

ATTACHMENT I

Statutory Citations Relating to the Review of 19 TAC Chapter 101, Assessment, Subchapter A, General Provisions, Subchapter B, Implementation of Assessments, and Subchapter C, Local Option

Rule Review

Texas Government Code, §2001.039, Agency Review of Existing Rules:

- (a) A state agency shall review and consider for re adoption each of its rules in accordance with this section.
- (b) A state agency shall review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not affect the dates on which the rule must be reviewed except that the effective date of an amendment is considered to be the effective date of the rule if the agency formally conducts a review of the rule in accordance with this section as part of the process of adopting the amendment.
- (c) The state agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.
- (d) The procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, re adoption, or re adoption with amendments of the rule, except as provided by this subsection. Publishing the Texas Administrative Code citation to a rule under review satisfies the requirements of this subchapter relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.
- (e) A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

19 TAC Chapter 101, Assessment, Subchapter A, General Provisions, Subchapter B, Implementation of Assessments, and Subchapter C, Local Option

Texas Education Code (TEC), Chapter 28, Courses of Study; Advancement, Subchapter B. Advancement, Placement, Credit, and Academic Achievement Record, §28.0211, Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction (excerpts):

- (a) Except as provided by Subsection (b) or (e), a student may not be promoted to:
 - (1) 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 assessment instruments under Section 39.023; or
 - (2) 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 assessment instruments under Section 39.023.
- (a-1) Each time a student fails to perform satisfactorily on an assessment instrument administered under Section 39.023(a) in the third, fourth, fifth, sixth, seventh, or eighth

grade, the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations.

- (a-2) A student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and who is promoted to the next grade level must complete accelerated instruction required under Subsection (a-1) before placement in the next grade level. A student who fails to complete required accelerated instruction may not be promoted.
- (a-3) The commissioner shall provide guidelines to districts on research-based best practices and effective strategies that a district may use in developing an accelerated instruction program.
- (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 instrument to a student who has failed an assessment instrument specified under Subsection (a) on the previous two opportunities. Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on an alternate assessment instrument under this subsection that is appropriate for the student's grade level and approved by the commissioner.
- (c) Each time a student fails to perform satisfactorily on 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 subject area, including reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument. After a student fails to perform satisfactorily on an assessment instrument a second time, a grade placement committee shall be established to prescribe the accelerated instruction the district shall provide to the student before the student is administered the assessment instrument the third time. The grade placement committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the grade placement committee and the purpose of the committee. An accelerated instruction group administered by a school district under this section may not have a ratio of more than 10 students for each teacher.
- (d) In addition to providing accelerated instruction to a student under Subsection (c), the district shall notify the student's parent or guardian of:
 - (1) the student's failure to perform satisfactorily on the assessment instrument;
 - (2) the accelerated instruction program to which the student is assigned; and
 - (3) the possibility that the student might be retained at the same grade level for the next school year.
- (e) A student who, after at least three attempts, fails to perform satisfactorily on an assessment instrument specified under Subsection (a) shall be retained at the same grade level for the next school year in accordance with Subsection (a). The student's parent or guardian may appeal the student's retention by submitting a request to the grade placement committee established under Subsection (c). The school district shall give the parent or guardian written notice of the opportunity to appeal. The grade placement committee may decide in favor of a student's promotion only if the committee concludes,

using standards adopted by the board of trustees, that if promoted and given accelerated instruction, the student is likely to perform at grade level. A student may not be promoted on the basis of the grade placement committee's decision unless that decision is unanimous. The commissioner by rule shall establish a time line for making the placement determination. This subsection does not create a property interest in promotion. The decision of the grade placement committee is final and may not be appealed.

- (f) A school district shall provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) accelerated instruction during the next school year as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c). The district shall provide that accelerated instruction regardless of whether the 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.
- (h) In each instance under this section in which a school district is specifically required to provide notice to a parent or guardian of a student, the district shall make a good faith effort to ensure that such notice is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English or the parent or guardian's native language.
- (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 an assessment instrument specified under Subsection (a) and administered under Section 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.
- (j) A school district or open-enrollment charter school shall provide students required to attend accelerated programs under this section with transportation to those programs if the programs occur outside of regular school hours.
- (k) The commissioner shall adopt rules as necessary to implement this section, including rules concerning when school districts shall administer assessment instruments required under this section and which administration of the assessment instruments will be used for purposes of Section 39.054.
- (n) A student who is promoted by a grade placement committee under this section must be assigned in each subject in which the student failed to perform satisfactorily on an assessment instrument specified under Subsection (a) to a teacher who meets all state and federal qualifications to teach that subject and grade.
- (o) This section does not require the administration of a fifth or eighth grade assessment instrument in a subject under Section 39.023(a) to a student enrolled in the fifth or eighth grade, as applicable, if the student:
 - (1) is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or

developed under Section 39.023(a) that aligns with the curriculum for the course in which the student is enrolled; or

- (2) is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course assessment instrument adopted under Section 39.023(c) for the course.
- (p) Notwithstanding any other provision of this section, a student described by Subsection (o) may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument not required to be administered to the student in accordance with that subsection.

TEC, Chapter 39, Public School System Accountability, Subchapter B, Assessment of Academic Skills

TEC, §39.021, Essential Skills and Knowledge:

The State Board of Education by rule shall establish the essential skills and knowledge that all students should learn to achieve the goals provided under Section 4.002.

TEC, §39.022, Assessment Program:

The State Board of Education by rule shall create and implement a statewide assessment program that is knowledge- and skills-based to ensure school accountability for student achievement that achieves the goals provided under Section 4.002. After adopting rules under this section, the State Board of Education shall consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.

TEC, §39.023, Adoption and Administration of Instruments (excerpts):

- (a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:
 - (1) mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;
 - (2) reading, annually in grades three through eight;
 - (3) writing, including spelling and grammar, in grades four and seven;
 - (4) social studies, in grade eight;
 - (5) science, in grades five and eight; and
 - (6) any other subject and grade required by federal law.
- (a-1) The agency shall develop assessment instruments required under Subsection (a) in a manner that allows, to the extent practicable:
 - (1) the score a student receives to provide reliable information relating to a student's satisfactory performance for each performance standard under Section 39.0241; and

- (2) an appropriate range of performances to serve as a valid indication of growth in student achievement.
- (a-2) A student is not required to be assessed in a subject otherwise assessed at the student's grade level under Subsection (a) if the student:
 - (1) is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Subsection (a) that aligns with the curriculum for the course in which the student is enrolled; or
 - (2) is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course assessment instrument adopted under Subsection (c) for the course.
- (b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee.
- (c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I end-of-course assessment instrument must be administered with the aid of technology. The English I and English II end-of-course assessment instruments must each assess essential knowledge and skills in both reading and writing in the same assessment instrument and must provide a single score. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection. If a student is in a special education program under Subchapter A, Chapter 29, the 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 State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).
- (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 and English II must be permitted to occur at an earlier date.
- (c-5) A student's performance on an end-of-course assessment instrument required under Subsection (c) must be included in the student's academic achievement record.
- (e) Under rules adopted by the State Board of Education, every third year, the agency shall release the questions and answer keys to each assessment instrument administered under

- Subsection (a), (b), (c), (d), or (l), excluding any assessment instrument administered to a student for the purpose of retaking the assessment instrument, after the last time the instrument is administered for that school year. To ensure a valid bank of questions for use each year, the agency is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument. The agency shall also release, under board rule, each question that is no longer being field-tested and that was not used to compute a student's score. During the 2014-2015 and 2015-2016 school years, the agency shall release the questions and answer keys to assessment instruments as described by this subsection each year.
- (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 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.
 - (l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.
 - (n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (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 committee shall determine whether any allowable modification is necessary in administering to a 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).

TEC, §39.025, Secondary-Level Performance Required:

- (a) The commissioner shall adopt rules requiring a student in the foundation high school program under Section 28.025 to be administered an end-of-course assessment instrument listed in Section 39.023(c) only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner under Section 39.0241(a), on each end-of-course assessment

instrument administered to the student. For each scale score required under this subsection that is not based on a 100-point scale scoring system, the commissioner shall provide for conversion, in accordance with commissioner rule, of the scale score to an equivalent score based on a 100-point scale scoring system. A student may not receive a high school diploma until the student has performed satisfactorily on end-of-course assessment instruments in the manner provided under this subsection. This subsection does not require a student to demonstrate readiness to enroll in an institution of higher education.

- (a-1) A student enrolled in a college preparatory mathematics or English language arts course under Section 28.014 who satisfies the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Texas Higher Education Coordinating Board under Section 51.3062(f) on an assessment instrument designated by the Texas Higher Education Coordinating Board under Section 51.3062(c) administered at the end of the college preparatory mathematics or English language arts course satisfies the requirements concerning and is exempt from the administration of the Algebra I or the English I and English II end-of-course assessment instruments, as applicable, as prescribed by Section 39.023(c), even if the student did not perform satisfactorily on a previous administration of the applicable end-of-course assessment instrument. A student who fails to perform satisfactorily on the assessment instrument designated by the Texas Higher Education Coordinating Board under Section 51.3062(c) administered as provided by this subsection may retake that assessment instrument for purposes of this subsection or may take the appropriate end-of-course assessment instrument.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 5 (S.B. 149), Sec. 4

- (a-2) Notwithstanding Subsection (a), a student who has failed to perform satisfactorily on end-of-course assessment instruments in the manner provided under this section may receive a high school diploma if the student has qualified for graduation under Section 28.0258. This subsection expires September 1, 2017.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 1036 (H.B. 1613), Sec. 2

- (a-2) The commissioner shall determine a method by which a student's satisfactory performance on an advanced placement test, an international baccalaureate examination, an SAT Subject Test, the SAT, the ACT, or any nationally recognized norm-referenced assessment instrument used by institutions of higher education to award course credit based on satisfactory performance on the assessment instrument shall be used to satisfy the requirements concerning an end-of-course assessment instrument in an equivalent course as prescribed by Subsection (a). The commissioner shall determine a method by which a student's satisfactory performance on the PSAT or the ACT-Plan shall be used to satisfy the requirements concerning an end-of-course assessment instrument in an equivalent course as prescribed by Subsection (a). A student who fails to perform satisfactorily on a test or other assessment instrument authorized under this subsection, other than the PSAT or the ACT-Plan, may retake that test or other assessment instrument for purposes of this subsection or may take the appropriate end-of-course assessment instrument. A student who fails to perform satisfactorily on the PSAT or the ACT-Plan must take the appropriate end-of-course assessment instrument. The commissioner shall adopt rules as necessary for the administration of this subsection.
- (a-3) A student who, after retaking an end-of-course assessment instrument for Algebra I or English II, has failed to perform satisfactorily as required by Subsection (a), but who receives a score of proficient on the Texas Success Initiative (TSI) diagnostic assessment for the corresponding subject for which the student failed to perform satisfactorily on the

end-of-course assessment instrument satisfies the requirement concerning the Algebra I or English II end-of-course assessment, as applicable. This subsection expires September 1, 2017.

- (a-4) The admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether, to receive a high school diploma, the student is required to achieve satisfactory performance on end-of-course assessment instruments.
- (b) Each time an end-of-course assessment instrument adopted under Section 39.023(c) is administered, a student who failed to achieve a score requirement under Subsection (a) may retake the assessment instrument. A student is not required to retake a course as a condition of retaking an end-of-course assessment instrument.
 - (b-1) A school district shall provide each student who fails to perform satisfactorily as determined by the commissioner under Section 39.0241(a) on an end-of-course assessment instrument with accelerated instruction in the subject assessed by the assessment instrument.
 - (b-2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 934 , Sec. 5(3), eff. June 18, 2015.
- (c) A student who has been denied a high school diploma under this section and who subsequently performs at the level necessary to comply with the requirements of this section shall be issued a high school diploma.
 - (c-1) A school district may not administer an assessment instrument required for graduation administered under this section as this section existed before September 1, 1999. A school district may administer to a student who failed to perform satisfactorily on an assessment instrument described by this subsection an alternate assessment instrument designated by the commissioner. The commissioner shall determine the level of performance considered to be satisfactory on an alternate assessment instrument. The district may not administer to the student an assessment instrument or a part of an assessment instrument that assesses a subject that was not assessed in an assessment instrument required for graduation administered under this section as this section existed before September 1, 1999. The commissioner shall make available to districts information necessary to administer the alternate assessment instrument authorized by this subsection. The commissioner's determination regarding designation of an appropriate alternate assessment instrument under this subsection and the performance required on the assessment instrument is final and may not be appealed.
- (d) Notwithstanding Subsection (a), the commissioner by rule shall adopt one or more alternative nationally recognized norm referenced assessment instruments under this section to administer to a student to qualify for a high school diploma if the student enrolls after January 1 of the school year in which the student is otherwise eligible to graduate:
 - (1) for the first time in a public school in this state; or
 - (2) after an absence of at least four years from any public school in this state.
- (e) The commissioner shall establish a required performance level for an assessment instrument adopted under Subsection (d) that is at least as rigorous as the performance level required to be met under Subsection (a).
 - (e-1) Nothing in this section has the effect of prohibiting the administration of an end-of-course assessment instrument listed in Section 39.023(c) to a student enrolled below the high school level who is enrolled in the course for which the assessment instrument is

adopted. The commissioner shall adopt rules necessary to ensure that the student's performance on the assessment instrument is considered in the same manner for purposes of this section as the performance of a student enrolled at the high school level.

- (f) The commissioner shall by rule adopt a transition plan to implement the amendments made by Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session, 2007, replacing general subject assessment instruments administered at the high school level with end-of-course assessment instruments. The rules must provide for the end-of-course assessment instruments adopted under Section 39.023(c) to be administered beginning with students entering the ninth grade during the 2011-2012 school year. During the period under which the transition to end-of-course assessment instruments is made:
 - (1) for students entering a grade above the ninth grade during the 2011-2012 school year, the commissioner shall retain, administer, and use for purposes of accreditation and other campus and district accountability measures under this chapter the assessment instruments required by Section 39.023(a) or (c), as that section existed before amendment by Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session, 2007; and
 - (2) a student subject to Subdivision (1) may not receive a high school diploma unless the student has performed satisfactorily on each required assessment instrument administered under Section 39.023(c) as that section existed before amendment by Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session, 2007.
- (g) Rules adopted under Subsection (f) must require that each student who will be subject to the requirements of Subsection (a) is entitled to notice of the specific requirements applicable to the student. Notice under this subsection must be provided not later than the date the student enters the eighth grade.

TEC, §39.029, Migratory Children:

The State Board of Education by rule may provide alternate dates for the administration of the assessment instruments to a student who is a migratory child as defined by 20 U.S.C. Section 6399. The alternate dates may be chosen following a consideration of migrant work patterns, and the dates selected may afford maximum opportunity for the students to be present when the assessment instruments are administered.

TEC, §39.032, Assessment Instrument Standards; Civil Penalty:

- (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1210, Sec. 2, eff. June 19, 2009.
- (b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1210, Sec. 2, eff. June 19, 2009.
- (c) State and national norms of averages shall be computed using data that are not more than eight years old at the time the assessment instrument is administered and that are representative of the group of students to whom the assessment instrument is administered.
 - (c-1) The standardization norms computed under Subsection (c) shall be:
 - (1) based on a national probability sample that meets accepted standards for educational and psychological testing; and
 - (2) updated at least every eight years using proven psychometric procedures approved by the State Board of Education.

- (c-2) The eight-year limitation on data to compute norms under this section does not apply if only data older than eight years is available for an assessment instrument. The commissioner by rule may limit the exception created by this subsection based on the type of assessment instrument.
- (d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1210, Sec. 2, eff. June 19, 2009.
- (e) The State Board of Education shall adopt rules for the implementation of this section and for the maintenance of the security of the contents of all assessment instruments.
- (f) In this section, "assessment instrument" means a group-administered achievement test.

TEC, §39.033, Voluntary Assessment of Private School Students:

- (a) Under an agreement with the agency, a private school may administer an assessment instrument adopted under this subchapter to students at the school.
- (b) An agreement under this section must require the private school to:
 - (1) as determined appropriate by the commissioner, provide to the commissioner the information described by Sections 39.053(c) and 39.301(c); and
 - (2) maintain confidentiality in compliance with Section 39.030.
- (c) A private school must reimburse the agency for the cost of administering an assessment instrument under this section. The State Board of Education shall determine the cost under this section. The per-student cost may not exceed the cost of administering the same assessment to a student enrolled in a public school district.
- (d) In this section, "private school" means a school that:
 - (1) offers a general education to elementary or secondary students; and
 - (2) is not operated by a governmental entity.

TEC, §39.035, Limitation on Field Testing of Assessment Instruments:

- (a) Subject to Subsection (b), the agency may conduct field testing of questions for any assessment instrument administered under Section 39.023(a), (b), (c), (d), or (l) that is separate from the administration of the assessment instrument not more frequently than every other school year.
- (b) Subsection (a) does not limit field testing necessary to develop new assessment instruments required under state or federal law.
- (c) Before the beginning of each school year, the agency shall notify each school district regarding the required participation of the district in field testing activities during that school year.