

By: Martinez

H.B. No. 2880

A BILL TO BE ENTITLED

AN ACT

relating to assessment instruments administered to public school students in grades three through eight.

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

SECTION 1. Section 21.4551(c), Education Code, is amended to read as follows:

(c) The commissioner by rule shall require a teacher to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students at the sixth, seventh, or eighth grade level at a campus that is considered academically unacceptable under Section 39.132 on the basis of student performance on the reading benchmark assessment instrument administered under Section 39.0237(a) [~~39.023(a)~~] to students in any grade level at the campus.

SECTION 2. Sections 28.0211(a), (b), (c), (d), (e), (f), (g), (i), (k), and (m), Education Code, are amended to read as follows:

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

(1) the fourth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the third grade reading benchmark assessment instruments [~~instrument~~] under Section 39.0237 or show annual improvement in student achievement [~~39.023~~];

(2) the sixth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the fifth grade mathematics and reading benchmark assessment instruments under Section 39.0237 or show annual improvement in student achievement [~~39.023~~]; or

(3) the ninth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the eighth grade mathematics and reading benchmark assessment instruments under Section 39.0237 or show annual improvement in student achievement [~~39.023~~].

~~(b) [A school district shall provide to a student who initially fails to perform satisfactorily on an assessment instrument specified under Subsection (a) at least two additional opportunities to take the assessment instrument.]~~ A school district may administer [~~an~~] alternate assessment instruments [~~instrument~~] to a student who has failed a benchmark [~~an~~] assessment instrument specified under Subsection (a) on [~~the previous~~] two occasions [~~opportunities~~]. Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on [~~an~~] alternate assessment instruments [~~instrument~~] under this subsection that are [~~is~~] appropriate for the student's grade level and approved by the commissioner.

(c) Each time a student fails to perform satisfactorily on a benchmark [~~an~~] assessment instrument specified under Subsection (a), the school district in which the student attends school shall provide to the student accelerated instruction in the applicable

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

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

21 (1) the student's failure to perform satisfactorily on
22 a benchmark ~~[the]~~ assessment instrument;

23 (2) the accelerated instruction program to which the
24 student is assigned; and

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

27 (e) A student who does not ~~[, after at least three attempts,~~

1 ~~fails to~~ perform satisfactorily on each benchmark ~~[an]~~ assessment
2 instrument in each subject specified under Subsection (a) may
3 ~~[shall]~~ be retained at the same grade level for the next school year
4 in accordance with Subsection (a) if the student has not shown
5 annual improvement or progress. The student's parent or guardian
6 may appeal the student's retention by submitting a request to the
7 grade placement committee established under Subsection (c). The
8 school district shall give the parent or guardian written notice of
9 the opportunity to appeal. The grade placement committee may
10 decide in favor of a student's promotion only if the committee
11 concludes, using standards adopted by the board of trustees, that
12 if promoted and given accelerated instruction, the student is
13 likely to perform at grade level. A student may not be promoted on
14 the basis of the grade placement committee's decision unless that
15 decision is unanimous. The commissioner by rule shall establish a
16 time line for making the placement determination. This subsection
17 does not create a property interest in promotion. The decision of
18 the grade placement committee is final and may not be appealed.

19 (f) A school district shall provide to a student who ~~[, after~~
20 ~~three attempts,~~ has failed to perform satisfactorily on at least
21 two benchmark ~~[an]~~ assessment instruments in a subject ~~[instrument]~~
22 specified under Subsection (a) accelerated instruction in that
23 subject during the next school year as prescribed by an educational
24 plan developed for the student by the student's grade placement
25 committee established under Subsection (c). The district shall
26 provide that accelerated instruction regardless of whether the
27 student has been promoted or retained. The educational plan must be

designed to enable the student to perform at the appropriate grade level by the conclusion of the school year. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the plan. ~~[The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.]~~

(g) This section does not preclude the retention at a grade level, in accordance with state law or school district policy, of a student who performs satisfactorily on benchmark ~~[an]~~ assessment instruments ~~[instrument]~~ specified under Subsection (a).

(i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on benchmark ~~[an]~~ assessment instruments ~~[instrument]~~ specified under Subsection (a) and administered under Section 39.0237(a) or (b) ~~[39.023(a) or (b)]~~ shall determine:

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

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

(k) The commissioner shall adopt rules as necessary to implement this section, including rules concerning when school districts shall administer benchmark assessment instruments required under this section and which administration of the benchmark assessment instruments will be used for purposes of

1 Section 39.051.

2 (m) The commissioner shall certify, not later than July 1 of
3 each school year or as soon as practicable thereafter, whether
4 sufficient funds have been appropriated statewide for the purposes
5 of this section. A determination by the commissioner is final and
6 may not be appealed. For purposes of certification, the
7 commissioner may not consider Foundation School Program
8 funds. This section may be implemented only if the commissioner
9 certifies that sufficient funds have been appropriated during a
10 school year for administering the benchmark ~~[accelerated]~~
11 instruction programs specified under this section, including
12 teacher training for that purpose.

13 SECTION 3. Section 28.0213(e), Education Code, is amended
14 to read as follows:

15 (e) For a student in a special education program under
16 Subchapter A, Chapter 29, who does not perform satisfactorily on an
17 assessment instrument administered under Section 39.023(a), (b),
18 or (c) or benchmark assessment instruments administered under
19 Section 39.0237, the student's admission, review, and dismissal
20 committee shall design the program to:

21 (1) enable the student to attain a standard of annual
22 growth on the basis of the student's individualized education
23 program; and

24 (2) if applicable, carry out the purposes of Section
25 28.0211.

26 SECTION 4. Section 29.056(g), Education Code, is amended to
27 read as follows:

1 (g) A district may transfer a student of limited English
2 proficiency out of a bilingual education or special language
3 program for the first time or a subsequent time if the student is
4 able to participate equally in a regular all-English instructional
5 program as determined by:

6 (1) agency-approved tests administered at the end of
7 each school year to determine the extent to which the student has
8 developed oral and written language proficiency and specific
9 language skills in English;

10 (2) satisfactory performance on the reading
11 assessment instrument under Section 39.023(a), the reading
12 benchmark assessment instruments under Section 39.0237, or an
13 English language arts assessment instrument under Section
14 39.023(c), as applicable, with the assessment instrument
15 administered in English, or, if the student is enrolled in the first
16 or second grade, an achievement score at or above the 40th
17 percentile in the reading and language arts sections of an English
18 standardized test approved by the agency; and

19 (3) agency-approved criterion-referenced tests and
20 the results of a subjective teacher evaluation.

21 SECTION 5. Section 29.0561(b), Education Code, is amended
22 to read as follows:

23 (b) During the first two school years after a student is
24 transferred out of a bilingual education or special language
25 program under Section 29.056(g), the language proficiency
26 assessment committee shall review the student's performance and
27 consider:

(1) the total amount of time the student was enrolled in a bilingual education or special language program;

(2) the student's grades each grading period in each subject in the foundation curriculum under Section 28.002(a)(1);

(3) the student's performance on each assessment instrument administered under Section 39.023(a) or (c) or benchmark assessment instruments administered under Section 39.0237(a);

(4) the number of credits the student has earned toward high school graduation, if applicable; and

(5) any disciplinary actions taken against the student under Subchapter A, Chapter 37.

SECTION 6. Section 30A.110(b), Education Code, is amended to read as follows:

(b) Each student enrolled under this chapter in an electronic course offered through the state virtual school network must take any assessment instrument under Section 39.023 and any benchmark assessment instruments under Section 39.0237 that are ~~[is]~~ administered to students who are provided instruction in the course material in the traditional classroom setting. The administration of the assessment instrument or benchmark assessment instruments to the student enrolled in the electronic course must be supervised by a proctor.

SECTION 7. Section 37.008(m), Education Code, is amended to read as follows:

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter.

1 The evaluation required by this section shall be based on
2 indicators defined by the commissioner, but must include student
3 performance on assessment instruments required under Sections
4 39.023(a) and (c) and benchmark assessment instruments required
5 under Section 39.0237(a). Academically, the mission of
6 disciplinary alternative education programs shall be to enable
7 students to perform at grade level.

8 SECTION 8. Sections 39.023(a), (b), (c-3), (h), and (i),
9 Education Code, are amended to read as follows:

10 (a) The agency shall adopt or develop appropriate
11 criterion-referenced assessment instruments designed to assess a
12 student's essential knowledge and skills in reading, writing,
13 mathematics, social studies, and science. The assessment
14 instrument administered under this subsection is a diagnostic
15 examination administered during the first six weeks of the school
16 year and may be used by the district only to identify the academic
17 strengths and weaknesses of each student. All students, except
18 students assessed under Subsection (b) or (l) or exempted under
19 Section 39.027, shall be assessed in:

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

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

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

26 (4) social studies, in grade eight;

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

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

(b) The agency shall develop or adopt appropriate criterion-referenced assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, who receives modified instruction in the essential knowledge and skills identified under Section 28.002 for the assessed subject but for whom an assessment instrument adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee. The assessment instrument administered under this subsection is a diagnostic examination administered during the first six weeks of the school year and may be used by the district only to identify the academic strengths and weaknesses of each student. The assessment instruments required under this subsection must assess essential knowledge and skills and growth in the subjects of reading, mathematics, and writing. A student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).

(c-3) In adopting a schedule for the administration of assessment instruments under this section, the State Board of Education shall require[+]

~~[(1) assessment instruments administered under Subsection (a) to be administered on a schedule so that the first assessment instrument is administered at least two weeks later than the date on which the first assessment instrument was administered under Subsection (a) during the 2006-2007 school year, and~~

~~[(2)]~~ the spring administration of end-of-course assessment instruments under Subsection (c) to occur in each school district not earlier than the first full week in May, except that the spring administration of the end-of-course assessment instruments in English I, English II, and English III must be permitted to occur at an earlier date.

(h) The agency shall notify school districts and campuses of the results of assessment instruments administered under this section at the earliest possible date determined by the State Board of Education ~~[but not later than the beginning of the subsequent school year]~~.

(i) The provisions of this section, except Subsections (a), (b), and [Subsection] (d), are subject to modification by rules adopted under Section 39.022. Each assessment instrument adopted under those rules and each assessment instrument required under Subsection (d) must be reliable and valid and must meet any applicable federal requirements for measurement of student progress.

SECTION 9. Subchapter B, Chapter 39, Education Code, is amended by adding Sections 39.0236 and 39.0237 to read as follows:

Sec. 39.0236. REGIONAL EDUCATION SERVICE CENTER BENCHMARK ASSESSMENT INSTRUMENT COMMITTEE. (a) Each regional education

1 service center shall appoint one person to serve on the benchmark
2 assessment instrument committee. The committee shall adopt or
3 develop appropriate benchmark assessment instruments designed to
4 assess knowledge and skills in reading, writing, mathematics,
5 social studies, and science in grades three through eight.

6 (b) School districts shall provide assistance to the
7 committee as requested in developing and administering the
8 benchmark assessment instruments.

9 (c) The committee shall review each benchmark assessment
10 instrument every two years.

11 (d) The committee shall develop benchmark assessment
12 instruments in a manner that allows for the measurement of annual
13 improvement in student achievement as required by Sections
14 39.034(c) and (d).

15 (e) The benchmark assessment instruments shall be designed
16 to include assessment of a student's problem-solving ability and
17 complex-thinking skills using a method of assessing those abilities
18 and skills that is demonstrated to be highly reliable.

19 (f) The committee shall release the questions and answer
20 keys to each benchmark assessment instrument administered under
21 Subsection (a) not later than the second anniversary of the date the
22 instrument is administered.

23 Sec. 39.0237. BENCHMARK ASSESSMENT INSTRUMENT. (a) Every
24 six weeks, all students other than students assessed under
25 Subsection (b) or (c) or exempted under Section 39.027 shall be
26 administered the benchmark assessment instruments developed by the
27 regional education service center benchmark assessment instrument

committee in:

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

(2) reading, in grades three through eight;

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

(4) social studies, in grade eight; and

(5) science, in grades five and eight.

(b) The benchmark assessment instrument committee shall develop or adopt appropriate benchmark assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, who receives modified instruction in the essential knowledge and skills identified under Section 28.002 for the assessed subject but for whom a benchmark assessment instrument adopted under Section 39.0236(a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee. The benchmark assessment instruments required under this subsection must assess essential knowledge and skills and growth in the subjects of reading, mathematics, and writing. A student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student a benchmark assessment instrument required under this subsection. The benchmark assessment instruments required under this subsection shall be administered on the same schedule as the benchmark assessment instruments

1 administered under Subsection (a).

2 (c) The benchmark assessment instrument committee shall
3 adopt rules for the administration of the benchmark assessment
4 instruments adopted under Section 39.0236(a) in Spanish to students
5 in grades three through eight who are of limited English
6 proficiency, as defined by Section 29.052, whose primary language
7 is Spanish. Each student of limited English proficiency whose
8 primary language is Spanish, other than a student to whom
9 Subsection (b) applies, may be assessed using benchmark assessment
10 instruments in Spanish under this subsection for up to three years
11 or benchmark instruments in English under Subsection (a). The
12 language proficiency assessment committee established under
13 Section 29.063 shall determine which students are administered
14 benchmark assessment instruments in Spanish under this subsection.

15 (d) The commissioner by rule shall develop procedures under
16 which the language proficiency assessment committee established
17 under Section 29.063 shall determine which students are exempt from
18 the administration of the benchmark assessment instruments under
19 Sections 39.027(a)(6) and (7). The rules adopted under this
20 subsection shall ensure that the language proficiency assessment
21 committee provides that the exempted students are administered the
22 benchmark assessment instruments under Subsection (a) at the
23 earliest practical date.

24 (e) This subsection applies only to a student who is
25 determined to have dyslexia or a related disorder and who is an
26 individual with a disability under 29 U.S.C. Section 705(20). The
27 benchmark assessment instrument committee shall adopt or develop

appropriate benchmark assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the benchmark assessment instruments adopted under Section 39.0236(a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The placement committee shall determine whether any allowable modification is necessary in administering to a student a benchmark assessment instrument required under this subsection. The benchmark assessment instruments required under this subsection shall be administered on the same schedule as the benchmark assessment instruments administered under Subsection (a).

(f) A student is considered to have met the standards for advancement if the student passes each benchmark assessment instrument or the student shows annual improvement in student achievement to meet the grade level requirements. A student must have attended school at least 150 days to meet the grade level requirements.

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

Sec. 39.026. LOCAL OPTION. In addition to the assessment instruments adopted by the agency and administered by the State Board of Education and the benchmark assessment instruments administered under Section 39.0237, a school district may adopt and administer criterion-referenced or norm-referenced assessment

1 instruments, or both, at any grade level. A norm-referenced
2 assessment instrument adopted under this section must be
3 economical, nationally recognized, and state-approved.

4 SECTION 11. Section 39.0262(a), Education Code, is amended
5 to read as follows:

6 (a) In a subject area for which assessment instruments are
7 administered under Section 39.023 or benchmark assessment
8 instruments are administered under Section 39.0237, a school
9 district may not administer district-required assessment
10 instruments to any student on more than 10 percent of the
11 instructional days in any school year.

12 SECTION 12. Sections 39.027(a), (b), (c), (e), and (g),
13 Education Code, are amended to read as follows:

14 (a) A student may be exempted from the administration of an
15 assessment or benchmark assessment instrument under:

16 (1) Section 39.023(a) or (b) if the student is
17 eligible for a special education program under Section 29.003 and
18 the student's individualized education program does not include
19 instruction in the essential knowledge and skills under Section
20 28.002 at any grade level;

21 (2) Section 39.023(c) or (d) if the student is
22 eligible for a special education program under Section 29.003 and:

23 (A) the student's individualized education
24 program does not include instruction in the essential knowledge and
25 skills under Section 28.002 at any grade level; or

26 (B) the assessment instrument, even with
27 allowable modifications, would not provide an appropriate measure

1 of the student's achievement as determined by the student's
2 admission, review, and dismissal committee;

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

8 (4) Section 39.023(a) or (l) for a period of up to two
9 years in addition to the exemption period authorized by Subdivision
10 (3) if the student has received an exemption under Subdivision (3)
11 and:

12 (A) is a recent unschooled immigrant; or

13 (B) is in a grade for which no assessment
14 instrument in the primary language of the student is available;

15 (5) Section 39.0237(a) or (b) if the student is
16 eligible for a special education program under Section 29.003 and
17 the student's individualized education program does not include
18 instruction in the essential knowledge and skills under Section
19 28.002 at any grade level; or

20 (6) Section 39.0237(a) or (c) for a period of up to one
21 year after initial enrollment in a school in the United States if
22 the student is of limited English proficiency, as defined by
23 Section 29.052, and has not demonstrated proficiency in English as
24 determined by the assessment system under Subsection (e); or

25 (7) Section 39.0237(a) or (c) for a period of up to two
26 years in addition to the exemption period authorized by Subdivision
27 (6) if the student has received an exemption under Subdivision (6)

1 and:

2 (A) is a recent unschooled immigrant; or

3 (B) is in a grade for which no benchmark
4 assessment instruments in the primary language of the student are
5 available.

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

13 (c) The commissioner shall develop and adopt a process for
14 reviewing the exemption process of a school district or shared
15 services arrangement that gives an exemption under Subsection
16 (a)(1) or (a)(5) as follows:

17 (1) to more than five percent of the students in the
18 special education program, in the case of a district or shared
19 services arrangement with an average daily attendance of at least
20 1,600;

21 (2) to more than 10 percent of the students in the
22 special education program, in the case of a district or shared
23 services arrangement with an average daily attendance of at least
24 190 and not more than 1,599; or

25 (3) to the greater of more than 10 percent of the
26 students in the special education program or to at least five
27 students in the special education program, in the case of a district

1 or shared services arrangement with an average daily attendance of
2 not more than 189.

3 (e) The commissioner shall develop an assessment system
4 that shall be used for evaluating the academic progress, including
5 reading proficiency in English, of all students of limited English
6 proficiency, as defined by Section 29.052. A student who is exempt
7 from the administration of an assessment instrument under
8 Subsection (a)(3), ~~or~~ (4), (6), or (7) who achieves reading
9 proficiency in English as determined by the assessment system
10 developed under this subsection shall be administered the
11 assessment instruments described by Sections 39.023(a) and (c) and
12 benchmark assessment instruments described by Section 39.0237(a)
13 or (c). The performance under the assessment system developed
14 under this subsection of students to whom Subsection (a)(3), ~~or~~
15 (4), (6), or (7) applies shall be included in the academic
16 excellence indicator system under Section 39.051, the performance
17 report under Section 39.053, and the comprehensive annual report
18 under Section 39.182. This information shall be provided in a
19 manner that is disaggregated by the bilingual education or special
20 language program, if any, in which the student is enrolled.

21 (g) For purposes of this section, "recent unschooled
22 immigrant" means an immigrant who initially enrolled in a school in
23 the United States not more than 12 months before the date of the
24 administration of an assessment instrument under Section 39.023(a)
25 or (1) or a benchmark assessment instrument under Section
26 39.0237(a) or (c) and who, as a result of inadequate schooling
27 outside of the United States, lacks the necessary foundation in the

essential knowledge and skills of the curriculum prescribed under Section 28.002 as determined by the language proficiency assessment committee established under Section 29.063. For purposes of this subsection and to the extent authorized by federal law, a child's prior enrollment in a school in the United States shall be determined on the basis of documents and records required under Section 25.002(a).

SECTION 13. Sections 39.034(a), (c), (e), and (g), Education Code, are amended to read as follows:

(a) The commissioner shall determine a method by which the agency may measure annual improvement in student achievement from one school year to the next on an assessment instrument required under this subchapter for students in grades nine and above and on benchmark assessment instruments for students in grades three through eight. A student in grades three through eight is considered to have made adequate annual improvement if the student shows annual improvement regardless of the student's performance on benchmark assessment instruments.

(c) The agency shall use a student's previous years' performance data on an assessment instrument or benchmark assessment instrument required under this subchapter to determine the student's expected annual improvement. The agency shall 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 the agency's expectation for improvement.

(e) The agency shall report to each school district the

1 comparisons made under this section. Each school district shall
2 provide the comparisons to each teacher for all students who were:

3 (1) assessed on an assessment instrument or benchmark
4 assessment instrument; and

5 (2) taught by that teacher in the subject for which the
6 assessment instrument or benchmark assessment instrument was
7 administered.

8 (g) To the extent practicable, the agency shall combine the
9 report of the comparisons required under this section with the
10 report of the student's performance on assessment instruments
11 administered under Section 39.023 and benchmark assessment
12 instruments administered under Section 39.0237.

13 SECTION 14. Section 39.051, Education Code, is amended by
14 amending Subsections (b), (d), (f), and (g) and adding Subsection
15 (b-2) to read as follows:

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

23 (1) the results of assessment instruments required
24 under Section 39.023(c) [~~Sections 39.023(a), (c),~~] and benchmark
25 assessment instruments required under Section 39.0237 [~~(1)~~],
26 aggregated by grade level and subject area;

27 (2) dropout rates, including dropout rates and

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

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

8 (4) student attendance rates;

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

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

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

21 (8) the percentage of students, aggregated by grade
22 level, provided accelerated instruction under Section 28.0211(c),
23 the results of benchmark assessment instruments [~~assessments~~]
24 administered under that section, the percentage of students
25 promoted through the grade placement committee process under
26 Section 28.0211, the subject of the benchmark assessment instrument
27 on which each student failed to perform satisfactorily, and the

1 performance of those students in the school year following that
2 promotion on the assessment instruments required under Section
3 39.023 and benchmark assessment instruments required under Section
4 39.0237;

5 (9) for students who have failed to perform
6 satisfactorily on benchmark ~~[an]~~ assessment instruments
7 ~~[instrument]~~ required under Section 39.0237(a) or an assessment
8 instrument required under Section 39.023(c) ~~[39.023(a) or (c)]~~, the
9 numerical progress of those students grouped by percentage on
10 subsequent assessment instruments required under those sections,
11 aggregated by grade level and subject area;

12 (10) the percentage of students exempted, by exemption
13 category, from the assessment programs ~~[program]~~ generally
14 applicable under this chapter;

15 (11) the percentage of students of limited English
16 proficiency exempted from the administration of an assessment
17 instrument or benchmark assessment instrument under Sections
18 39.027(a)(3), ~~[and]~~ (4), (6), and (7);

19 (12) the percentage of students in a special education
20 program under Subchapter A, Chapter 29, assessed through benchmark
21 assessment instruments developed or adopted under Section
22 39.0237(b) ~~[39.023(b)]~~;

23 (13) the measure of progress toward preparation for
24 postsecondary success; and

25 (14) the measure of progress toward dual language
26 proficiency under Section 39.034(b), for students of limited
27 English proficiency, as defined by Section 29.052.

(b-2) Notwithstanding Subsection (b)(2), in determining dropout rates and district completion rates under that subsection for grade levels 9 through 12 for purposes of the state accountability system under this chapter, a student who has obtained a high school equivalency certificate (GED) or completed four years of high school is considered to have completed school and is not considered to have dropped out of school.

(d) Annually, the commissioner shall define exemplary, recognized, and unacceptable performance for each academic excellence indicator included under Subsections (b)(1) through (7) and shall project the standards for each of those levels of performance for succeeding years. For the indicator under Subsection (b)(8), the commissioner shall define exemplary, recognized, and unacceptable performance based on student performance for the period covering both the current and preceding academic years. In defining exemplary, recognized, and unacceptable performance for the indicators under Subsections (b)(2) and (4), the commissioner may not consider as a dropout or as a student who has failed to attend school a student:

(1) who has obtained a high school equivalency certificate (GED) or attended four years of high school; or

(2) whose failure to attend school results from:

(A) [~~(1)~~] the student's expulsion under Section 37.007; and

(B) [~~(2)~~] as applicable:

(i) [~~(A)~~] adjudication as having engaged in delinquent conduct or conduct indicating a need for supervision, as

1 defined by Section 51.03, Family Code; or

2 (ii) ~~[(B)]~~ conviction of and sentencing for
3 an offense under the Penal Code.

4 (f) The indicator under Subsection (b)(1) must include the
5 results of benchmark assessment instruments required under Section
6 39.0237(b) ~~[39.023(b)]~~.

7 (g) The commissioner by rule shall adopt accountability
8 measures to be used in assessing the progress of students who have
9 failed to perform satisfactorily in the preceding school year on
10 benchmark ~~[an]~~ assessment instruments ~~[instrument]~~ required under
11 Section 39.0237 ~~[39.023(a), (c), or (1)]~~.

12 SECTION 15. Section 39.072(c), Education Code, is amended
13 to read as follows:

14 (c) The agency shall evaluate against state standards and
15 shall, not later than August 1 of each year, report the performance
16 of each campus in a district and each open-enrollment charter
17 school on the basis of the campus's performance on the indicators
18 adopted under Sections 39.051(b)(1) through (8). Consideration of
19 the effectiveness of district programs under Subsection (b)(2) or
20 (3) must be based on data collected through the Public Education
21 Information Management System for purposes of accountability under
22 this chapter and include the results of assessment instruments
23 ~~[assessments]~~ required under Section 39.023 or benchmark
24 assessment instruments required under Section 39.0237.

25 SECTION 16. Section 39.073(e), Education Code, is amended
26 to read as follows:

27 (e) In determining a district's accreditation rating, the

1 agency shall consider:

2 (1) the district's current special education
3 compliance status with the agency; and

4 (2) the progress of students who have failed to
5 perform satisfactorily in the preceding school year on benchmark
6 ~~[an]~~ assessment instruments ~~[instrument]~~ required under Section
7 39.0237 ~~[39.023(a), (c), or (1)]~~.

8 SECTION 17. Section 39.075(a), Education Code, is amended
9 to read as follows:

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

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

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

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

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

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

26 (6) in response to an allegation involving a conflict
27 between members of the board of trustees or between the board and

the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code;

(7) when excessive numbers of students in special education programs under Subchapter A, Chapter 29, are assessed through benchmark assessment instruments developed or adopted under Section 39.0237(b) [~~39.023(b)~~];

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

(9) as the commissioner otherwise determines necessary.

SECTION 18. Section 39.1324(b), Education Code, is amended to read as follows:

(b) The campus intervention team shall decide which educators may be retained at that campus. A principal who has been employed by the campus in that capacity during the full two-year period described by Subsection (a) may not be retained at that campus. A teacher of a subject assessed by an assessment instrument under Section 39.023 or a benchmark assessment instrument under Section 39.0237 may be retained only if the campus intervention team determines that a pattern exists of significant academic improvement by students taught by the teacher. If an educator is not retained, the educator may be assigned to another position in the district.

SECTION 19. Section 39.182(a), Education Code, is amended to read as follows:

(a) Not later than December 1 of each year, the agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a comprehensive report covering the preceding school year and containing:

(1) an evaluation of the achievements of the state educational program in relation to the statutory goals for the public education system under Section 4.002;

(2) an evaluation of the status of education in the state as reflected by the academic excellence indicators adopted under Section 39.051;

(3) a summary compilation of overall student performance on academic skills assessment instruments required by Section 39.023 or benchmark assessment instruments required by Section 39.0237 with the number and percentage of students exempted from the administration of those instruments and the basis of the exemptions, aggregated by grade level, subject area, campus, and district, with appropriate interpretations and analysis, and disaggregated by ~~[race]~~ ethnicity, gender, and socioeconomic status;

(4) a summary compilation of overall performance of students placed in a disciplinary alternative education program established under Section 37.008 on academic skills assessment

1 instruments required by Section 39.023 or benchmark assessment
2 instruments required by Section 39.0237 with the number of those
3 students exempted from the administration of those instruments and
4 the basis of the exemptions, aggregated by district, grade level,
5 and subject area, with appropriate interpretations and analysis,
6 and disaggregated by [~~race~~] ethnicity, gender, and socioeconomic
7 status;

8 (5) a summary compilation of overall performance of
9 students at risk of dropping out of school, as defined by Section
10 29.081(d), on academic skills assessment instruments required by
11 Section 39.023 or benchmark assessment instruments required by
12 Section 39.0237 with the number of those students exempted from the
13 administration of those instruments and the basis of the
14 exemptions, aggregated by district, grade level, and subject area,
15 with appropriate interpretations and analysis, and disaggregated
16 by [~~race~~] ethnicity, gender, and socioeconomic status;

17 (6) an evaluation of the correlation between student
18 grades and student performance on academic skills assessment
19 instruments required by Section 39.023 or benchmark assessment
20 instruments required by Section 39.0237;

21 (7) a statement of the dropout rate of students in
22 grade levels 7 through 12, expressed in the aggregate and by grade
23 level, and a statement of the completion rates of students for grade
24 levels 9 through 12;

25 (8) a statement of:

26 (A) the completion rate of students who enter
27 grade level 9 and graduate not more than four years later;

(B) the completion rate of students who enter grade level 9 and graduate, including students who require more than four years to graduate;

(C) the completion rate of students who enter grade level 9 and not more than four years later receive a high school equivalency certificate;

(D) the completion rate of students who enter grade level 9 and receive a high school equivalency certificate, including students who require more than four years to receive a certificate; and

(E) the number and percentage of all students who have not been accounted for under Paragraph (A), (B), (C), or (D);

(9) a statement of the projected cross-sectional and longitudinal dropout rates for grade levels 9 through 12 for the next five years, assuming no state action is taken to reduce the dropout rate;

(10) a description of a systematic, measurable plan for reducing the projected cross-sectional and longitudinal dropout rates to five percent or less for the 1997-1998 school year;

(11) a summary of the information required by Section 29.083 regarding grade level retention of students and information concerning:

(A) the number and percentage of students retained; and

(B) the performance of retained students on benchmark assessment instruments required under Section 39.0237(a)

~~[39.023(a)]~~;

1 (12) information, aggregated by district type and
2 disaggregated by [~~race,~~] ethnicity, gender, and socioeconomic
3 status, on:

4 (A) the number of students placed in a
5 disciplinary alternative education program established under
6 Section 37.008;

7 (B) the average length of a student's placement
8 in a disciplinary alternative education program established under
9 Section 37.008;

10 (C) the academic performance of students on
11 benchmark assessment instruments required under Section 39.0237(a)
12 [~~39.023(a)~~] during the year preceding and during the year following
13 placement in a disciplinary alternative education program; and

14 (D) the dropout rates of students who have been
15 placed in a disciplinary alternative education program established
16 under Section 37.008;

17 (13) a list of each school district or campus that does
18 not satisfy performance standards, with an explanation of the
19 actions taken by the commissioner to improve student performance in
20 the district or campus and an evaluation of the results of those
21 actions;

22 (14) an evaluation of the status of the curriculum
23 taught in public schools, with recommendations for legislative
24 changes necessary to improve or modify the curriculum required by
25 Section 28.002;

26 (15) a description of all funds received by and each
27 activity and expenditure of the agency;

1 (16) a summary and analysis of the instructional
2 expenditures ratios and instructional employees ratios of school
3 districts computed under Section 44.0071;

4 (17) a summary of the effect of deregulation,
5 including exemptions and waivers granted under Section 7.056 or
6 39.112;

7 (18) a statement of the total number and length of
8 reports that school districts and school district employees must
9 submit to the agency, identifying which reports are required by
10 federal statute or rule, state statute, or agency rule, and a
11 summary of the agency's efforts to reduce overall reporting
12 requirements;

13 (19) a list of each school district that is not in
14 compliance with state special education requirements, including:

15 (A) the period for which the district has not
16 been in compliance;

17 (B) the manner in which the agency considered the
18 district's failure to comply in determining the district's
19 accreditation status; and

20 (C) an explanation of the actions taken by the
21 commissioner to ensure compliance and an evaluation of the results
22 of those actions;

23 (20) a comparison of the performance of
24 open-enrollment charter schools and school districts on the
25 academic excellence indicators specified in Section 39.051(b) and
26 accountability measures adopted under Section 39.051(g), with a
27 separately aggregated comparison of the performance of

1 open-enrollment charter schools predominantly serving students at
2 risk of dropping out of school, as defined by Section 29.081(d),
3 with the performance of school districts;

4 (21) a summary of the information required by Section
5 38.0141 regarding student health and physical activity from each
6 school district;

7 (22) a summary compilation of overall student
8 performance under the assessment system developed to evaluate the
9 longitudinal academic progress as required by Section 39.027(e),
10 disaggregated by bilingual education or special language program
11 instructional model, if any; and

12 (23) any additional information considered important
13 by the commissioner or the State Board of Education.

14 SECTION 20. Section 42.003(d), Education Code, is amended
15 to read as follows:

16 (d) Notwithstanding Subsection (a), a student younger than
17 five years of age is entitled to the benefits of the Foundation
18 School Program if:

19 (1) the student performs satisfactorily on the
20 benchmark assessment instruments ~~[instrument]~~ administered under
21 Section 39.0237(a) ~~[39.023(a)]~~ to students in the third grade; and

22 (2) the district has adopted a policy for admitting
23 students younger than five years of age.

24 SECTION 21. Section 42.152(r), Education Code, is amended
25 to read as follows:

26 (r) The commissioner shall grant a one-year exemption from
27 the requirements of Subsections (q)-(q-4) to a school district in

1 which the group of students who have failed to perform
2 satisfactorily in the preceding school year on benchmark ~~[an]~~
3 assessment instruments ~~[instrument]~~ required under Section 39.0237
4 ~~[39.023(a), (c), or (1)]~~ subsequently performs on those assessment
5 instruments at a level that meets or exceeds a level prescribed by
6 commissioner rule. Each year the commissioner, based on the most
7 recent information available, shall determine if a school district
8 is entitled to an exemption for the following school year and notify
9 the district of that determination.

10 SECTION 22. Section 28.006(c-1), Education Code, is
11 repealed.

12 SECTION 23. This Act applies beginning with the 2010-2011
13 school year.

14 SECTION 24. This Act takes effect immediately if it
15 receives a vote of two-thirds of all the members elected to each
16 house, as provided by Section 39, Article III, Texas Constitution.
17 If this Act does not receive the vote necessary for immediate
18 effect, this Act takes effect September 1, 2009.