

By: Krause, Landgraf, Burns, Slawson, et al.

H.B. No. 764

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the academic assessment of public school students.

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

4 SECTION 1. Section 18.006(b), Education Code, is amended to
5 read as follows:

6 (b) In addition to other factors determined to be
7 appropriate by the commissioner, the accountability system must
8 include consideration of:

9 (1) student performance on the ~~[end-of-course]~~
10 assessment instruments administered under ~~[required by]~~ Section
11 39.023(c); and

12 (2) dropout rates, including dropout rates and diploma
13 program completion rates for the grade levels served by the diploma
14 program.

15 SECTION 2. Section 25.005(b), Education Code, is amended to
16 read as follows:

17 (b) A reciprocity agreement must:

18 (1) address procedures for:

19 (A) transferring student records;

20 (B) awarding credit for completed course work;

21 and

22 (C) permitting a student to satisfy the
23 requirements of Section 39.025 through successful performance on
24 comparable ~~[end-of-course or other exit-level]~~ assessment

1 instruments administered in another state; and

2 (2) include appropriate criteria developed by the
3 agency.

4 SECTION 3. Section 28.014(a), Education Code, is amended to
5 read as follows:

6 (a) Each school district shall partner with at least one
7 institution of higher education to develop and provide courses in
8 college preparatory mathematics and English language arts. The
9 courses must be designed:

10 (1) for students at the 12th grade level whose
11 performance on:

12 (A) an ~~[end-of-course]~~ assessment instrument
13 administered ~~[required]~~ under Section 39.023(c) does not meet
14 college readiness standards; or

15 (B) coursework, a college entrance examination,
16 or an assessment instrument designated under Section 51.334
17 indicates that the student is not ready to perform entry-level
18 college coursework; and

19 (2) to prepare students for success in entry-level
20 college courses.

21 SECTION 4. Section 28.0211(o), Education Code, is amended
22 to read as follows:

23 (o) This section does not require the administration of
24 a fifth ~~[or-eighth]~~ grade assessment instrument in a subject under
25 Section 39.023(a) to a student enrolled in the fifth ~~[or-eighth]~~
26 grade ~~[, as applicable,]~~ if the student ~~[+~~

27 ~~[-1-]~~ is enrolled in a course in the subject intended

1 for students above the student's grade level and will be
2 administered an assessment instrument adopted or developed under
3 Section 39.023(a) that aligns with the curriculum for the course in
4 which the student is enrolled[~~, or~~

5 ~~[(2) is enrolled in a course in the subject for which~~
6 ~~the student will receive high school academic credit and will be~~
7 ~~administered an end-of-course assessment instrument adopted under~~
8 ~~Section 39.023(c) for the course].~~

9 SECTION 5. Section 28.023(c), Education Code, is amended to
10 read as follows:

11 (c) A school district shall give a student in grade level
12 six or above credit for a subject on the basis of an examination for
13 credit in the subject approved by the board of trustees under
14 Subsection (a) if the student scores in the 80th percentile or above
15 on the examination or if the student achieves a score as provided by
16 Subsection (c-1). If a student is given credit in a subject on the
17 basis of an examination, the district shall enter the examination
18 score on the student's transcript [~~and the student is not required~~
19 ~~to take an end-of-course assessment instrument adopted under~~
20 ~~Section 39.023(c) for that subject].~~

21 SECTION 6. Sections 28.025(b-4) and (c-8), Education Code,
22 are amended to read as follows:

23 (b-4) A school district may offer the curriculum described
24 in Subsections (b-1)(1) through (4) in an applied manner. Courses
25 delivered in an applied manner must cover the essential knowledge
26 and skills[~~, and the student shall be administered the applicable~~
27 ~~end-of-course assessment instrument as provided by Sections~~

1 ~~39.023(c) and 39.025~~].

2 (c-8) For purposes of Subsection (c-7), the admission,
3 review, and dismissal committee of a student in a special education
4 program under Subchapter A, Chapter 29, shall determine whether the
5 student is required to achieve satisfactory performance on an
6 ~~[end-of-course]~~ assessment instrument administered under Section
7 39.023(c) to earn an endorsement on the student's transcript.

8 SECTION 7. Section 28.0255, Education Code, is amended by
9 amending Subsections (g) and (h) and adding Subsection (g-1) to
10 read as follows:

11 (g) A student entering the ninth grade for the first time
12 beginning with the 2021-2022 school year is entitled to a high
13 school diploma if the student:

14 (1) successfully complies with the curriculum
15 requirements specified under Subsection (e); and

16 (2) performs satisfactorily, as determined by the
17 commissioner under Subsection (h), on each ~~[end-of-course]~~
18 assessment instrument selected ~~[instruments listed]~~ under Section
19 39.023(c) by the school district ~~[for courses]~~ in which the student
20 is ~~[was]~~ enrolled.

21 (g-1) A student other than a student described by Subsection
22 (g) is entitled to a high school diploma if the student:

23 (1) successfully complies with the curriculum
24 requirements specified under Subsection (e); and

25 (2) performs satisfactorily, as determined by the
26 commissioner under Subsection (h), on:

27 (A) each assessment instrument selected under

1 Section 39.023(c) by the school district in which the student is
2 enrolled; or

3 (B) assessment instruments listed under Section
4 39.023(c), as that section existed before amendment by H.B. 764,
5 Acts of the 87th Legislature, Regular Session, 2021, for courses in
6 which the student was enrolled.

7 (h) For purposes of Subsections [~~Subsection~~] (g)(2) and
8 (g-1)(2), the commissioner shall determine the level of
9 satisfactory performance on applicable [~~end-of-course~~] assessment
10 instruments administered to a student.

11 SECTION 8. Section 28.0258, Education Code, is amended by
12 amending Subsections (a), (b), (f), (h), (j), and (k) and adding
13 Subsections (m) and (n) to read as follows:

14 (a) This section applies only to an 11th or 12th grade
15 student who has failed to comply with the [~~end-of-course~~]
16 assessment instrument performance requirements under Section
17 39.025 for not more than two subjects identified under Section
18 39.023(c) [courses].

19 (b) For each student to whom this section applies, the
20 school district that the student attends shall establish an
21 individual graduation committee at the end of or after the
22 student's 11th grade year to determine whether the student may
23 qualify to graduate as provided by this section. A student may not
24 qualify to graduate under this section before the student's 12th
25 grade year. The committee shall be composed of:

- 26 (1) the principal or principal's designee;
27 (2) for each subject identified under Section

1 39.023(c) for [~~end-of-course assessment instrument on~~] which the
2 student failed to perform satisfactorily on the appropriate
3 corresponding required assessment instrument, a [~~the~~] teacher of
4 the student in that subject, designated by the principal [~~course~~];

5 (3) the department chair or lead teacher supervising
6 the teacher described by Subdivision (2); and

7 (4) as applicable:

8 (A) the student's parent or person standing in
9 parental relation to the student;

10 (B) a designated advocate described by
11 Subsection (c) if the person described by Paragraph (A) is unable to
12 serve; or

13 (C) the student, at the student's option, if the
14 student is at least 18 years of age or is an emancipated minor.

15 (f) Notwithstanding any other law, a student's individual
16 graduation committee established under this section shall
17 recommend additional requirements by which the student may qualify
18 to graduate, including:

19 (1) additional remediation; and

20 (2) for each [~~end-of-course~~] assessment instrument
21 required under Section 39.023(c) on which the student failed to
22 perform satisfactorily:

23 (A) the completion of a project related to the
24 subject area [~~of the course~~] that demonstrates proficiency in the
25 subject area; or

26 (B) the preparation of a portfolio of work
27 samples in the subject area [~~of the course~~], including work samples

1 ~~[from the course]~~ that demonstrate proficiency in the subject area.

2 (h) In determining whether a student for whom an individual
3 graduation committee is established is qualified to graduate, the
4 committee shall consider:

5 (1) the recommendation of the student's teacher in
6 each course of the subject for which the student failed to perform
7 satisfactorily on an ~~[end-of-course]~~ assessment instrument;

8 (2) the student's grade in each course of the subject
9 for which the student failed to perform satisfactorily on an
10 ~~[end-of-course]~~ assessment instrument;

11 (3) the student's score on each ~~[end-of-course]~~
12 assessment instrument required under Section 39.023(c) on which the
13 student failed to perform satisfactorily;

14 (4) the student's performance on any additional
15 requirements recommended by the committee under Subsection (f);

16 (5) the number of hours of remediation that the
17 student has attended, including~~+~~

18 ~~[(A) attendance in a college preparatory course
19 required under Section 39.025(b-2), if applicable, or~~

20 ~~[(B)]~~ attendance in and successful completion of
21 a transitional college course in reading or mathematics;

22 (6) the student's school attendance rate;

23 (7) the student's satisfaction of any of the Texas
24 Success Initiative (TSI) college readiness benchmarks prescribed
25 by the Texas Higher Education Coordinating Board;

26 (8) the student's successful completion of a dual
27 credit course in English, mathematics, science, or social studies;

1 (9) the student's successful completion of a high
2 school pre-advanced placement, advanced placement, or
3 international baccalaureate program course in English,
4 mathematics, science, or social studies;

5 (10) the student's rating of advanced high on the most
6 recent high school administration of the Texas English Language
7 Proficiency Assessment System;

8 (11) the student's score of 50 or greater on a
9 College-Level Examination Program examination;

10 (12) the student's score on:

11 (A) the ACT or ~~and~~ the SAT, if not otherwise
12 considered under Subdivision (3); or

13 (B) the Armed Services Vocational Aptitude
14 Battery test;

15 (13) the student's completion of a sequence of courses
16 under a career and technical education program required to attain
17 an industry-recognized credential or certificate;

18 (14) the student's overall preparedness for
19 postsecondary success; and

20 (15) any other academic information designated for
21 consideration by the board of trustees of the school district.

22 (j) Notwithstanding any action taken by an individual
23 graduation committee under this section, a school district shall
24 administer an ~~[end-of-course]~~ assessment instrument required under
25 Section 39.023(c) to any student who fails to perform
26 satisfactorily on an ~~[end-of-course]~~ assessment instrument
27 required under Section 39.023(c) as provided by Section 39.025(b).

1 For purposes of Section 39.053(c)(1), an assessment instrument
2 administered as provided by this subsection is considered an
3 assessment instrument required for graduation retaken by a student.

4 (k) The commissioner shall adopt rules as necessary to
5 administer [~~implement~~] this section [~~not later than the 2015-2016~~
6 ~~school year~~].

7 (m) For a student subject to Section 39.025(f-3)(1):

8 (1) for purposes of Subsection (a), this section
9 applies only to an 11th or 12th grade student who has failed to
10 comply with the end-of-course assessment instrument performance
11 requirements under Section 39.025, as that section existed before
12 amendment by H.B. 764, Acts of the 87th Legislature, Regular
13 Session, 2021, for not more than two courses listed in Section
14 39.023(c), as that section existed before amendment by H.B. 764,
15 Acts of the 87th Legislature, Regular Session, 2021;

16 (2) for purposes of the composition of an individual
17 graduation committee under Subsection (b)(2), the committee shall
18 include the teacher of the course for each end-of-course assessment
19 instrument described by Subdivision (1) for which the student
20 failed to perform satisfactorily;

21 (3) for purposes of Subsection (h)(1), an individual
22 graduation committee shall consider the recommendation of the
23 teacher described by Subdivision (2); and

24 (4) for purposes of Subsection (h)(2), an individual
25 graduation committee shall consider the student's grade in each
26 course described by Subdivision (2).

27 (n) Subsection (m) and this subsection expire September 1,

1 2025.

2 SECTION 9. Sections 29.081(b) and (b-1), Education Code,
3 are amended to read as follows:

4 (b) Each district shall provide accelerated instruction to
5 a student enrolled in the district who has taken an ~~[end-of-course]~~
6 assessment instrument administered under Section 39.023(c) and has
7 not performed satisfactorily on the assessment instrument or who is
8 at risk of dropping out of school.

9 (b-1) Each school district shall offer before the next
10 scheduled administration of the assessment instrument, without
11 cost to the student, additional accelerated instruction to each
12 student in any subject in which the student failed to perform
13 satisfactorily on an ~~[end-of-course]~~ assessment instrument
14 required for graduation.

15 SECTION 10. Section 29.087(f), Education Code, is amended
16 to read as follows:

17 (f) A student participating in a program authorized by this
18 section, other than a student ordered to participate under
19 Subsection (d)(1), must have taken any ~~[the]~~ appropriate
20 ~~[end-of-course]~~ assessment instrument ~~[instruments]~~ specified by
21 Section 39.023(c) that is administered before the student enters
22 ~~[entering]~~ the program and must take any ~~[each]~~ appropriate
23 ~~[end-of-course]~~ assessment instrument that is administered during
24 the period in which the student is enrolled in the program. Except
25 for a student ordered to participate under Subsection (d)(1), a
26 student participating in the program may not take the high school
27 equivalency examination unless the student has taken the assessment

1 instruments required by this subsection.

2 SECTION 11. Section 29.402(b), Education Code, is amended
3 to read as follows:

4 (b) A person who is under 26 years of age is eligible to
5 enroll in a dropout recovery program under this subchapter if the
6 person:

7 (1) must complete not more than three course credits
8 to complete the curriculum requirements for the foundation high
9 school program for high school graduation; or

10 (2) has failed to perform satisfactorily on, as
11 applicable:

12 (A) an ~~[end-of-course]~~ assessment instrument
13 administered under Section 39.023(c);

14 (B) an assessment instrument administered under
15 Section 39.023(c) as that section existed before amendment by H.B.
16 764, Acts of the 87th Legislature, Regular Session, 2021; or

17 (C) an assessment instrument administered under
18 Section 39.023(c) as that section existed before amendment by
19 Chapter 1312 (S.B. 1031), Acts of the 80th Legislature, Regular
20 Session, 2007.

21 SECTION 12. Section 39.023(a), Education Code, as effective
22 until September 1, 2021, is amended to read as follows:

23 (a) The agency shall adopt or develop appropriate
24 criterion-referenced assessment instruments designed to assess
25 essential knowledge and skills in reading, ~~[writing,~~ mathematics,
26 ~~[social studies,~~ and science. Except as provided by Subsection
27 (a-2), all students, other than students assessed under Subsection

1 (b) or (1) or exempted under Section 39.027, shall be assessed in:

2 (1) mathematics, annually in grades three through
3 eight;

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

6 (3) [~~writing, including spelling and grammar, in~~
7 ~~grades four and seven,~~

8 [~~(4) social studies, in grade eight,~~

9 [~~(5)] science, in grades five and eight[, and~~

10 [~~(6) any other subject and grade required by federal~~
11 ~~law].~~

12 SECTION 13. Section 39.023(a), Education Code, as effective
13 September 1, 2021, is amended to read as follows:

14 (a) The agency shall adopt or develop appropriate
15 criterion-referenced assessment instruments designed to assess
16 essential knowledge and skills in reading, mathematics, [~~social~~
17 ~~studies,~~] and science. Except as provided by Subsection (a-2), all
18 students, other than students assessed under Subsection (b) or (1)
19 or exempted under Section 39.027, shall be assessed in:

20 (1) mathematics, annually in grades three through
21 eight;

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

24 (3) [~~social studies, in grade eight,~~

25 [~~(4)] science, in grades five and eight[, and~~

26 [~~(5) any other subject and grade required by federal~~
27 ~~law].~~

1 SECTION 14. Section 39.023, Education Code, is amended by
2 amending Subsections (a-2), (b-1), (c), (c-3), (c-5), (c-8), (e),
3 (g), (h), (i), and (p) and adding Subsections (b-2), (b-3), (h-1),
4 and (q) to read as follows:

5 (a-2) Except as required by federal law, a student is not
6 required to be assessed in a subject otherwise assessed at the
7 student's grade level under Subsection (a) if the student[+]

8 [~~(1)~~] is enrolled in a course in the subject intended
9 for students above the student's grade level and will be
10 administered an assessment instrument adopted or developed under
11 Subsection (a) that aligns with the curriculum for the course in
12 which the student is enrolled[~~+~~]

13 [~~(2) is enrolled in a course in the subject for which~~
14 ~~the student will receive high school academic credit and will be~~
15 ~~administered an end-of-course assessment instrument adopted under~~
16 ~~Subsection (c) for the course].~~

17 (b-1) The agency, in conjunction with appropriate
18 interested persons, shall redevelop assessment instruments adopted
19 or developed under Subsection (b) for administration to
20 significantly cognitively disabled students in a manner consistent
21 with federal law. An assessment instrument under this subsection
22 may not require a teacher to prepare tasks or materials for a
23 student who will be administered such an assessment instrument. [~~A~~
24 ~~classroom portfolio method used to assess writing performance may~~
25 ~~require a teacher to prepare tasks and materials.]~~

26 (b-2) Notwithstanding Subsection (b), (b-1), or any other
27 law, and to the extent consistent with federal law, the parent of or

1 person standing in parental relation to a student with significant
2 cognitive disabilities may request that the student be exempted
3 from the administration of an alternative assessment instrument
4 adopted or developed under Subsection (b) or (b-1). If a parent or
5 person standing in parental relation makes a request for exemption
6 under this subsection, the student's admission, review, and
7 dismissal committee, in consultation with the parent or person
8 standing in parental relation, shall determine if the student
9 should be exempted from administration of the alternative
10 assessment instrument. If the student is exempted from
11 administration of the alternative assessment instrument under this
12 subsection, the student must be assessed in the applicable subject
13 using the alternative assessment method developed under Subsection
14 (b-3).

15 (b-3) The commissioner, in consultation with stakeholders,
16 including parents of and persons standing in parental relation to
17 students with significant cognitive disabilities, shall develop
18 for each applicable subject an alternative assessment method for
19 the assessment of students who receive an exemption from the
20 administration of an alternative assessment instrument under
21 Subsection (b-2). The criteria for the assessment method must
22 include progress on the goals identified in the student's
23 individualized education plan. The commissioner shall adopt rules
24 necessary to implement this subsection.

25 (c) The agency shall also provide for [adopt end-of-course]
26 assessment instruments for each federally required secondary-level
27 subject, including English language arts, mathematics, and

1 science. The commissioner shall identify a procedure for a school
2 district to select the SAT, the ACT, or any other nationally
3 recognized, norm-referenced secondary-level assessment instrument
4 designated by the commissioner for the assessment of students under
5 this subsection. Each school district shall select one or more
6 assessment instruments for purposes of this subsection. A school
7 district that selects more than one assessment instrument must
8 uniformly administer to students in the district the same
9 assessment instrument to satisfy the requirement for the same
10 subject [~~courses in Algebra I, biology, English I, English II, and~~
11 ~~United States history. The Algebra I end-of-course assessment~~
12 ~~instrument must be administered with the aid of technology, but may~~
13 ~~include one or more parts that prohibit the use of technology~~]. An
14 [~~The English I and English II end-of-course~~] assessment instrument
15 designated under this subsection [~~instruments~~] must [~~each~~] assess
16 essential knowledge and skills in the appropriate subject [~~both~~
17 ~~reading and writing and must provide a single score~~]. A school
18 district shall comply with State Board of Education rules regarding
19 administration of the assessment instruments under [~~listed in~~] this
20 subsection. If a student is in a special education program under
21 Subchapter **A**, Chapter **29**, the student's admission, review, and
22 dismissal committee shall determine whether any allowable
23 modification is necessary in administering to the student an
24 assessment instrument required under this subsection. [~~The State~~
25 ~~Board of Education shall administer the assessment instruments. An~~
26 ~~end-of-course assessment instrument may be administered in~~
27 ~~multiple parts over more than one day. The State Board of Education~~

1 ~~shall adopt a schedule for the administration of end-of-course~~
2 ~~assessment instruments that complies with the requirements of~~
3 ~~Subsection (c-3).]~~

4 (c-3) In [~~Except as provided by Subsection (c-7), in~~]
5 adopting a schedule for the administration of assessment
6 instruments under this section, the State Board of Education shall
7 ensure that assessment instruments administered under Subsection
8 (a) or (c) are not administered on the first instructional day of a
9 week.

10 (c-5) A student's performance on an [~~end-of-course~~]
11 assessment instrument administered [~~required~~] under Subsection (c)
12 must be included in the student's academic achievement record.

13 (c-8) Beginning with the 2022-2023 school year, an
14 assessment instrument developed under Subsection (a) [~~or (c)~~] may
15 not present more than 75 percent of the questions in a multiple
16 choice format.

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

1 field-tested and that was not used to compute a student's score.
2 ~~[During the 2014-2015 and 2015-2016 school years, the agency shall~~
3 ~~release the questions and answer keys to assessment instruments as~~
4 ~~described by this subsection each year.]~~

5 (g) An ~~[The State Board of Education may adopt one~~
6 ~~appropriate, nationally recognized, norm-referenced]~~ assessment
7 instrument administered under Subsection (c) ~~[in reading and~~
8 ~~mathematics to be administered to a selected sample of students in~~
9 ~~the spring. If adopted, a norm-referenced assessment instrument]~~
10 must be a secured test. The commissioner shall contract with a
11 vendor to administer the assessment instrument, complete the
12 scoring of the assessment instrument, and distribute within a
13 reasonable period the results to the agency and the relevant
14 results to each school district. As soon as practicable after the
15 district receives the results from the vendor under this
16 subsection, the district shall:

17 (1) distribute the relevant results to each district
18 campus; and

19 (2) provide written notice to the student and the
20 person standing in parental relation to the student that states the
21 student's results and whether the student performed satisfactorily
22 on the assessment instrument ~~[The state may pay the costs of~~
23 ~~purchasing and scoring the adopted assessment instrument and of~~
24 ~~distributing the results of the adopted instrument to the school~~
25 ~~districts. A district that administers the norm-referenced test~~
26 ~~adopted under this subsection shall report the results to the~~
27 ~~agency in a manner prescribed by the commissioner].~~

1 (h) Except as provided by Subsection (g), the ~~[The]~~ agency
2 shall notify school districts and campuses of the results of
3 assessment instruments administered under this section not later
4 than the 21st day after the date the assessment instrument is
5 administered.

6 A ~~[The]~~ school district shall disclose to each
7 district teacher the results of assessment instruments
8 administered to students taught by the teacher in the subject for
9 the school year in which the assessment instrument is administered.

10 (i) The provisions of this section~~[, except Subsection~~
11 ~~(d),]~~ are subject to modification by rules adopted under Section
12 [39.022](#). Each assessment instrument adopted or designated under
13 those rules ~~[and each assessment instrument required under~~
14 ~~Subsection (d)]~~ must be reliable and valid and must meet any
15 applicable federal requirements for measurement of student
16 progress.

17 (p) On or before September 1 of each year, the commissioner
18 shall make the following information available on the agency's
19 Internet website for each assessment instrument administered under
20 Subsection (a) ~~[, (c),]~~ or (l):

21 (1) the number of questions on the assessment
22 instrument;

23 (2) the number of questions that must be answered
24 correctly to achieve satisfactory performance as determined by the
25 commissioner under Section [39.0241\(a\)](#);

26 (3) the number of questions that must be answered
27 correctly to achieve satisfactory performance under the college

1 readiness performance standard as provided by Section 39.0241; and

2 (4) the corresponding scale scores.

3 (g) Notwithstanding any provision of this section or other
4 law, if changes made to the Every Student Succeeds Act (20 U.S.C.
5 Section 6301 et seq.) reduce the number or frequency of assessment
6 instruments required to be administered to students, the State
7 Board of Education shall adopt rules reducing the number or
8 frequency of assessment instruments administered to students under
9 state law, and the commissioner shall ensure that students are not
10 assessed in subject areas or in grades that are no longer required
11 to meet the minimum requirements of that Act.

12 SECTION 15. The heading to Section 39.0232, Education Code,
13 is amended to read as follows:

14 Sec. 39.0232. USE OF [~~END-OF-COURSE~~] ASSESSMENT INSTRUMENT
15 AS PLACEMENT INSTRUMENT; CERTAIN USES PROHIBITED.

16 SECTION 16. Sections 39.0232(a), (b), and (c), Education
17 Code, are amended to read as follows:

18 (a) To the extent practicable, the agency shall ensure that
19 any high school [~~end-of-course~~] assessment instrument designated
20 under Section 39.023(c) [~~developed by the agency is developed in~~
21 ~~such a manner that the assessment instrument~~] may be used to
22 determine the appropriate placement of a student in a course of the
23 same subject matter at an institution of higher education.

24 (b) A student's performance on an [~~end-of-course~~]
25 assessment instrument administered under Section 39.023(c) may not
26 be used:

27 (1) in determining the student's class ranking for any

1 purpose, including entitlement to automatic college admission
2 under Section 51.803 or 51.804; or

3 (2) as a sole criterion in the determination of
4 whether to admit the student to a general academic teaching
5 institution in this state.

6 (c) Subsection (b)(2) does not prohibit a general academic
7 teaching institution from implementing an admission policy that
8 takes into consideration a student's performance on an
9 ~~[end-of-course]~~ assessment instrument administered under Section
10 39.023(c) in addition to other criteria.

11 SECTION 17. Section 39.0234, Education Code, is amended to
12 read as follows:

13 Sec. 39.0234. ELECTRONIC ADMINISTRATION OF ASSESSMENT
14 INSTRUMENTS. (a) Except as provided by Subsection (b), the ~~[The]~~
15 agency shall ensure that assessment instruments required under
16 Section 39.023 are capable of being administered electronically.

17 (b) Subsection (a) does not apply to a nationally
18 recognized, norm-referenced assessment instrument under Section
19 39.023(c).

20 SECTION 18. Section 39.0241, Education Code, is amended by
21 amending Subsection (a-1) and adding Subsection (a-2) to read as
22 follows:

23 (a-1) The commissioner of education, in collaboration with
24 the commissioner of higher education, shall determine the level of
25 performance necessary to indicate college readiness~~[, as defined by~~
26 ~~Section 39.024(a)]~~.

27 (a-2) In this section, "college readiness" means the level

1 of preparation a student must attain in English language arts and
2 mathematics courses to enroll and succeed, without remediation, in
3 an entry-level general education course for credit in that same
4 content area for a baccalaureate degree or associate degree program
5 at:

6 (1) a general academic teaching institution, as
7 defined by Section 61.003, other than a research institution, as
8 categorized under the Texas Higher Education Coordinating Board's
9 accountability system; or

10 (2) a postsecondary educational institution that
11 primarily offers associate degrees or certificates or credentials
12 other than baccalaureate or advanced degrees.

13 SECTION 19. Subchapter B, Chapter 39, Education Code, is
14 amended by adding Sections 39.02342 and 39.0239 to read as follows:

15 Sec. 39.02342. ALTERNATIVE ADAPTIVE ASSESSMENT
16 INSTRUMENTS. (a) Notwithstanding any other law, the agency shall
17 adopt alternative adaptive assessment instruments in accordance
18 with this section that a school district may administer in lieu of
19 an assessment instrument adopted under Section 39.023 to satisfy
20 state or federal law requirements concerning the administration of
21 that assessment instrument.

22 (b) An alternative adaptive assessment instrument adopted
23 under this section must:

24 (1) effectively measure each student's academic
25 progress over time, without regard to the student's age, grade
26 level, or academic performance;

27 (2) evidence high content or concurrent validity;

1 (3) have been the subject of a study used to determine
2 the typical performance of a student conducted not more than 10
3 years before the adoption of the assessment instrument;

4 (4) use an adaptive difficulty level that is adjusted
5 based on a student's knowledge and ability as demonstrated by the
6 student's performance on the assessment instrument;

7 (5) take no longer than 90 minutes to administer; and

8 (6) provide immediate information and real-time
9 reporting on student progress without requiring any additional data
10 or syncing or uploading by a teacher or administrator.

11 (c) The agency may adopt an alternative adaptive assessment
12 instrument submitted to the agency by a school district if the
13 assessment instrument complies with the requirements of Subsection
14 (b) and serves as an adequate measure of grade level achievement.

15 (d) A school district shall administer an alternative
16 adaptive assessment instrument adopted under this section
17 electronically.

18 (e) The agency shall:

19 (1) determine for each assessment instrument adopted
20 by the agency under this section the level of performance
21 considered to be satisfactory; and

22 (2) develop a method to compile a student's score on
23 each alternative adaptive assessment administered to the student
24 during a school year into a single summative score for each subject
25 area assessed.

26 (f) A school district shall submit in the manner and form
27 prescribed by the agency the results of an alternative adaptive

1 assessment instrument administered under this section to the agency
2 not later than three days after the administration of the
3 assessment instrument.

4 (g) The agency shall provide reimbursement to a school
5 district for all costs associated with the administration of an
6 alternative adaptive assessment instrument under this section.

7 (h) The State Board of Education shall annually review each
8 alternative adaptive assessment instrument adopted by the agency
9 under this section to ensure that the instrument is relevant,
10 valid, and reliable.

11 (i) The agency may contract for services to develop or
12 administer alternative adaptive assessment instruments that comply
13 with the requirements of Subsection (b).

14 (j) The commissioner shall adopt rules necessary to
15 implement this section, including a rule providing the number and
16 schedule of administrations of alternative adaptive assessment
17 instruments under this section and requiring the administration of
18 one alternative adaptive assessment instrument:

19 (1) at the beginning of each school year;

20 (2) at the end of each school year; and

21 (3) during each school year, between the
22 administrations under Subdivisions (1) and (2).

23 (k) Unless it conflicts with this section, a reference in
24 law to an assessment instrument adopted under Section [39.023](#)
25 includes an alternative adaptive assessment instrument adopted by
26 the agency or administered by a school district in accordance with
27 this section.

1 Sec. 39.0239. ADMINISTRATION OF ASSESSMENT INSTRUMENTS AND
2 TEMPORARY SUSPENSION OF CERTAIN ACCOUNTABILITY MEASURES DURING
3 DISASTER. (a) If, during a school year, a statewide disaster
4 declared by the president of the United States under the Robert T.
5 Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.
6 Section 5121 et seq.) or by the governor under Chapter 418,
7 Government Code, significantly disrupts school district
8 operations, including in-person attendance, in a majority of school
9 districts in this state, the commissioner shall apply to the United
10 States Department of Education for a waiver of the requirement
11 under the Every Student Succeeds Act (20 U.S.C. Section 6301 et
12 seq.) to administer assessment instruments during that school year.

13 (b) If the United States Department of Education fails to
14 grant a waiver requested under Subsection (a), the assessment
15 instruments shall be administered as required under Section 39.023
16 during the applicable school year, but, notwithstanding any other
17 law, the commissioner may not consider the results of the
18 assessment instruments for purposes of:

19 (1) evaluating school district or campus performance
20 under this chapter for the applicable school year, including in
21 determining:

22 (A) the performance rating to assign to each
23 district or campus under Section 39.054; or

24 (B) whether to impose any intervention or
25 sanction authorized by Chapter 39A after the applicable school year
26 on each district or campus; or

27 (2) determining a student's qualification for

1 promotion or graduation.

2 SECTION 20. Section 39.025, Education Code, is amended by
3 amending Subsections (a), (a-4), (b), and (b-1) and adding
4 Subsection (f-3) to read as follows:

5 (a) The commissioner shall adopt rules requiring a student
6 in the foundation high school program under Section 28.025 to be
7 administered each ~~[an end-of-course]~~ assessment instrument
8 selected under ~~[listed in]~~ Section 39.023(c) by the school district
9 ~~[only for a course]~~ in which the student is enrolled ~~[and for which~~
10 ~~an end-of-course assessment instrument is administered]~~. Each
11 student's performance on an assessment instrument selected under
12 Section 39.023(c) shall be evaluated to determine whether the [A]
13 student achieved ~~[is required to achieve]~~ a scale score that
14 indicates satisfactory performance, as determined by the
15 commissioner under Section 39.0241(a) ~~[, on each end-of-course~~
16 ~~assessment instrument administered to the student]~~. The results of
17 the administration of an assessment instrument administered under
18 Section 39.023(c) may not be used as criteria for graduation. The
19 results may be used only for the purpose of diagnosing the academic
20 strengths and deficiencies of a student and guiding specific
21 instruction to the student. ~~[For each scale score required under~~
22 ~~this subsection that is not based on a 100-point scale scoring~~
23 ~~system, the commissioner shall provide for conversion, in~~
24 ~~accordance with commissioner rule, of the scale score to an~~
25 ~~equivalent score based on a 100-point scale scoring system. A~~
26 ~~student may not receive a high school diploma until the student has~~
27 ~~performed satisfactorily on end-of-course assessment instruments~~

1 ~~in the manner provided under this subsection.]~~ This subsection does
2 not require a student to demonstrate readiness to enroll in an
3 institution of higher education.

4 (a-4) The admission, review, and dismissal committee of a
5 student in a special education program under Subchapter A, Chapter
6 29, shall determine whether, to receive a high school diploma, the
7 student is required to achieve satisfactory performance on
8 ~~[end-of-course]~~ assessment instruments administered under Section
9 39.023(c).

10 (b) Each time an ~~[end-of-course]~~ assessment instrument
11 ~~[adopted]~~ under Section 39.023(c) is administered, a student who
12 failed to achieve a score requirement under Subsection (a) may
13 retake the assessment instrument. ~~[A student is not required to~~
14 ~~retake a course as a condition of retaking an end-of-course~~
15 ~~assessment instrument.]~~

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
19 administered under Section 39.023(c) with accelerated instruction
20 ~~[in the subject assessed by the assessment instrument].~~

21 (f-3) The commissioner shall by rule adopt a transition plan
22 to implement the amendments made by H.B. 764, Acts of the 87th
23 Legislature, Regular Session, 2021, replacing end-of-course
24 assessment instruments with one or more assessment instruments
25 selected by a school district under Section 39.023(c). The rules
26 must provide for each assessment instrument selected by a school
27 district under Section 39.023(c) to be administered beginning with

1 students enrolled in the ninth grade for the first time during the
2 2021-2022 school year. During the period under which the
3 transition from end-of-course assessment instruments is made:

4 (1) for students entering a grade above the ninth
5 grade during the 2021-2022 school year or students repeating ninth
6 grade during the 2021-2022 school year, the commissioner shall
7 retain, administer, and use for purposes of accreditation and other
8 campus and district accountability measures under this chapter the
9 end-of-course assessment instruments required by Section
10 39.023(c), as that section existed before amendment by H.B. 764,
11 Acts of the 87th Legislature, Regular Session, 2021; and

12 (2) a student subject to Subdivision (1) may not
13 receive a high school diploma unless the student has performed
14 satisfactorily on:

15 (A) each required end-of-course assessment
16 instrument administered under Section 39.023(c), as that section
17 existed before amendment by H.B. 764, Acts of the 87th Legislature,
18 Regular Session, 2021; or

19 (B) each assessment instrument selected under
20 Section 39.023(c) by the district in which the student is enrolled.

21 SECTION 21. Section 39.034(d), Education Code, is amended
22 to read as follows:

23 (d) The agency shall determine the necessary annual
24 improvement required each year for a student to be prepared to
25 perform satisfactorily on, as applicable:

26 (1) the grade five assessment instruments;

27 (2) the grade eight assessment instruments; and

1 (3) the [~~end-of-course~~] assessment instruments
2 required under this subchapter for graduation.

3 SECTION 22. Section 39.035(a), Education Code, is amended
4 to read as follows:

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

10 SECTION 23. Subchapter C, Chapter 39, Education Code, is
11 amended by adding Section 39.0547 to read as follows:

12 Sec. 39.0547. EVALUATING SPECIALIZED SUPPORT CAMPUSES. (a)
13 In this section, "specialized support campus" means a school
14 district campus that:

15 (1) has a campus identification number;

16 (2) serves students enrolled in any grade level at
17 which state assessment instruments are administered; and

18 (3) has a student enrollment in which:

19 (A) at least 90 percent of students receive
20 special education services under Subchapter A, Chapter 29; and

21 (B) a significant percentage of the students
22 required to take an assessment instrument under Section 39.023:

23 (i) take an alternative assessment
24 instrument under Section 39.023(b) or (b-1); and

25 (ii) are unable to provide an authentic
26 academic response on that assessment instrument.

27 (b) The commissioner, in consultation with administrators

1 of specialized support campuses, teachers at specialized support
2 campuses, parents and guardians of students enrolled at specialized
3 support campuses, and other stakeholders, by rule shall establish
4 appropriate accountability guidelines under this chapter for use by
5 a specialized support campus in developing an alternative
6 accountability plan under Subsection (c) based on the specific
7 student population served by the campus. The commissioner shall
8 provide for public notice and comment in adopting rules under this
9 subsection.

10 (c) A specialized support campus may develop and submit to
11 the commissioner for approval an alternative accountability plan
12 tailored to the student population served by the campus, based on
13 the guidelines established under Subsection (b). The commissioner
14 may approve the alternative accountability plan only if the plan:

15 (1) follows the guidelines established under
16 Subsection (b); and

17 (2) complies with applicable federal law.

18 (d) Notwithstanding any other provision of this code, if the
19 commissioner approves an alternative accountability plan developed
20 by a specialized support campus under Subsection (c), the
21 commissioner shall determine, report, and consider the performance
22 of students enrolled at the campus using that plan.

23 (e) Not later than December 1, 2024, the commissioner shall
24 submit to the governor, the lieutenant governor, the speaker of the
25 house of representatives, and the standing legislative committees
26 with primary jurisdiction over public education a report on the
27 effectiveness of this section in evaluating specialized support

1 campuses and any recommendations for legislative or other action.

2 (f) This section expires September 1, 2025.

3 SECTION 24. Section 39.203(c), Education Code, is amended
4 to read as follows:

5 (c) In addition to the distinction designations described
6 by Subsections (a) and (b), a campus that satisfies the criteria
7 developed under Section 39.204 shall be awarded a distinction
8 designation by the commissioner for outstanding performance in
9 academic achievement in English language arts, mathematics, or
10 science[~~, or social studies~~].

11 SECTION 25. Section 51.338(c), Education Code, is amended
12 to read as follows:

13 (c) A student who has achieved scores set by the board on the
14 questions developed for end-of-course assessment instruments under
15 Section 39.0233(a), as that section existed before repeal by
16 H.B. 764, Acts of the 87th Legislature, Regular Session, 2021, is
17 exempt from the requirements of this subchapter. The exemption is
18 effective for the three-year period following the date a student
19 takes the last assessment instrument for purposes of this
20 subchapter and achieves the standard set by the board. This
21 subsection does not apply during any period for which the board
22 designates the questions developed for end-of-course assessment
23 instruments under Section 39.0233(a), as that section existed
24 before repeal by H.B. 764, Acts of the 87th Legislature, Regular
25 Session, 2021, as the primary assessment instrument under this
26 subchapter, except that the three-year period described by this
27 subsection remains in effect for students who qualify for an

1 exemption under this subsection before that period.

2 SECTION 26. The following provisions of the Education Code
3 are repealed:

4 (1) Sections 39.023(a-15), (c-2), (c-4), (c-6), and
5 (d);

6 (2) Section 39.023(c-7), as added by Chapter 1282
7 (H.B. 1244), Acts of the 86th Legislature, Regular Session, 2019;

8 (3) Section 39.023(c-7), as added by Chapter 1315
9 (H.B. 3906), Acts of the 86th Legislature, Regular Session, 2019;

10 (4) Section 39.0233;

11 (5) Section 39.024;

12 (6) Sections 39.025(a-1), (a-2), (a-3), (a-5), and
13 (e-1);

14 (7) Section 39.053(d-1); and

15 (8) Section 39.203(d).

16 SECTION 27. As soon as practicable after the effective date
17 of this Act, the Texas Education Agency shall adopt alternative
18 adaptive assessment instruments as required by Section 39.02342,
19 Education Code, as added by this Act.

20 SECTION 28. As soon as practicable after the effective date
21 of this Act, each school district shall provide notice to an eighth
22 grade student under Section 39.025(g), Education Code, informing
23 the student of the specific requirements applicable to the student
24 under Sections 39.023(c) and 39.025(a), Education Code, as amended
25 by this Act.

26 SECTION 29. (a) Except as provided by Subsection (b), this
27 Act applies beginning with the 2021-2022 school year.

1 (b) Section 39.02342, Education Code, as added by this Act,
2 applies beginning with the 2022-2023 school year.

3 SECTION 30. Not later than January 1, 2022, the Texas
4 Education Agency shall apply to the United States Department of
5 Education for a waiver of the annual alternate assessment of
6 students with significant cognitive disabilities required under
7 the Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.) and
8 the Individuals with Disabilities Education Act (20 U.S.C. Section
9 1400 et seq.).

10 SECTION 31. As soon as practicable after the effective date
11 of this Act, the commissioner of education shall apply to the United
12 States Department of Education for a statewide waiver of the annual
13 assessment of students required under the Every Student Succeeds
14 Act (20 U.S.C. Section 6301 et seq.) for the 2020-2021 school year.

15 SECTION 32. To the extent of any conflict, this Act prevails
16 over another Act of the 87th Legislature, Regular Session, 2021,
17 relating to nonsubstantive additions to and corrections in enacted
18 codes.

19 SECTION 33. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2021.