

By: Olivo

H.B. No. 337

A BILL TO BE ENTITLED

AN ACT

relating to alternative compensatory criteria for promotion to certain grade levels in public school.

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

SECTION 1. Subchapter B, Chapter 28, Education Code, is amended by adding Section 28.0212 to read as follows:

Sec. 28.0212. ALTERNATIVE COMPENSATORY PROMOTION CRITERIA.

(a) The commissioner by rule shall prescribe alternative compensatory promotion criteria that a student may meet to be promoted to:

(1) the fourth grade level without performing satisfactorily on the assessment instrument specified by Section 28.0211(a)(1);

(2) the sixth grade level without performing satisfactorily on the assessment instruments specified by Section 28.0211(a)(2); or

(3) the ninth grade level without performing satisfactorily on the assessment instruments specified by Section 28.0211(a)(3).

(b) The alternative compensatory promotion criteria must include a student's:

(1) grades in language arts, mathematics, science, and social studies for:

(A) the grade level from which the student seeks

1 promotion; and

2 (B) each lower grade level the student has
3 completed;

4 (2) performance on the individual assessment
5 instruments administered to the student under Section 39.023;

6 (3) total scores, using only the student's highest
7 scores, on the assessment instrument or instruments specified by
8 Section 28.0211(a)(1), (2), or (3); and

9 (4) overall academic performance, as evaluated by the
10 student's teacher or teachers.

11 (c) A committee composed of the student's teacher, the
12 student's principal or the principal's designee, and a counselor at
13 the student's school, or in the student's school district if the
14 student's school does not have a counselor, shall determine whether
15 a student who has not performed satisfactorily on the assessment
16 instruments specified by Section 28.0211(a)(1), (2), or (3) has met
17 the alternative compensatory promotion criteria prescribed under
18 Subsections (a) and (b). If the student is an individual with a
19 disability, as defined by 29 U.S.C. Section 705(20) and its
20 subsequent amendments, the committee established by the school
21 district in compliance with Section 504, Rehabilitation Act of 1973
22 (29 U.S.C. Section 794), and its subsequent amendments shall
23 determine whether the student has met the alternative compensatory
24 promotion criteria. The decision of a committee is final and may
25 not be appealed.

26 (d) The committee described by Subsection (c) shall
27 determine whether a student who has not performed satisfactorily on

1 an assessment instrument specified by Section 28.0211 (a)(1), (2),
2 or (3) has met the alternative compensatory promotion criteria
3 prescribed under Subsections (a) and (b) following each
4 administration of the assessment instrument. If the committee
5 determines the student has met the alternative compensatory
6 promotion criteria, the student is not subject to Section 28.0211
7 for the grade level promotion as to which the determination is made.

8 (e) This section does not create a property right in
9 promotion to the next grade level.

10 (f) Notwithstanding this section, a student must meet:

11 (1) the requirements of Sections 25.092 and 28.021;

12 and

13 (2) any grade or conduct requirements prescribed by
14 school district policy, other than a requirement that a student
15 perform satisfactorily on the assessment instruments specified by
16 Section 28.0211(a)(1), (2), or (3).

17 SECTION 2. Sections 28.0211(a)-(f) and (i), Education Code,
18 are amended to read as follows:

19 (a) Except as provided by Subsection (b) or (e) or Section
20 28.0212, a student may not be promoted to:

21 (1) the fourth grade program to which the student
22 would otherwise be assigned if the student does not perform
23 satisfactorily on the third grade reading assessment instrument
24 under Section 39.023;

25 (2) the sixth grade program to which the student would
26 otherwise be assigned if the student does not perform
27 satisfactorily on the fifth grade mathematics and reading

1 assessment instruments under Section 39.023; or

2 (3) the ninth grade program to which the student would
3 otherwise be assigned if the student does not perform
4 satisfactorily on the eighth grade mathematics and reading
5 assessment instruments under Section 39.023.

6 (b) A school district shall provide to a student who
7 initially fails to perform satisfactorily on an assessment
8 instrument specified under Subsection (a) and who does not meet the
9 alternative compensatory promotion criteria prescribed under
10 Section 28.0212 at least two additional opportunities to take the
11 assessment instrument. A school district may administer an
12 alternate assessment instrument to a student who has failed an
13 assessment instrument specified under Subsection (a) on the
14 previous two opportunities. Notwithstanding any other provision of
15 this section, a student may be promoted if the student performs at
16 grade level on an alternate assessment instrument under this
17 subsection that is appropriate for the student's grade level and
18 approved by the commissioner.

19 (c) Each time a student fails to perform satisfactorily on
20 an assessment instrument specified under Subsection (a), the school
21 district in which the student attends school shall provide to the
22 student accelerated instruction in the applicable subject area,
23 including reading instruction for a student who fails to perform
24 satisfactorily on a reading assessment instrument. After a student
25 fails to perform satisfactorily on an assessment instrument a
26 second time, if the student does not meet the alternative
27 compensatory promotion criteria prescribed under Section 28.0212,

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

13 (d) In addition to providing accelerated instruction to a
14 student under Subsection (c), the district shall notify the
15 student's parent or guardian of:

16 (1) the student's failure to perform satisfactorily on
17 the assessment instrument and to meet the alternative compensatory
18 promotion criteria prescribed under Section 28.0212;

19 (2) the accelerated instruction program to which the
20 student is assigned; and

21 (3) the possibility that the student might be retained
22 at the same grade level for the next school year.

23 (e) A student who, after at least three attempts, fails to
24 perform satisfactorily on an assessment instrument specified under
25 Subsection (a) and who does not meet the alternative compensatory
26 promotion criteria prescribed under Section 28.0212 shall be
27 retained at the same grade level for the next school year in

1 accordance with Subsection (a). The student's parent or guardian
2 may appeal the student's retention by submitting a request to the
3 grade placement committee established under Subsection (c). The
4 school district shall give the parent or guardian written notice of
5 the opportunity to appeal. The grade placement committee may
6 decide in favor of a student's promotion only if the committee
7 concludes, using standards adopted by the board of trustees, that
8 if promoted and given accelerated instruction, the student is
9 likely to perform at grade level. A student may not be promoted on
10 the basis of the grade placement committee's decision unless that
11 decision is unanimous. The commissioner by rule shall establish a
12 time line for making the placement determination. This subsection
13 does not create a property interest in promotion. The decision of
14 the grade placement committee is final and may not be appealed.

15 (f) A school district shall provide to a student who, after
16 three attempts, has failed to perform satisfactorily on an
17 assessment instrument specified under Subsection (a) and who does
18 not meet the alternative compensatory promotion criteria
19 prescribed under Section 28.0212 accelerated instruction during
20 the next school year as prescribed by an educational plan developed
21 for the student by the student's grade placement committee
22 established under Subsection (c). The district shall provide that
23 accelerated instruction regardless of whether the student has been
24 promoted or retained. The educational plan must be designed to
25 enable the student to perform at the appropriate grade level by the
26 conclusion of the school year. During the school year, the student
27 shall be monitored to ensure that the student is progressing in

1 accordance with the plan. The district shall administer to the
2 student the assessment instrument for the grade level in which the
3 student is placed at the time the district regularly administers
4 the assessment instruments for that school year.

5 (i) The admission, review, and dismissal committee of a
6 student who participates in a district's special education program
7 under Subchapter B, Chapter 29, and who does not perform
8 satisfactorily on an assessment instrument specified under
9 Subsection (a) and administered under Section 39.023(a) or (b) and
10 who does not meet the alternative compensatory promotion criteria
11 prescribed under Section 28.0212 shall determine:

12 (1) the manner in which the student will participate
13 in an accelerated instruction program under this section; and

14 (2) whether the student will be promoted or retained
15 under this section.

16 SECTION 3. Section 28.0212, Education Code, as added by
17 this Act, applies beginning with the 2003-2004 school year.

18 SECTION 4. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2003.