shall determine the cost  
25 under this section. The per-student cost may not exceed the cost of  
26 administering the same assessment to a student enrolled in a public  
27 school district.

1 SECTION 16. Section 39.039(b), Education Code, is amended  
2 to read as follows:

3 (b) A person who is an agent of an entity that has been  
4 contracted to develop or implement assessment instruments required  
5 under Section 39.023 commits an offense if the person serves as a  
6 member of a formal or informal advisory committee established by  
7 the commissioner or [7] agency staff [~~7~~, ~~or the State Board of~~  
8 ~~Education~~] to advise the commissioner or [7] agency staff [~~7~~, ~~or the~~  
9 ~~State Board of Education~~] regarding policies or implementation of  
10 the requirements of this subchapter.

11 SECTION 17. Section 39.301(c), Education Code, is amended  
12 to read as follows:

13 (c) Indicators for reporting purposes must include:

14 (1) the percentage of graduating students who meet the  
15 course requirements established by State Board of Education rule  
16 for:

17 (A) the foundation high school program;

18 (B) the distinguished level of achievement under  
19 the foundation high school program; and

20 (C) each endorsement described by Section  
21 28.025(c-1);

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

24 (3) for students who have failed to perform  
25 satisfactorily, under each performance standard under Section  
26 39.0241, on an assessment instrument required under Section  
27 39.023(a) or (c), the performance of those students on subsequent

1 assessment instruments required under those sections, aggregated  
2 by grade level and subject area;

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

8 (5) the percentage of students, aggregated by grade  
9 level, provided accelerated instruction under Section 28.0211  
10 [~~28.0211(c)~~], the results of assessment instruments administered  
11 under that section, [~~the percentage of students promoted through~~  
12 ~~the grade placement committee process under Section 28.0211,~~] the  
13 subject of the assessment instrument on which each student failed  
14 to perform satisfactorily under each performance standard under  
15 Section 39.0241, and the performance of those students in the  
16 subsequent school year [~~following that promotion~~] on the assessment  
17 instruments required under Section 39.023;

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

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

24 (8) the percentage of students who satisfy the college  
25 readiness measure;

26 (9) the measure of progress toward dual language  
27 proficiency under Section 39.034(b), for students of limited

1 English proficiency, as defined by Section 29.052;

2 (10) the percentage of students who are not  
3 educationally disadvantaged;

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

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

10 SECTION 18. Section 51.338(d), Education Code, is amended  
11 to read as follows:

12 (d) A student who has demonstrated the performance standard  
13 for college readiness as provided by Section 28.008 on the  
14 postsecondary readiness assessment instruments adopted under  
15 Section 39.0238 for Algebra II and English III, as that section  
16 existed before repeal by \_\_.B. \_\_\_\_\_, Acts of the 87th Legislature,  
17 Regular Session, 2021, is exempt from the requirements of this  
18 subchapter with respect to those content areas. The commissioner of  
19 higher education by rule shall establish the period for which an  
20 exemption under this subsection is valid.

21 SECTION 19. The following provisions of the Education Code  
22 are repealed:

23 (1) Sections 28.0211(b), (d), (e), (i-1), (i-2), (m),  
24 and (m-1);

25 (2) Section 39.0231;

26 (3) Section 39.0238; and

27 (4) Section 39.039(a).

1           SECTION 20. As soon as practicable after the effective date  
2 of this Act, the board of trustees of a school district shall adopt  
3 a policy as required by Section 28.0211(f-3), Education Code, as  
4 added by this Act.

5           SECTION 21. The change in law made by this Act to Section  
6 39.039, Education Code, applies only to an offense committed on or  
7 after the effective date of this Act. An offense committed before  
8 the effective date of this Act is governed by the law in effect on  
9 the date the offense was committed, and the former law is continued  
10 in effect for that purpose. For purposes of this section, an offense  
11 was committed before the effective date of this Act if any element  
12 of the offense occurred before that date.

13           SECTION 22. (a) On the effective date of this Act:

14                   (1) all powers and duties of the State Board of  
15 Education under Section 33.0812 and Subchapter B, Chapter 39,  
16 Education Code, as those provisions existed immediately before the  
17 effective date of this Act, are transferred to the commissioner of  
18 education; and

19                   (2) all rules, forms, and assessment instruments  
20 adopted or prescribed by the State Board of Education are continued  
21 in effect as if they were rules, forms, or assessment instruments  
22 adopted or prescribed by the commissioner of education until they  
23 are repealed or otherwise changed by the commissioner.

24           (b) The validity of an action taken by the State Board of  
25 Education before the effective date of this Act is not affected by  
26 the transfer of powers and duties under this Act.

27           SECTION 23. To the extent of any conflict, this Act prevails

1 over another Act of the 87th Legislature, Regular Session, 2021,  
2 relating to nonsubstantive additions to and corrections in enacted  
3 codes.

4 SECTION 24. This Act applies beginning with the 2021-2022  
5 school year.

6 SECTION 25. This Act takes effect immediately if it  
7 receives a vote of two-thirds of all the members elected to each  
8 house, as provided by Section 39, Article III, Texas Constitution.  
9 If this Act does not receive the vote necessary for immediate  
10 effect, this Act takes effect September 1, 2021.