

By: Raymond

H.B. No. 541

A BILL TO BE ENTITLED

AN ACT

relating to assessment of public school students receiving special education services.

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

SECTION 1. Section 28.0211, Education Code, is amended by adding Subsection (n) to read as follows:

(n) This section does not apply to a student who participates in a district's special education program under Subchapter A, Chapter 29.

SECTION 2. Sections 39.023(a), (c), (d), (e), and (l), Education Code, are amended to read as follows:

(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection [~~(b) or~~] (1) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;

(2) reading, annually in grades three through eight;

(3) writing, including spelling and grammar, in grades four and seven;

(4) social studies, in grade eight;

1 (5) science, in grades five and eight; and

2 (6) any other subject and grade required by federal
3 law.

4 (c) The agency shall also adopt end-of-course assessment
5 instruments for secondary-level courses in Algebra I, Algebra II,
6 geometry, biology, chemistry, physics, English I, English II,
7 English III, world geography, world history, and United States
8 history. The Algebra I, Algebra II, and geometry end-of-course
9 assessment instruments must be administered with the aid of
10 technology. A school district shall comply with State Board of
11 Education rules regarding administration of the assessment
12 instruments listed in this subsection and shall adopt a policy that
13 requires a student's performance on an end-of-course assessment
14 instrument for a course listed in this subsection in which the
15 student is enrolled to account for 15 percent of the student's final
16 grade for the course. If a student retakes an end-of-course
17 assessment instrument for a course listed in this subsection, as
18 provided by Section 39.025, a school district is not required to use
19 the student's performance on the subsequent administration or
20 administrations of the assessment instrument to determine the
21 student's final grade for the course. [~~If a student is in a special
22 education program under Subchapter A, Chapter 29, the student's
23 admission, review, and dismissal committee shall determine whether
24 any allowable modification is necessary in administering to the
25 student an assessment instrument required under this subsection or
26 whether the student should be exempted under Section
27 39.027(a)(2).~~] The State Board of Education shall administer the

1 assessment instruments. The State Board of Education shall adopt a
2 schedule for the administration of end-of-course assessment
3 instruments that complies with the requirements of Subsection
4 (c-3).

5 (d) The commissioner may participate in multistate efforts
6 to develop voluntary standardized end-of-course assessment
7 instruments. The commissioner by rule may require a school
8 district to administer an end-of-course assessment instrument
9 developed through the multistate efforts. ~~[The admission, review,
10 and dismissal committee of a student in a special education program
11 under Subchapter A, Chapter 29, shall determine whether any
12 allowable modification is necessary in administering to the student
13 an end-of-course assessment instrument or whether the student
14 should be exempted under Section 39.027(a)(2).]~~

15 (e) Under rules adopted by the State Board of Education,
16 every third year, the agency shall release the questions and answer
17 keys to each assessment instrument administered under Subsection
18 (a), ~~[(b)]~~ (c), (d), or (l) after the last time the instrument is
19 administered for that school year. To ensure a valid bank of
20 questions for use each year, the agency is not required to release a
21 question that is being field-tested and was not used to compute the
22 student's score on the instrument. The agency shall also release,
23 under board rule, each question that is no longer being
24 field-tested and that was not used to compute a student's score.

25 (l) The State Board of Education shall adopt rules for the
26 administration of the assessment instruments adopted under
27 Subsection (a) in Spanish to students in grades three through six

1 who are of limited English proficiency, as defined by Section
2 29.052, whose primary language is Spanish, and who are not
3 otherwise exempt from the administration of an assessment
4 instrument under Section 39.027(a)(3) or (4). Each student of
5 limited English proficiency whose primary language is Spanish[~~7~~
6 ~~other than a student to whom Subsection (b) applies,~~] may be
7 assessed using assessment instruments in Spanish under this
8 subsection for up to three years or assessment instruments in
9 English under Subsection (a). The language proficiency assessment
10 committee established under Section 29.063 shall determine which
11 students are administered assessment instruments in Spanish under
12 this subsection.

13 SECTION 3. Section 39.024(a), Education Code, is amended to
14 read as follows:

15 (a) The [~~Except as otherwise provided by this subsection,~~
16 ~~the~~] State Board of Education shall determine the level of
17 performance considered to be satisfactory on the assessment
18 instruments. [~~The admission, review, and dismissal committee of a~~
19 ~~student being assessed under Section 39.023(b) shall determine the~~
20 ~~level of performance considered to be satisfactory on the~~
21 ~~assessment instruments administered to that student in accordance~~
22 ~~with criteria established by agency rule.~~]

23 SECTION 4. Section 39.027(a), Education Code, is amended to
24 read as follows:

25 (a) A student may be exempted from the administration of an
26 assessment instrument under:

27 (1) Section 39.023(a) [~~or (b)~~] if the student is

1 eligible for a special education program under Section 29.003 [~~and~~
2 ~~the student's individualized education program does not include~~
3 ~~instruction in the essential knowledge and skills under Section~~
4 ~~28.002 at any grade level~~];

5 (2) Section 39.023(c) or (d) if the student is
6 eligible for a special education program under Section 29.003 [~~and~~;

7 [~~(A) the student's individualized education~~
8 ~~program does not include instruction in the essential knowledge and~~
9 ~~skills under Section 28.002 at any grade level; or~~

10 [~~(B) the assessment instrument, even with~~
11 ~~allowable modifications, would not provide an appropriate measure~~
12 ~~of the student's achievement as determined by the student's~~
13 ~~admission, review, and dismissal committee~~];

14 (3) Section 39.023(a) or (l) for a period of up to one
15 year after initial enrollment in a school in the United States if
16 the student is of limited English proficiency, as defined by
17 Section 29.052, and has not demonstrated proficiency in English as
18 determined by the assessment system under Subsection (e); or

19 (4) Section 39.023(a) or (l) for a period of up to two
20 years in addition to the exemption period authorized by Subdivision
21 (3) if the student has received an exemption under Subdivision (3)
22 and:

23 (A) is a recent unschooled immigrant; or

24 (B) is in a grade for which no assessment
25 instrument in the primary language of the student is available.

26 SECTION 5. Section 39.0302(a), Education Code, is amended
27 to read as follows:

1 (a) During an agency investigation or audit of a school
2 district under Section 39.0301(e) or (f), an accreditation
3 investigation under Section 39.075(a)(7) [~~39.075(a)(8)~~], or an
4 investigation by the State Board for Educator Certification of an
5 educator for an alleged violation of an assessment instrument
6 security procedure established under Section 39.0301(a), the
7 commissioner may issue a subpoena to compel the attendance of a
8 relevant witness or the production, for inspection or copying, of
9 relevant evidence that is located in this state.

10 SECTION 6. Section 39.035(a), Education Code, is amended to
11 read as follows:

12 (a) Subject to Subsection (b), the agency may conduct field
13 testing of questions for any assessment instrument administered
14 under Section 39.023(a), [~~(b)~~] (c), (d), or (l) that is separate
15 from the administration of the assessment instrument not more
16 frequently than every other school year.

17 SECTION 7. Sections 39.051(b) and (b-1), Education Code,
18 are amended to read as follows:

19 (b) Performance on the indicators adopted under this
20 section shall be compared to state-established standards. The
21 degree of change from one school year to the next in performance on
22 each indicator adopted under this section shall also be
23 considered. The indicators must be based on information that is
24 disaggregated by race, ethnicity, gender, and socioeconomic status
25 and must include:

26 (1) the results of assessment instruments required
27 under Sections 39.023(a), (c), and (l), aggregated by grade level

1 and subject area;

2 (2) dropout rates, including dropout rates and
3 district completion rates for grade levels 9 through 12, computed
4 in accordance with standards and definitions adopted by the
5 National Center for Education Statistics of the United States
6 Department of Education;

7 (3) high school graduation rates, computed in
8 accordance with standards and definitions adopted in compliance
9 with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110);

10 (4) student attendance rates;

11 (5) the percentage of graduating students who attain
12 scores on the questions developed for end-of-course assessment
13 instruments under Section 39.0233(a) that are equivalent to a
14 passing score on the assessment instrument required under Section
15 51.3062;

16 (6) the percentage of graduating students who meet the
17 course requirements established for the recommended high school
18 program by State Board of Education rule;

19 (7) the results of the Scholastic Assessment Test
20 (SAT), the American College Test (ACT), articulated postsecondary
21 degree programs described by Section 61.852, and certified
22 workforce training programs described by Chapter 311, Labor Code;

23 (8) the percentage of students, aggregated by grade
24 level, provided accelerated instruction under Section 28.0211(c),
25 the results of assessments administered under that section, the
26 percentage of students promoted through the grade placement
27 committee process under Section 28.0211, the subject of the

1 assessment instrument on which each student failed to perform
2 satisfactorily, and the performance of those students in the school
3 year following that promotion on the assessment instruments
4 required under Section 39.023;

5 (9) for students who have failed to perform
6 satisfactorily on an assessment instrument required under Section
7 39.023(a) or (c), the numerical progress of those students grouped
8 by percentage on subsequent assessment instruments required under
9 those sections, aggregated by grade level and subject area;

10 (10) the percentage of students exempted, by exemption
11 category, from the assessment program generally applicable under
12 this chapter;

13 (11) the percentage of students of limited English
14 proficiency exempted from the administration of an assessment
15 instrument under Sections 39.027(a)(3) and (4);

16 ~~(12) [the percentage of students in a special~~
17 ~~education program under Subchapter A, Chapter 29, assessed through~~
18 ~~assessment instruments developed or adopted under Section~~
19 ~~39.023(b),~~

20 ~~[(13)]~~ the measure of progress toward preparation for
21 postsecondary success; and

22 (13) ~~[(14)]~~ the measure of progress toward dual
23 language proficiency under Section 39.034(b), for students of
24 limited English proficiency, as defined by Section 29.052.

25 (b-1) Performance on the indicators described by
26 Subsections (b)(1), (2), (3), (8), (9), and (13) ~~[(14)]~~ must be
27 based on longitudinal student data that is disaggregated by the

1 bilingual education or special language program, if any, in which
2 students of limited English proficiency, as defined by Section
3 29.052, are or former students of limited English proficiency were
4 enrolled. If a student described by this subsection is not or was
5 not enrolled in specialized language instruction, the number and
6 percentage of those students shall be provided.

7 SECTION 8. Section 39.075(a), Education Code, is amended to
8 read as follows:

9 (a) The commissioner shall authorize special accreditation
10 investigations to be conducted:

11 (1) when excessive numbers of absences of students
12 eligible to be tested on state assessment instruments are
13 determined;

14 (2) when excessive numbers of allowable exemptions
15 from the required state assessment instruments are determined;

16 (3) in response to complaints submitted to the agency
17 with respect to alleged violations of civil rights or other
18 requirements imposed on the state by federal law or court order;

19 (4) in response to established compliance reviews of
20 the district's financial accounting practices and state and federal
21 program requirements;

22 (5) when extraordinary numbers of student placements
23 in disciplinary alternative education programs, other than
24 placements under Sections 37.006 and 37.007, are determined;

25 (6) in response to an allegation involving a conflict
26 between members of the board of trustees or between the board and
27 the district administration if it appears that the conflict

1 involves a violation of a role or duty of the board members or the
2 administration clearly defined by this code;

3 (7) [~~when excessive numbers of students in special~~
4 ~~education programs under Subchapter A, Chapter 29, are assessed~~
5 ~~through assessment instruments developed or adopted under Section~~
6 ~~39.023(b)~~;

7 [~~(8)~~] in response to an allegation regarding or an
8 analysis using a statistical method result indicating a possible
9 violation of an assessment instrument security procedure
10 established under Section 39.0301, including for the purpose of
11 investigating or auditing a school district under that section; or

12 (8) [~~(9)~~] as the commissioner otherwise determines
13 necessary.

14 SECTION 9. Section 39.114(b), Education Code, is amended to
15 read as follows:

16 (b) A school district may use funds allocated under Section
17 42.2516(b)(3) on any instructional program in grades six through 12
18 other than an athletic program if:

19 (1) the district is recognized as exceptional by the
20 commissioner under the academic accountability indicator adopted
21 under Section 39.051(b)(12) [~~39.051(b)(13)~~]; and

22 (2) the district's completion rates for grades nine
23 through 12 meet or exceed completion rate standards required by the
24 commissioner to achieve a rating of exemplary under Section 39.072.

25 SECTION 10. Sections 28.0211(i), 28.0213(e), 39.023(b),
26 39.027(c), and 39.051(f), Education Code, are repealed.

27 SECTION 11. Not later than December 1, 2010, the Texas

1 Education Agency shall submit to the legislature a report that:

2 (1) identifies the anticipated consequences of
3 implementing the changes in law made by this Act regarding
4 assessment of students receiving special education services,
5 including any consequences arising from requirements imposed by
6 federal law regarding assessment of those students; and

7 (2) specifies the amount, if any, of federal funds
8 that would not be received as a result of implementing those changes
9 in law.

10 SECTION 12. (a) Except as provided by Subsection (b) of
11 this section, this Act takes effect September 1, 2011.

12 (b) Section 11 of this Act takes effect September 1, 2010.