

AN ACT

relating to accelerated instruction provided to public school students who fail to achieve satisfactory performance on certain assessment instruments.

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

SECTION 1. The heading to Section 28.0211, Education Code, is amended to read as follows:

Sec. 28.0211. [~~ACCELERATED LEARNING COMMITTEE,~~] ACCELERATED INSTRUCTION; MODIFIED TEACHER ASSIGNMENT.

SECTION 2. Section 28.0211, Education Code, is amended by amending Subsections (a), (a-1), (a-4), (a-5), (f), (f-1), (f-2), (f-3), (g), (h), (i), (j), (k), and (n) and adding Subsections (a-7), (a-8), (a-9), (a-10), (a-11), (a-12), (a-13), (a-14), (b), (b-1), (i-1), (l), (q), and (r) to read as follows:

(a) To ensure that each student achieves at least satisfactory performance on each assessment instrument administered under Section 39.023, a [A] school district shall ensure that the district's curricular and instructional systems provide instruction to all students that:

(1) is consistently aligned with the essential knowledge and skills for the applicable subject area and grade level; and

(2) strategically and timely addresses deficiencies in the prerequisite essential knowledge and skills for the

1 applicable subject area and grade level [~~establish an accelerated~~
2 ~~learning committee described by Subsection (c) for each student who~~
3 ~~does not perform satisfactorily on:~~

4 ~~[(1) the third grade mathematics or reading assessment~~
5 ~~instrument under Section 39.023,~~

6 ~~[(2) the fifth grade mathematics or reading assessment~~
7 ~~instrument under Section 39.023, or~~

8 ~~[(3) the eighth grade mathematics or reading~~
9 ~~assessment instrument under Section 39.023].~~

10 (a-1) Each time a student fails to perform satisfactorily on
11 an assessment instrument administered under Section 39.023(a) or
12 (1) in the third, fourth, fifth, sixth, seventh, or eighth grade or
13 an end-of-course assessment instrument administered under Section
14 39.023(c), other than an assessment instrument developed or adopted
15 based on alternative academic achievement standards, the school
16 district in which the student attends school shall provide to the
17 student accelerated instruction in the applicable subject area
18 during the subsequent summer or school year and, subject to
19 Subsections (a-7) and (a-8), either:

20 (1) allow the student to be assigned a classroom
21 teacher who is certified as a master, exemplary, or recognized
22 teacher under Section 21.3521 for the subsequent school year in the
23 applicable subject area; or

24 (2) provide the student supplemental instruction
25 under Subsection (a-4).

26 (a-4) If a district receives funding under Section 29.0881
27 or 48.104, the Coronavirus Response and Relief Supplemental

1 Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260), or the
2 American Rescue Plan Act of 2021 (Pub. L. No. 117-2), then
3 supplemental instruction provided by a school district under
4 Subsection (a-1)(2) must:

5 (1) include targeted instruction in the essential
6 knowledge and skills for the applicable grade levels and subject
7 area;

8 (2) be provided in addition to instruction normally
9 provided to students in the grade level in which the student is
10 enrolled;

11 (3) be provided [~~for no less than 30 total hours~~]
12 during the subsequent summer or school year:

13 (A) to each student for no less than:

14 (i) 15 hours; or

15 (ii) 30 hours for a student whose
16 performance on the applicable assessment instrument was
17 significantly below satisfactory, as defined by commissioner rule;

18 and

19 (B) [7] unless the instruction is provided to a
20 student fully during summer, [~~include instruction~~] no less than
21 once per week during the school year, except as otherwise provided
22 by commissioner rule to account for school holidays or shortened
23 school weeks;

24 (4) be designed to assist the student in achieving
25 satisfactory performance in the applicable grade level and subject
26 area;

27 (5) include effective instructional materials

1 designed for supplemental instruction;

2 (6) be provided to a student individually or in a group
3 of no more than four [~~three~~] students, unless the parent or guardian
4 of each student in the group authorizes a larger group;

5 (7) be provided by a person with training in the
6 applicable instructional materials for the supplemental
7 instruction and under the oversight of the school district; and

8 (8) to the extent possible, be provided by one person
9 for the entirety of the student's supplemental instruction period.

10 (a-5) Each school district shall establish a process
11 allowing for the parent or guardian of a student who fails to
12 perform satisfactorily on an assessment instrument specified under
13 Subsection (a-1) [~~(a)~~] to make a request for district consideration
14 that the student be assigned to a particular classroom teacher in
15 the applicable subject area for the subsequent school year, if more
16 than one classroom teacher is available.

17 (a-7) The requirements under Subsection (a-1)(1) or (2) do
18 not apply to a student who is retained at a grade level for the
19 school year in which those requirements would otherwise apply.

20 (a-8) A school district may not be required to provide
21 supplemental instruction under Subsection (a-1)(2) to a student in
22 more than two subject areas per school year. If the district would
23 otherwise be required to provide supplemental instruction to a
24 student in more than two subject areas for a school year, the
25 district shall prioritize providing supplemental instruction to
26 the student in mathematics and reading, or Algebra I, English I, or
27 English II, as applicable, for that school year.

1 (a-9) A parent or guardian of a student to whom supplemental
2 instruction will be provided under Subsection (a-1)(2) and who
3 either was administered and failed to perform satisfactorily on an
4 assessment instrument specified under Subsection (a-1) or was
5 administered a beginning-of-year assessment instrument aligned
6 with the essential knowledge and skills for the applicable subject
7 area, including a student to whom Subsection (b) applies, may elect
8 to modify or remove a requirement for that instruction under
9 Subsection (a-4) by submitting a written request to an
10 administrator of the campus at which the student is enrolled. A
11 school district may not encourage or direct a parent or guardian to
12 make an election under this subsection that would allow the
13 district to:

14 (1) not provide supplemental instruction to the
15 student; or

16 (2) provide supplemental instruction in a group larger
17 than authorized under Subsection (a-4)(6).

18 (a-10) A school district is not required to provide
19 accelerated instruction under Subsection (a-1) to a student who,
20 instead of being administered an assessment instrument specified
21 under Subsection (a-1), was administered a substitute assessment
22 instrument in accordance with other law or agency rule authorizing
23 the use of the substitute assessment instrument for purposes of
24 satisfying the requirements concerning the applicable assessment
25 instrument under Subsection (a-1).

26 (a-11) The agency shall approve one or more products that
27 use an automated, computerized, or other augmented method for

1 providing supplemental instruction under Subsection (a-1)(2) that
2 may be used in lieu of some or all of the individual or group
3 instruction required under Subsection (a-4)(6), as appropriate for
4 the applicable grade level and subject area and a student's
5 academic deficiency. The agency may approve a product under this
6 subsection only if evidence indicates that the product is more
7 effective than the individual or group instruction required under
8 Subsection (a-4)(6). The commissioner shall adopt rules regarding
9 when a product approved under this subsection may be used and the
10 requirements under Subsection (a-4) for which the product may be
11 substituted.

12 (a-12) For the purpose of providing accelerated instruction
13 or supplemental instruction under this section, a school district
14 may use a service provider that is not on a list of service
15 providers approved by the agency if the district can demonstrate to
16 the commissioner that use of the service provider results in
17 measurable improvement in student outcomes.

18 (a-13) A school district that is required to provide to a
19 student accelerated instruction under Subsection (a-1) or
20 supplemental instruction under Subsection (a-1)(2) is not required
21 to provide additional instruction under either provision to the
22 student based on the student's failure to perform satisfactorily on
23 an assessment instrument administered as an optional assessment in
24 the same subject area in which the district is required to provide
25 the student the accelerated or supplemental instruction.

26 (a-14) A school district shall provide to the parent or
27 guardian of a student who fails to perform satisfactorily on an

1 assessment instrument specified under Subsection (a-1) notice that
2 the student is not performing on grade level in the applicable
3 subject area. Notwithstanding Subsection (h), the district must
4 provide the notice at a parent-teacher conference or, if the
5 district is unable to provide the notice at a parent-teacher
6 conference, by another means. The agency shall develop and provide
7 to school districts a model notice in plain language for use under
8 this section.

9 (b) For each student who does not perform satisfactorily on
10 an assessment instrument specified under Subsection (a-1) for two
11 or more consecutive school years in the same subject area, the
12 school district the student attends shall develop an accelerated
13 education plan as described by Subsection (f).

14 (b-1) A school district shall make a good faith attempt to
15 provide to the parent or guardian of a student to whom Subsection
16 (b) applies a parent-teacher conference with the student's primary
17 teacher at the start and end of the subsequent school year. At the
18 conference, the district shall provide the student's parent or
19 guardian with:

20 (1) the notice required under Subsection (a-14); and

21 (2) an explanation of:

22 (A) the accelerated instruction to which the
23 student is entitled under this section; and

24 (B) the accelerated education plan that must be
25 developed for the student under Subsection (f) and the manner in
26 which the parent or guardian may participate in developing the
27 plan.

1 (f) Not [~~An accelerated learning committee described by~~
2 ~~Subsection (c) shall, not~~] later than the start of the subsequent
3 school year, a school district shall develop an accelerated
4 education [~~educational~~] plan for each [~~the~~] student to whom
5 Subsection (b) applies that provides the necessary accelerated
6 instruction to enable the student to perform at the appropriate
7 grade or course level by the conclusion of the school year. The
8 plan:

9 (1) must:

10 (A) identify the reason the student did not
11 perform satisfactorily on the applicable assessment instrument
12 specified under Subsection (a-1); and

13 (B) notwithstanding Subsection (a-4)(3)(A),
14 require the student to be provided with no less than 30 hours, or a
15 greater number of hours if appropriate, of supplemental instruction
16 under Subsection (a-4) for each consecutive school year in which
17 the student does not perform satisfactorily on the assessment
18 instrument in the applicable subject area specified under
19 Subsection (a-1); and

20 (2) may require that, as appropriate to ensure the
21 student performs satisfactorily on the assessment instrument in the
22 applicable subject area specified under Subsection (a-1) at the
23 next administration of the assessment instrument:

24 (A) the district expand the times in which
25 supplemental instruction under Subsection (a-4) is available to the
26 student;

27 (B) the student be assigned for the school year

1 to a specific teacher who is better able to provide accelerated
2 instruction; and

3 (C) the district provide any necessary
4 additional resources to the student.

5 (f-1) The accelerated education [~~educational~~] plan under
6 Subsection (f) must be documented in writing, and a copy must be
7 provided to the student's parent or guardian.

8 (f-2) During the school year, the student shall be monitored
9 to ensure that the student is progressing in accordance with the
10 accelerated education plan developed under Subsection (f). [~~The~~
11 ~~district shall administer to the student the assessment instrument~~
12 ~~for the grade level in which the student is placed at the time the~~
13 ~~district regularly administers the assessment instruments for that~~
14 ~~school year.~~]

15 (f-3) The board of trustees of each school district shall
16 adopt a policy consistent with the grievance procedure adopted
17 under Section 26.011 to allow a parent to contest the content or
18 implementation of an accelerated education [~~educational~~] plan
19 developed under Subsection (f).

20 (g) This section does not preclude the retention at a grade
21 level, in accordance with state law or school district policy, of a
22 student who performs satisfactorily on an assessment instrument
23 specified under Subsection (a-1) [~~(a)~~].

24 (h) In each instance under this section in which a school
25 district is specifically required to provide notice or a written
26 copy to a parent or guardian of a student, the district shall make a
27 good faith effort to ensure that such notice or copy is provided

1 either in person or by regular mail and that the notice or copy is
2 clear and easy to understand and is written in English or the parent
3 or guardian's native language.

4 (i) The admission, review, and dismissal committee of a
5 student who participates in a district's special education program
6 under Subchapter A, Chapter 29, and who does not perform
7 satisfactorily on an assessment instrument specified under
8 Subsection (a-1) shall, at the student's next annual review
9 meeting, review the student's participation and progress in, as
10 applicable, accelerated instruction provided under Subsection (a),
11 supplemental instruction provided under Subsection (a-1)(2), or an
12 accelerated education plan developed under Subsection (f). The
13 student's parent may request, or the district may schedule, an
14 additional committee meeting if a committee member believes that
15 the student's individualized education program needs to be modified
16 based on the requirements under this section. If the district
17 refuses to convene a committee meeting requested by the student's
18 parent under this subsection, the district shall provide the parent
19 with written notice explaining the reason the district refuses to
20 convene the meeting [~~(a) and administered under Section 39.023(a)~~
21 ~~or (b) must meet to determine the manner in which the student will~~
22 ~~participate in an accelerated instruction program under this~~
23 ~~section)].~~

24 (i-1) If a student who attends school in a homebound or
25 other off-campus instructional arrangement, including at a
26 residential treatment campus or state hospital, is unable to
27 participate in an accelerated instruction program required under

1 this section due to the student's condition, the school district
2 may determine that the student be provided the accelerated
3 instruction when the student attends school in an on-campus
4 instructional setting. If the student's condition prevents the
5 student from attending school in an on-campus instructional setting
6 for the school year during which the accelerated instruction is
7 required to be provided to the student, the district is not required
8 to provide the accelerated instruction to the student for that
9 school year.

10 (j) A school district or open-enrollment charter school
11 shall provide students required to attend accelerated programs
12 under this section with transportation to those programs if the
13 programs occur outside of regular school hours, unless the district
14 or school does not operate, or contract or agree with another entity
15 to operate, a transportation system.

16 (k) The commissioner may adopt rules as necessary to
17 implement this section, including rules for required reporting
18 necessary to support student transfers.

19 (l) The agency shall monitor and evaluate the effectiveness
20 of the accelerated instruction required under this section.

21 (n) Except as requested under Subsection (a-5) or provided
22 by Subsection (n-1), a student for whom an accelerated education
23 plan must be developed [~~who fails to perform satisfactorily on an~~
24 ~~assessment instrument specified~~] under Subsection (b) [~~(a) and is~~
25 ~~promoted to the next grade level~~] must be assigned, in each [~~the~~
26 ~~subsequent~~] school year and [~~in each~~] subject covered by the
27 accelerated education plan, [in which the student failed to perform

1 ~~satisfactorily on an assessment instrument specified under~~
2 ~~Subsection (a)]~~ to an appropriately certified teacher who meets all
3 state and federal qualifications to teach that subject and grade.

4 (g) The commissioner may waive the requirements under this
5 section regarding accelerated instruction for a school district for
6 each school year in which at least 60 percent of the students who
7 received accelerated instruction during the school year
8 immediately preceding the previous school year, including at least
9 60 percent of students whose performance on the applicable
10 assessment instrument was significantly below satisfactory, as
11 defined by commissioner rule, performed satisfactorily in the
12 previous school year on the assessment instrument in each subject
13 in which the student previously failed to perform satisfactorily.
14 For purposes of determining whether a school district qualifies for
15 a waiver under this subsection, the commissioner shall:

16 (1) if a student received accelerated instruction in
17 more than one subject during the applicable school year, consider
18 the student's performance on the assessment instrument in each
19 subject separately from the student's performance on the assessment
20 instrument for each other subject; and

21 (2) by rule provide that a school district may not
22 qualify for a waiver if students who are receiving special
23 education services or are educationally disadvantaged are
24 overrepresented among the students in the district who received
25 accelerated instruction during the school year immediately
26 preceding the previous school year and did not perform
27 satisfactorily in the previous school year on the assessment

1 instrument in each applicable subject.

2 (r) Not later than the beginning of each school year, the
3 commissioner shall publish a list of school districts that qualify
4 for a waiver under Subsection (q).

5 SECTION 3. Section 29.0881(e), Education Code, is amended
6 to read as follows:

7 (e) A school district or open-enrollment charter school
8 that receives grant funds under this section may use the funds to:

9 (1) financially support or train or otherwise prepare
10 educators and other staff;

11 (2) pay for agreements with other entities to provide
12 prekindergarten services; or

13 (3) pay for accelerated instruction provided under
14 Section 28.0211 [~~or 28.0217~~].

15 SECTION 4. Section 39.025(b-1), Education Code, is amended
16 to read as follows:

17 (b-1) A school district shall provide each student who fails
18 to perform satisfactorily as determined by the commissioner under
19 Section 39.0241(a) on an end-of-course assessment instrument with
20 accelerated instruction under Section 28.0211 [~~28.0217~~] in the
21 subject assessed by the assessment instrument.

22 SECTION 5. The following provisions of the Education Code
23 are repealed:

24 (1) Sections 28.0211(c), (f-4), and (f-5); and

25 (2) Section 28.0217.

26 SECTION 6. The changes in law made by this Act to Section
27 28.0211, Education Code, apply beginning with assessment

1 instruments administered during the 2023 spring semester.

2 SECTION 7. The repeal by this Act of Section 28.0217,
3 Education Code, applies beginning with the 2023-2024 school year.

4 SECTION 8. (a) Notwithstanding any other section of this
5 Act, in a state fiscal year, the Texas Education Agency is not
6 required to implement a provision found in another section of this
7 Act that is drafted as a mandatory provision imposing a duty on the
8 agency to take an action unless money is specifically appropriated
9 to the agency for that fiscal year to carry out that duty. The Texas
10 Education Agency may implement the provision in that fiscal year to
11 the extent other funding is available to the agency to do so.

12 (b) If, as authorized by Subsection (a) of this section, the
13 Texas Education Agency does not implement the mandatory provision
14 in a state fiscal year, the agency, in its legislative budget
15 request for the next state fiscal biennium, shall certify that fact
16 to the Legislative Budget Board and include a written estimate of
17 the costs of implementing the provision in each year of that next
18 state fiscal biennium.

19 (c) This section and the suspension of the Texas Education
20 Agency's duty to implement a mandatory provision of this Act, as
21 provided by Subsection (a) of this section, expires and the duty to
22 implement the mandatory provision resumes on September 1, 2027.

23 SECTION 9. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1416 was passed by the House on April 20, 2023, by the following vote: Yeas 144, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1416 on May 19, 2023, by the following vote: Yeas 141, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1416 was passed by the Senate, with amendments, on May 16, 2023, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor