

By: Shaheen

H.B. No. 4613

A BILL TO BE ENTITLED

AN ACT

relating to the waiving academic assessment and testing for children in special education services.

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

SECTION 1. Section 39.027, Education Code, is amended to read as follows:

Sec. 39.027. EXEMPTION.

(a) A student may be administered an accommodated or alternative assessment instrument or may be granted an exemption from or a postponement of the administration of an assessment instrument under:

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

(2) Section 39.023(a), (b), (c), or (l) for a period of up to two years in addition to the exemption period authorized by Subdivision (1) if the student has received an exemption under Subdivision (1) and:

(A) is a recent unschooled immigrant; or

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

(3) Section 39.023(a), (b), (c), or (l) for a period of

up to four years, in addition to the exemption period authorized under Subdivision (1), if the student's initial enrollment in a school in the United States was as an unschooled asylee or refugee.

(a-1) For purposes of this section, "unschooled asylee or refugee" means a student who:

(1) initially enrolled in a school in the United States as:

(A) an asylee as defined by 45 C.F.R. Section 400.41; or

(B) a refugee as defined by 8 U.S.C. Section 1101;

(2) has a visa issued by the United States Department of State with a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and

(3) as a result of inadequate schooling 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.

(a-2) Unless a student is enrolled in a school in the United States for a period of at least 60 consecutive days during a year, the student may not be considered to be enrolled in a school in the United States for that year for the purpose of determining a number of years under Subsection (a)(1), (2), or (3).

(b) The State Board of Education shall adopt rules under which a dyslexic student who is not exempt under Subsection (a) may

1 use procedures including oral examinations if appropriate or may be
2 allowed additional time or the materials or technology necessary
3 for the student to demonstrate the student's mastery of the
4 competencies the assessment instruments are designed to measure.

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

9 (1) to more than five percent of the students in the
10 special education program, in the case of a district or shared
11 services arrangement with an average daily attendance of at least
12 1,600;

13 (2) to more than 10 percent of the students in the
14 special education program, in the case of a district or shared
15 services arrangement with an average daily attendance of at least
16 190 and not more than 1,599; or

17 (3) to the greater of more than 10 percent of the
18 students in the special education program or to at least five
19 students in the special education program, in the case of a district
20 or shared services arrangement with an average daily attendance of
21 not more than 189.

22 (d) Expired.

23 (e) The commissioner shall develop an assessment system
24 that shall be used for evaluating the academic progress, including
25 reading proficiency in English, of all students of limited English
26 proficiency, as defined by Section [29.052](#). A student who is exempt
27 from the administration of an assessment instrument under

1 Subsection (a)(1) or (2) who achieves reading proficiency in
2 English as determined by the assessment system developed under this
3 subsection shall be administered the assessment instruments
4 described by Sections 39.023(a) and (c). The performance under the
5 assessment system developed under this subsection of students to
6 whom Subsection (a)(1) or (2) applies shall be included in the
7 indicator systems under Section 39.301, as applicable, the
8 performance report under Section 39.306, and the comprehensive
9 biennial report under Section 39.332. This information shall be
10 provided in a manner that is disaggregated by the bilingual
11 education or special language program, if any, in which the student
12 is enrolled.

13 (f) In this section, "average daily attendance" is computed
14 in the manner provided by Section 42.005.

15 (g) For purposes of this section, "recent unschooled
16 immigrant" means an immigrant who initially enrolled in a school in
17 the United States not more than 12 months before the date of the
18 administration of an assessment instrument under Section 39.023(a)
19 or (1) and who, as a result of inadequate schooling outside of the
20 United States, lacks the necessary foundation in the essential
21 knowledge and skills of the curriculum prescribed under Section
22 28.002 as determined by the language proficiency assessment
23 committee established under Section 29.063. For purposes of this
24 subsection and to the extent authorized by federal law, a child's
25 prior enrollment in a school in the United States shall be
26 determined on the basis of documents and records required under
27 Section 25.002(a).

1 (h) Texas Education testing requirements are waived for
2 individuals who qualify for Special education instruction as
3 determined under Section 29.003

4 SECTION 2. Section 29.002, Education Code, is amended to
5 read as follows:

6 Sec. 29.002. DEFINITION. In this subchapter, "special
7 services" means:

8 (1) special education instruction, which may be
9 provided by professional and supported by paraprofessional
10 personnel in the regular classroom or in an instructional
11 arrangement described by Section 42.151; and

12 (2) related services, which are developmental,
13 corrective, supportive, or evaluative services, not instructional
14 in nature, that may be required for the student to benefit from
15 special education instruction and for implementation of a student's
16 individualized education program.

17 (3) Special Education testing requirements exemption
18 waiver from State mandated testing:

19 (a) that inhibited their education learning
20 outcomes.

21 (b) Texas Education Agency in conjunction with
22 the United State Department of Education determine testing is not
23 applicable.

24 SECTION 3. Section 29.003, Education Code, is amended to
25 read as follows:

26 Sec. 29.003. ELIGIBILITY CRITERIA. (a) The agency shall
27 develop specific eligibility criteria based on the general

1 classifications established by this section with reference to
2 contemporary diagnostic or evaluative terminologies and
3 techniques. Eligible students with disabilities shall enjoy the
4 right to a free appropriate public education, which may include
5 instruction in the regular classroom, instruction through special
6 teaching, Waivers to State mandated testing and federal testing as
7 possibly through a waiver of Federal Education Testing requirements
8 or instruction through contracts approved under this subchapter.
9 Instruction shall be supplemented by the provision of related
10 services when appropriate.

11 (b) A student is eligible to participate in a school
12 district's special education program if the student:

13 (1) is not more than 21 years of age and has a visual or
14 auditory impairment that prevents the student from being adequately
15 or safely educated in public school without the provision of
16 special services; or

17 (2) is at least three but not more than 21 years of age
18 and has one or more of the following disabilities that prevents the
19 student from being adequately or safely educated in public school
20 without the provision of special services:

- 21 (A) physical disability;
- 22 (B) mental retardation;
- 23 (C) emotional disturbance;
- 24 (D) learning disability;
- 25 (E) autism;
- 26 (F) speech disability; or
- 27 (G) traumatic brain injury.

1 SECTION 4. This Act applies beginning with the 2019-2020
2 school year.

3 SECTION 5. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2019.