

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE H. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

CHAPTER 39. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 39.001. RULES. (a) The commissioner shall adopt rules as necessary to administer this chapter.

(b) In adopting a rule under this chapter, the commissioner shall solicit input statewide from persons who would likely be affected by the proposed rule, including school district boards of trustees, administrators and teachers employed by school districts, parents of students enrolled in school districts, and other interested stakeholders.

Added by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 6, eff. June 15, 2017.

Sec. 39.002. ADVISORY COMMITTEE. An advisory committee appointed under this chapter is not subject to Chapter 2110, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 6, eff. June 15, 2017.

Sec. 39.003. SPECIAL INVESTIGATIONS. (a) The commissioner may authorize special investigations to be conducted:

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

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

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

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

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

(6) in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code;

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

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

(9) when a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily as determined by the commissioner under Section 39.0241(a) on assessment instruments administered under Section 39.023(a), (c), or (l);

(10) when excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other advanced course as determined by the commissioner;

(11) when resource allocation practices as evaluated under Section 39.0821 indicate a potential for significant improvement in resource allocation;

(12) when a disproportionate number of students of a particular demographic group is graduating with a particular endorsement under Section 28.025(c-1);

(13) when an excessive number of students is graduating with a particular endorsement under Section 28.025(c-1);

(14) in response to a complaint submitted to the agency with respect to alleged inaccurate data that is reported

through the Public Education Information Management System (PEIMS) or through other reports required by state or federal law or rule or court order and that is used by the agency to make a determination relating to public school accountability, including accreditation, under this chapter;

(15) when 10 percent or more of the students graduating in a particular school year from a particular high school campus are awarded a diploma based on the determination of an individual graduation committee under Section [28.0258](#);

(16) when a school district for any reason fails to produce, at the request of the agency, evidence or an investigation report relating to an educator who is under investigation by the State Board for Educator Certification; or

(17) as the commissioner otherwise determines necessary.

(b) If the agency's findings in an investigation under Subsection (a)(6) indicate that the board of trustees has observed a lawfully adopted policy that does not otherwise violate a law or rule, the agency may not substitute its judgment for that of the board.

(c) The commissioner may authorize special investigations to be conducted in response to repeated complaints submitted to the agency concerning imposition of excessive paperwork requirements on classroom teachers.

(d) Based on the results of a special investigation, the commissioner may:

(1) take appropriate action under Chapter [39A](#);

(2) lower the school district's accreditation status or a district's or campus's accountability rating; or

(3) take action under both Subdivisions (1) and (2).

(e) At any time before issuing a report with the agency's final findings, the commissioner may defer taking an action under Subsection (d) until:

(1) a person who is a third party, selected by the commissioner, has reviewed programs or other subjects of an investigation under this section and submitted a report identifying problems and proposing solutions;

(2) a district completes a corrective action plan developed by the commissioner; or

(3) the completion of actions under both Subdivisions (1) and (2).

(f) Based on the results of an action taken under Subsection (e), the commissioner may decline to take the deferred action under Subsection (d).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 48(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 509 (S.B. 123), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 5.004, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 178 (S.B. 7), Sec. 16, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(21), eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 321 (H.B. 1603), Sec. 5, eff. June 7, 2021.

Transferred, redesignated and amended from Education Code, Section 39.057 by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.04, eff. September 1, 2021.

Sec. 39.004. CONDUCT OF SPECIAL INVESTIGATIONS. (a) The agency shall adopt written procedures for conducting special investigations, including procedures that allow the agency to obtain information from district employees in a manner that prevents a district or campus from screening the information. The agency shall make the procedures available on the agency Internet website. Agency staff must be trained in the procedures and must follow the procedures in conducting the special investigation.

(a-1) During the pendency of a special investigation under this section, the agency is not required to disclose the identity of any witness.

(b) After completing a special investigation, the agency shall present preliminary findings to any person or entity the agency finds has violated a law, rule, or policy.

(c) In presenting the agency's preliminary findings to a school district under Subsection (b), the agency:

(1) shall provide to the district a written report of the agency's preliminary findings of the investigation;

(2) shall provide to the district any evidence relied on by the agency in making the preliminary findings;

(3) shall disclose to the district the identity of any witness whose statements the agency relied on in making the preliminary findings; and

(4) may not include recommended sanctions or interventions.

(d) A written report of preliminary findings under Subsection (c) and all associated materials produced by the agency in support of the report are excepted from public disclosure as audit working papers of the agency under Section 552.116, Government Code. A school district may publicly release a report of preliminary findings only if the release is approved by an affirmative vote of the board of trustees of the district.

(e) Unless otherwise provided by law, all evidence collected by the agency in connection with a special investigation, including witness statements and videos of agency interviews, are confidential and not subject to disclosure under Chapter 552, Government Code, except that evidence described by this section may be disclosed:

(1) to a person with a legitimate interest in the investigation; or

(2) in connection with an administrative or other legal proceeding brought under this title.

(f) Not later than 30 days after the date on which the board of trustees of the school district receives the written report of the preliminary findings under Subsection (c), the board of trustees of a school district may accept the agency's findings or respond in writing to the agency.

(g) The agency shall consider any response submitted by the

board of trustees of the school district under Subsection (f) before providing the board of trustees of a school district a final report in writing that includes proposed sanctions or interventions.

(h) Before the commissioner determines to order a sanction or intervention based on a final report, other than a sanction or intervention described by Section 39.005, the commissioner or the commissioner's designee shall provide an informal review. An informal review provided under this section is not a contested case for purposes of Chapter 2001, Government Code.

(i) In conducting a special investigation under Section 39.003, the commissioner or the commissioner's designee may subpoena a current or former school district employee, agent, or official to compel the employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation.

(j) If a person fails to comply with a subpoena issued under Subsection (i), the commissioner, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state. On a finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena and the court may punish a person who fails to obey the court order.

(k) A court may not enjoin a special investigation conducted under this section prior to the conclusion of the special investigation.

(l) A school district must exhaust the administrative remedies provided under this subchapter before appealing the findings or final recommendations of a special investigation conducted under this section to a court.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 8, eff. June 19, 2015.

Transferred, redesignated and amended from Education Code, Section 39.058 by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec.

2.04, eff. September 1, 2021.

Sec. 39.005. HEARING FOLLOWING INVESTIGATION. (a) This section applies to a school district that is the subject of a special investigation conducted under Section 39.003 that resulted in a final report in which the agency recommends the appointment of a board of managers, alternative management of a campus, or closure of the district or a district campus.

(b) Except as provided by Subsection (c), not later than 15 days after the date on which the board of trustees of the school district receives the final report of a special investigation under Section 39.004(g), a board of trustees of a school district to which this section applies may request a hearing if the board of trustees disagrees with the final report or a sanction or intervention recommended by the agency in the report.

(c) A school district and the agency may agree in writing to extend the time period for requesting a hearing under Subsection (b) by not more than an additional 30 days.

(d) If a board of trustees of a school district requests a hearing under Subsection (b), the hearing shall be conducted by the State Office of Administrative Hearings unless the district and the agency agree in writing to the appointment of another qualified person to conduct the hearing.

(e) Except as otherwise provided by this subchapter, a hearing conducted under this section is a contested case under Chapter 2001, Government Code.

(f) A hearing conducted under this section shall be held at the administrative offices of the school district that requested the hearing or at another location within the geographic boundaries of the district agreed to by the district and the agency, unless the district and the agency agree in writing to a different location.

(g) To protect the privacy of a witness who is a child, the hearing examiner or the person conducting the hearing may:

(1) close the hearing to receive the testimony of the witness; or

(2) order that the testimony or a statement of the witness be presented using the procedures prescribed by Article

[38.071](#), Code of Criminal Procedure.

(h) Not later than 90 days after the date on which the school district requests a hearing under Subsection (b), the hearing examiner or the person conducting the hearing shall issue and submit to the commissioner findings of fact and conclusions of law. The hearing examiner or the person conducting the hearing may not issue a recommendation for relief.

(i) A hearing conducted under this section may not be held on a Saturday, Sunday, or state or federal holiday, unless agreed to by the school district that requested the hearing and the agency.

Added by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. [1365](#)), Sec. 2.05, eff. September 1, 2021.

Sec. 39.006. COMMISSIONER DETERMINATION. (a) After a hearing is conducted under Section [39.005](#), the commissioner shall provide an opportunity for the agency and the school district to present oral argument to the commissioner regarding the disagreement that formed the basis of the hearing. The commissioner shall provide the agency and the district with equal time for oral argument.

(b) After hearing any oral argument presented under Subsection (a), the commissioner shall issue a written decision to the school district that contains:

- (1) findings of fact;
- (2) conclusions of law; and
- (3) sanctions, interventions, or other actions authorized by law.

(c) In determining the written decision under Subsection (b), the commissioner shall consider:

- (1) the record of the hearing conducted under Section [39.005](#);
- (2) the findings of fact and conclusions of law issued by the hearing examiner or the person conducting the hearing under Section [39.005](#)(h); and
- (3) the oral arguments presented under Subsection (a).

(d) The commissioner may accept, reject, or amend the conclusions of law issued by the hearing examiner or the person who

conducted the hearing under Section 39.005 regarding the interpretation of a provision of this code.

(e) The commissioner may not reject or amend a finding of fact issued by the hearing examiner or the person who conducted the hearing under Section 39.005, unless the commissioner, after reviewing the record, determines that a finding of fact is not supported by substantial, admissible evidence.

(f) The commissioner shall provide in writing the legal basis and reason for any amendment or rejection of a finding of fact or conclusion of law made by the hearing examiner or the person who conducted the hearing under Section 39.005.

Added by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.05, eff. September 1, 2021.

Sec. 39.007. JUDICIAL APPEAL. (a) Notwithstanding Chapter 2001, Government Code, a school district may only appeal a decision made by the commissioner under Section 39.006 in accordance with this section.

(b) A school district may appeal a decision made by the commissioner under Section 39.006 to:

(1) a district court with jurisdiction in the county in which the school district's central administrative offices are located; or

(2) a district court in Travis County, if agreed to by the school district and the commissioner.

(c) A school district must file an appeal under this section not later than 30 days after the date on which the district received the written decision of the commissioner under Section 39.006(b).

(d) The filing of an appeal under this section does not affect or stay the enforcement of the commissioner's written decision issued under Section 39.006(b).

(e) A court hearing an appeal under this section shall review the decision issued by the commissioner under Section 39.006(b) under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code, after examining:

(1) the evidentiary record of the hearing conducted under Section 39.005;

(2) the findings of fact issued by the hearing examiner or the person that conducted the hearing under Section 39.005; and

(3) any amendment or rejection of a finding of fact made by the commissioner under Section 39.006.

(f) A court hearing an appeal under this section may not take additional evidence.

(g) A court hearing an appeal under this section may review any amendment to or rejection of a finding of fact made by the commissioner. If the court determines that the amendment or rejection was not supported by substantial evidence, the court shall reject the commissioner's amended finding of fact and consider instead the original finding issued by the hearing examiner or the person who conducted the hearing under Section 39.005.

(h) Notwithstanding Section 2001.174, Government Code, the court may not reverse or remand a decision issued by the commissioner under Section 39.006(b) based on a procedural error or irregularity made by the commissioner, an agency investigator, or the hearing examiner or the person who conducted the hearing under Section 39.005, unless the court determines that the procedural error or irregularity is likely to have caused an erroneous decision by the commissioner.

Added by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.05, eff. September 1, 2021.

SUBCHAPTER B. ASSESSMENT OF ACADEMIC SKILLS

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 39.022. ASSESSMENT PROGRAM. (a) 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.

(b) It is the policy of this state that the statewide assessment program be designed to:

(1) provide assessment instruments that are as short as practicable; and

(2) minimize the disruption to the educational program.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1999, 76th Leg., ch. 397, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. 3906), Sec. 1, eff. June 14, 2019.

Sec. 39.023. ADOPTION AND ADMINISTRATION OF INSTRUMENTS.

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

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

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

(3) social studies, in grade eight;

(4) science, in grades five and eight; and

(5) 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) Except as required by federal law, 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.

(a-3) The agency may not adopt or develop a criterion-referenced assessment instrument under this section based on common core state standards as defined by Section [28.002\(b-1\)](#). This subsection does not prohibit the use of college advanced placement tests or international baccalaureate examinations as those terms are defined by Section [28.051](#).

(a-4) For purposes of Subsection (a)(1), the State Board of Education by rule may designate sections of a mathematics assessment instrument for a grade level that:

(1) may be completed with the aid of technology; and

(2) must be completed without the aid of technology.

(a-5)-(a-10) Expired.

(a-11) Before an assessment instrument adopted or developed under Subsection (a) may be administered under that subsection, the assessment instrument must, on the basis of empirical evidence, be determined to be valid and reliable by an entity that is independent of the agency and of any other entity that developed the assessment instrument.

(a-12) An assessment instrument adopted or developed under Subsection (a) may not have more than three parts. A part of an assessment instrument must be designed so that:

(1) if administered to students in grades three and

four, 85 percent of students will be able to complete that part within 60 minutes; and

(2) if administered to students in grades five through eight, 85 percent of students will be able to complete that part within 75 minutes.

(a-13) The amount of time allowed for administration of an assessment instrument adopted or developed under Subsection (a) may not exceed eight hours, and the administration may occur in multiple parts over more than one day.

(a-14) Subsections (a-12) and (a-13) do not apply to the administration of assessment instruments for a grade level if, as a result of the time restriction imposed, the assessment instrument no longer:

(1) complies with federal law; or

(2) is valid and reliable, based on findings and recommendations made by the advisory committees established under Section [39.02302](#).

(a-15) Subsections (a-12) and (a-13) do not apply to a classroom portfolio method used to assess writing performance.

(a-16) An assessment instrument under this section may not be administered to a kindergarten student except for the purpose of determining whether the student is entitled to the benefit of the Foundation School Program as provided under this code.

(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, including assessment instruments approved by the commissioner that measure growth. The assessment instruments developed or adopted under this subsection, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students under this subsection. The agency may not adopt a performance standard that indicates that a

student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee.

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

(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, but may include one or more parts that prohibit the use 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 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. An end-of-course assessment instrument may be administered in multiple parts over more than one day. 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-1) The agency shall develop any assessment instrument required under this section in a manner that allows for the

measurement of annual improvement in student achievement as required by Sections 39.034(c) and (d).

(c-2) The agency may adopt end-of-course assessment instruments for courses not listed in Subsection (c). A student's performance on an end-of-course assessment instrument adopted under this subsection is not subject to the performance requirements established under Subsection (c) or Section 39.025.

(c-3) Except as provided by Subsection (c-7) or (c-10) or as otherwise provided by this subsection, in adopting a schedule for the administration of assessment instruments under this section, the State Board of Education shall ensure that assessment instruments administered under Subsection (a) or (c) are not administered on the first instructional day of a week. On request by a school district or open-enrollment charter school, the commissioner may allow the district or school to administer an assessment instrument required under Subsection (a) or (c) on the first instructional day of a week if administering the assessment instrument on another instructional day would result in a significant administrative burden due to specific local conditions.

(c-4) To the extent practicable and subject to Section 39.024, the agency shall ensure that each end-of-course assessment instrument adopted under Subsection (c) is:

(1) developed in a manner that measures a student's performance under the college readiness standards established under Section 28.008; and

(2) validated by national postsecondary education experts for college readiness content and performance standards.

(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.

(c-6) In adopting an end-of-course assessment instrument under this section, the agency shall consider the use of an existing assessment instrument that is currently available. The agency may use an existing assessment instrument that is currently available only if the assessment instrument:

(1) is aligned with the essential knowledge and skills

of the subject being assessed; and

(2) allows for the measurement of annual improvement in student achievement as provided by Subsection (c-1).

(c-7) Subsection (c-3) does not apply to a classroom portfolio method used to assess writing performance if student performance under that method is less than 50 percent of a student's overall assessed performance in writing.

(c-8) Beginning with the 2022-2023 school year, not more than 75 percent of the available points on an assessment instrument developed under Subsection (a) or (c) may be attributable to questions presented in a multiple choice format.

(c-9) The United States history end-of-course assessment instrument adopted under Subsection (c) must include 10 questions randomly selected by the agency from the civics test administered by the United States Citizenship and Immigration Services as part of the naturalization process under the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.). The agency shall:

(1) ensure that the questions included in the assessment instrument align with the essential knowledge and skills adopted for the United States history course for which the instrument is administered; and

(2) annually issue a report:

(A) providing the questions included in the assessment instrument under this subsection and the answers to those questions; and

(B) detailing student performance on the questions included in the assessment instrument under this subsection, both statewide and disaggregated by school district and campus.

(c-10) An entity that operates a dropout recovery education program under Section [29.081\(e\)](#) may administer an assessment instrument under this section on any date selected by the entity that falls within a testing window established, in accordance with Subsection (c-3), for the administration of the assessment instrument.

(d) The commissioner may participate in multistate efforts to develop voluntary standardized end-of-course assessment

instruments. The commissioner by rule may require a school district to administer an end-of-course assessment instrument developed through the multistate efforts. The admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether any allowable modification is necessary in administering to the student an end-of-course assessment instrument.

(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.

(e-1) The agency may defer releasing assessment instrument questions and answer keys as required by Subsection (e) to the extent necessary to develop additional assessment instruments.

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

(g) The State Board of Education may adopt one appropriate, nationally recognized, norm-referenced assessment instrument in reading and mathematics to be administered to a selected sample of students in the spring. If adopted, a norm-referenced assessment instrument must be a secured test. The state may pay the costs of purchasing and scoring the adopted assessment instrument and of distributing the results of the adopted instrument to the school districts. A district that administers the norm-referenced test

adopted under this subsection shall report the results to the agency in a manner prescribed by the commissioner.

(h) The agency shall notify school districts and campuses of the results of assessment instruments administered under this section not later than the 21st day after the date the assessment instrument is administered. The school district shall disclose to each district teacher the results of assessment instruments administered to students taught by the teacher in the subject for the school year in which the assessment instrument is administered.

(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.

(j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1312, Sec. 18, eff. September 1, 2007.

(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to emergent bilingual students in grades three through five, 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 emergent bilingual student 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.

(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides

that the exempted students are administered the assessment instruments under Subsections (a) and (c) at the earliest practical date.

(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).

(o) The agency shall adopt or develop optional interim assessment instruments for each subject or course for each grade level subject to assessment under this section. A school district or open-enrollment charter school may not be required to administer interim assessment instruments adopted or developed under this subsection. An interim assessment instrument:

(1) must be:

(A) when possible, predictive of the assessment instrument for the applicable subject or course for that grade level required under this section; and

(B) administered electronically; and

(2) may not be used for accountability purposes.

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

(1) the number of questions on the assessment

instrument;

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

(3) the number of questions that must be answered correctly to achieve satisfactory performance under the college readiness performance standard as provided by Section [39.0241](#); and

(4) the corresponding scale scores.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1997, 75th Leg., ch. 767, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 397, Sec. 3, 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 8, Sec. 1, eff. April 11, 2001; Acts 2001, 77th Leg., ch. 834, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, Sec. 25, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 430, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 433, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1212, Sec. 11, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(20), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. [1031](#)), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. [1031](#)), Sec. 18, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. [3](#)), Sec. 50, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 307 (H.B. [2135](#)), Sec. 3, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. [5](#)), Sec. 31(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 590 (S.B. [906](#)), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 861 (H.B. [462](#)), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1267 (H.B. [866](#)), Sec. 1.

Acts 2013, 83rd Leg., R.S., Ch. 1267 (H.B. [866](#)), Sec. 2, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 934 (H.B. [2349](#)), Sec. 2, eff.

June 18, 2015.

Acts 2015, 84th Leg., R.S., Ch. 934 (H.B. [2349](#)), Sec. 5(1), eff. June 18, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1006 (H.B. [743](#)), Sec. 1, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. [2804](#)), Sec. 13, eff. June 19, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1282 (H.B. [1244](#)), Sec. 1, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. [3906](#)), Sec. 2, eff. September 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. [3906](#)), Sec. 3, eff. June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. [3607](#)), Sec. 21.001(10), eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. [2066](#)), Sec. 18, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1003 (H.B. [3261](#)), Sec. 4, eff. June 18, 2021.

Acts 2023, 88th Leg., R.S., Ch. 940 (S.B. [1647](#)), Sec. 2, eff. September 1, 2023.

Sec. 39.02302. ADVISORY COMMITTEES FOR ASSESSMENT INSTRUMENTS. (a) The commissioner shall appoint a technical advisory committee to advise the commissioner and the agency regarding the development of valid and reliable assessment instruments for purposes of this chapter. The members of the committee must be experts on educational assessments and psychometrics.

(b) The commissioner shall appoint an educator advisory committee to advise the commissioner and the agency regarding the development of academically appropriate assessment instruments for purposes of this chapter. The members of the committee must include experts in curriculum and instruction.

(c) The agency may compensate a member of the technical or educator advisory committee or reimburse the member for expenses incurred in the performance of duties related to the member's

service on the committee.

(d) The selection of or payment to a member of the technical or educator advisory committee is not subject to Chapter 2110 or 2254, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. 3906), Sec. 4, eff. June 14, 2019.

Sec. 39.02315. REPORTING RESULTS OF ASSESSMENT INSTRUMENTS FOR OUT-OF-STATE TRANSFER STUDENTS. (a) For assessment instruments required to be administered under Section 39.023, the agency shall adopt procedures to ensure that the results of the assessment instruments administered to students who transfer from a school district in another state to a school district in this state are reported to each school district separately from the results of assessment instruments administered to other students.

(b) The commissioner by rule shall:

(1) ensure that the results of assessment instruments administered to students who transfer from a school district in another state to a school district in this state reported under Subsection (a) are properly identified in agency systems that report and track academic performance of students; and

(2) adopt procedures for reporting and tracking data relating to students who transfer from a school district in another state to a school district in this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 934 (H.B. 2349), Sec. 3, eff. June 18, 2015.

Sec. 39.0232. USE OF END-OF-COURSE ASSESSMENT INSTRUMENT AS PLACEMENT INSTRUMENT; CERTAIN USES PROHIBITED. (a) To the extent practicable, the agency shall ensure that any high school end-of-course assessment instrument developed by the agency is developed in such a manner that the assessment instrument may be used to determine the appropriate placement of a student in a course of the same subject matter at an institution of higher education.

(b) A student's performance on an end-of-course assessment instrument may not be used:

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

purpose, including entitlement to automatic college admission under Section [51.803](#) or [51.804](#); or

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

(c) Subsection (b)(2) does not prohibit a general academic teaching institution from implementing an admission policy that takes into consideration a student's performance on an end-of-course assessment instrument in addition to other criteria.

(d) In this section, "general academic teaching institution" has the meaning assigned by Section [61.003](#).

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 5.05, eff. May 31, 2006.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 32(a), eff. June 10, 2013.

Sec. 39.0233. SPECIAL-PURPOSE QUESTIONS INCLUDED IN END-OF-COURSE ASSESSMENT INSTRUMENTS. (a) The agency, in coordination with the Texas Higher Education Coordinating Board, shall adopt a series of questions to be included in an end-of-course assessment instrument administered under Section [39.023\(c\)](#) to be used for purposes of Subchapter [F-1](#), Chapter [51](#). The questions adopted under this subsection must be developed in a manner consistent with any college readiness standards adopted under Subchapter [F-1](#), Chapter [51](#).

(b) In addition to the questions adopted under Subsection (a), the agency shall adopt a series of questions to be included in an end-of-course assessment instrument administered under Section [39.023\(c\)](#) to be used for purposes of identifying students who are likely to succeed in an advanced high school course. A school district shall notify a student who performs at a high level on the questions adopted under this subsection and the student's parent or guardian of the student's performance and potential to succeed in an advanced high school course. A school district may not require a student to perform at a particular level on the questions adopted under this subsection in order to be eligible to enroll in an

advanced high school course.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 934 , Sec. 5(2), eff. June 18, 2015.

(d) The questions adopted under this section may not be administered in a separate section of the end-of-course assessment instrument.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 9, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 51, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 4.005, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 33(a), eff. June 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 934 (H.B. 2349), Sec. 5(2), eff. June 18, 2015.

Acts 2017, 85th Leg., R.S., Ch. 842 (H.B. 2223), Sec. 2.03, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 597 (S.B. 668), Sec. 1.11, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.043, eff. September 1, 2019.

Sec. 39.0234. ELECTRONIC ADMINISTRATION OF ASSESSMENT INSTRUMENTS. (a) Each assessment instrument required under Section 39.023(a), (c), or (l) must be administered electronically, unless otherwise provided by commissioner rule.

(b) The agency may recommend, but may not require, that a school district make external keyboards available for student use with tablet devices for the electronic administration of an assessment instrument, including any portion of an assessment instrument that contains constructed response or essay items.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 9, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 52, eff.

June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. 3906), Sec. 5, eff.

June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1003 (H.B. 3261), Sec. 5, eff.

June 18, 2021.

Sec. 39.02342. PAPER ADMINISTRATION OF ASSESSMENT INSTRUMENTS ON REQUEST. (a) Subject to Subsection (c), a school district may administer an assessment instrument required under Section 39.023(a), (c), or (1) in paper format to any student whose parent, guardian, or teacher in the applicable subject area requests the assessment instrument be administered to the student in paper format.

(b) A request for the administration of an assessment instrument in paper format to a student under this section must be submitted to the school district:

(1) for a fall administration of an assessment instrument, not later than September 15 of the school year in which the assessment instrument will be administered; and

(2) for a spring administration of an assessment instrument, not later than December 1 of the school year in which the assessment instrument will be administered.

(c) The number of students enrolled at a school district who are administered an assessment instrument in paper format for any single administration under this section may not exceed three percent of the number of students enrolled in the district. On receipt of more requests for administration of an assessment instrument than the maximum number permitted under this subsection, the district shall accept the requests in the order received until the maximum number is reached. The limitation described by this subsection does not apply to a student whose admission, review, and dismissal committee determines that the administration of an assessment instrument in paper format is a necessary modification for the student.

Added by Acts 2023, 88th Leg., R.S., Ch. 311 (H.B. 1225), Sec. 1, eff. June 2, 2023.

Sec. 39.0235. TECHNOLOGY LITERACY ASSESSMENT PILOT PROGRAM.

(a) In this section, "pilot program" means the technology literacy assessment pilot program.

(b) The commissioner by rule shall establish a pilot program in which a participating school district assesses student technology proficiency.

(c) A school district may apply to the commissioner to participate in the pilot program. The commissioner shall select for participation school districts from both rural and urban areas of the state.

(d) The agency shall adopt an assessment instrument designed to assess an individual student's mastery of the essential knowledge and skills in technology to be administered by a school district participating in the pilot program. The assessment instrument adopted under this subsection must be an existing product that is currently available.

(e) Each school year, the assessment instrument adopted under Subsection (d) shall be administered in a participating school district to each student in either fifth, sixth, seventh, eighth, or ninth grade, with the grade level and time to be determined by the district.

(f) The assessment instrument adopted under Subsection (d) must:

- (1) be administered online;
- (2) be aligned with the essential knowledge and skills requirements for technology applications; and
- (3) incorporate performance-based measures, including a requirement that students perform certain technological tasks and respond to questions based on the completion of those tasks.

(g) An assessment instrument administered by a participating school district must be designed in a manner to provide the district with an automatic report of the technology literacy proficiency of a district student in a format that is compatible with the school district and state data information systems.

(h) A participating school district shall report student performance on the assessment instrument to the agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 1237 (H.B. 2503), Sec. 1, eff. June 15, 2007.

Sec. 39.0236. INTEGRATED FORMATIVE ASSESSMENT PILOT PROGRAM. (a) The agency shall establish a pilot program in which participating school districts administer to students integrated formative assessment instruments for subjects or courses for a grade level subject to assessment under Section 28.006 or 39.023.

(b) A school district may elect to participate in the pilot program.

(c) A school district's participation in the pilot program does not affect the district's obligations regarding the administration of assessment instruments required under Section 39.023.

(d) Not later than December 1 of each even-numbered year, the agency shall submit to the governor, the lieutenant governor, and the members of the legislature a report on the pilot program that includes:

(1) an analysis of whether the administration of integrated formative assessment instruments under the pilot program provided any improvement in instructional support during the preceding two school years; and

(2) a determination of the feasibility of replacing the assessment instruments required under Section 39.023 with integrated formative assessment instruments.

Added by Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. 3906), Sec. 6, eff. June 14, 2019.

Sec. 39.0237. CONSIDERATION OF PREKINDERGARTEN ASSESSMENT INSTRUMENTS PROHIBITED. Performance on an assessment instrument administered to students in prekindergarten may not be considered for any purpose under this chapter or Chapter 39A.

Added by Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. 3906), Sec. 6, eff. June 14, 2019.

Sec. 39.0238. CONSIDERATION OF RELIGIOUS HOLY DAYS IN SCHEDULING ASSESSMENT INSTRUMENTS. (a) In this section,

"religious holy day or period of observance" means a holy day or a period of holy days observed by a religion whose places of worship would be exempt from property taxation under Section 11.20, Tax Code.

(b) The board of trustees of a school district or the governing body of an open-enrollment charter school may consider the dates of religious holy days or periods of observance likely to be observed by the students enrolled in the district or school during the period set by the State Board of Education for the administration of assessment instruments required under Section 39.023 in establishing:

(1) the district's or school's calendar for that school year; and

(2) the instructional days within that period on which district or school students are administered the required assessment instruments, provided that the board of trustees or governing body may not exclude more than two instructional days from that period based solely on the occurrence of a single religious holy day or period of observance.

(c) In establishing a school calendar as described in Subsection (b), the board of trustees of a school district or the governing body of an open-enrollment charter school shall provide for alternative dates for the administration of assessment instruments required under Section 39.023 to a student who is absent from school to observe a religious holy day or period of observance on the date an assessment instrument is administered.

(d) The agency may adopt rules as necessary to ensure a student may be administered an assessment instrument on an alternative date as necessary to comply with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 988 (H.B. 1883), Sec. 1, eff. June 18, 2023.

Sec. 39.024. MEASURE OF COLLEGE READINESS. (a) In this section, "college readiness" means the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, without remediation, in an entry-level general education course for credit in that same

content area for a baccalaureate degree or associate degree program at:

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

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

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(2), eff. September 1, 2013.

(i) The agency shall gather data and conduct research to substantiate any correlation between a certain level of performance by students on end-of-course assessment instruments and success in:

(1) military service; or

(2) a workforce training, certification, or other credential program at a postsecondary educational institution that primarily offers associate degrees or certificates or credentials other than baccalaureate or advanced degrees.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 767, Sec. 2, eff. Sept. 1,

1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.19, eff. Sept. 1, 1999;

Acts 1999, 76th Leg., ch. 397, Sec. 4, eff. Sept. 1, 1999; Acts

2001, 77th Leg., ch. 1420, Sec. 4.006, eff. Sept. 1, 2001; Acts

2003, 78th Leg., ch. 1212, Sec. 12, 14, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 53, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 40, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 105(a)(5), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 78(a)(2), eff. September 1, 2013.

Sec. 39.0241. PERFORMANCE STANDARDS. (a) The commissioner shall determine the level of performance considered to be satisfactory on the assessment instruments.

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

(a-2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(a)(3), eff. September 1, 2013.

(c) Using funds appropriated for purposes of this subsection, the agency may develop study guides for the assessment instruments administered under Sections 39.023(a) and (c). To assist parents in providing assistance during the period that school is recessed for summer, each school district shall make the study guides available to parents of students who do not perform satisfactorily as determined by the commissioner under Subsection (a) on one or more parts of an assessment instrument administered under this subchapter.

(d) Using funds appropriated for purposes of this subsection, the agency shall develop and make available teacher training materials and other teacher training resources to assist teachers in enabling emergent bilingual students to meet state performance expectations. The teacher training resources shall be designed to support intensive, individualized, and accelerated instructional programs developed by school districts for emergent bilingual students.

Added by Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 53, eff.

June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 78(a)(3), eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. 2066), Sec. 19, eff. September 1, 2021.

Sec. 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 51.334 on an assessment instrument designated by the coordinating board under that section 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 coordinating board under Section 51.334 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.

(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.

(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.

(a-5) 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.

(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 under Section 28.0211 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:

(1) before September 1, 1999; or

(2) before amendment by Chapter 1312 (S.B. 1031), Acts of the 80th Legislature, Regular Session, 2007.

(c-2) A school district may administer to a student who failed to perform satisfactorily on an assessment instrument described by Subsection (c-1) 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 applicable to the student described by Subsection (c-1). 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 enrolled in the ninth grade for the first time 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 or students repeating 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 the SAT, the ACT, the Texas Success Initiative (TSI) diagnostic assessment, or the current assessment instrument or instruments administered for graduation purposes as provided by Subsection (f-1) or 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.

(f-1) The commissioner shall establish satisfactory performance levels for the SAT, the ACT, the Texas Success Initiative (TSI) diagnostic assessment, and the current assessment instrument or instruments administered for graduation purposes that are equivalent in rigor to the performance level required to be met under Subsection (a), as that subsection existed before amendment by Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session, 2007, that qualify a student subject to Subsection (f)(1) to receive a high school diploma. Notwithstanding Subsection (f), the commissioner is not required after September 1, 2017, to maintain and administer assessment instruments 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.

(f-2) A school district shall determine which assessment or assessments described by Subsection (f-1) qualify a student subject to Subsection (f)(1) to receive a high school diploma from the district.

(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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 767, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 397, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 164 (H.B. 25), Sec. 6, eff. May 27, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 54, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 307 (H.B. 2135), Sec. 4, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 35(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 36(a), eff. September 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 78(a)(5), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 5 (S.B. 149), Sec. 4, eff. May 11, 2015.

Acts 2015, 84th Leg., R.S., Ch. 934 (H.B. 2349), Sec. 4, eff. June 18, 2015.

Acts 2015, 84th Leg., R.S., Ch. 934 (H.B. 2349), Sec. 5(3), eff. June 18, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1036 (H.B. 1613), Sec. 2, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 549 (S.B. 463), Sec. 9, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 549 (S.B. 463), Sec. 10, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 549 (S.B. 463), Sec. 11, eff. September 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 722 (S.B. 1005), Sec. 1, eff. June 12, 2017.

Acts 2017, 85th Leg., R.S., Ch. 842 (H.B. 2223), Sec. 2.04, eff. June 15, 2017.

Redesignated and amended by Acts 2019, 86th Leg., R.S., Ch. 14 (S.B. 213), Sec. 8, eff. May 7, 2019.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 14 (S.B. 213), Sec. 9, eff. May 7, 2019.

Acts 2021, 87th Leg., R.S., Ch. 321 (H.B. 1603), Sec. 4, eff. June 7, 2021.

Acts 2021, 87th Leg., R.S., Ch. 910 (H.B. 4545), Sec. 5, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 404 (H.B. 1416), Sec. 4, eff. June 9, 2023.

Sec. 39.026. LOCAL OPTION. In addition to the assessment instruments adopted by the agency and administered by the State Board of Education, a school district may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level. A norm-referenced assessment instrument adopted under this section must be economical, nationally recognized, and state-approved.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 39.0261. COLLEGE PREPARATION ASSESSMENTS. (a) In addition to the assessment instruments otherwise authorized or required by this subchapter:

(1) each school year and at state cost, a school district may administer to students in the spring of the eighth grade an established, valid, reliable, and nationally

norm-referenced preliminary college preparation assessment instrument for the purpose of diagnosing the academic strengths and deficiencies of students before entrance into high school;

(2) each school year and at state cost, a school district may administer to students in the 10th grade an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument for the purpose of measuring a student's progress toward readiness for college and the workplace; and

(3) high school students in the spring of the 11th grade or during the 12th grade may select and take once, at state cost:

(A) one of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes; or

(B) the assessment instrument designated by the Texas Higher Education Coordinating Board under Section [51.334](#).

(a-1) Notwithstanding Subsection (a)(3), the commissioner by rule may allow a student to take at state cost an assessment instrument described by that subdivision if circumstances existed that prevented the student from taking the assessment instrument before the student graduated from high school.

(b) The agency shall:

(1) select and approve vendors of the specific assessment instruments administered under this section and negotiate with each approved vendor a price for each assessment instrument; and

(2) provide reimbursement to a school district in the amount negotiated under Subdivision (1) for the administration of the assessment instrument from funds appropriated for that purpose.

(c) The agency shall ensure that a school district is not reimbursed under Subsection (b) for the administration of an assessment instrument to a student to whom the assessment instrument is not actually administered. The agency may comply with this subsection by any reasonable means, including by creating a refund system under which a school district returns any payment

made for a student who registered for the administration of an assessment instrument but did not appear for the administration.

(d) A vendor that administers an assessment instrument for a district under this section shall report the results of the assessment instrument to the agency. The agency shall:

(1) include a student's results on the assessment instrument in the electronic student records system established under Section 7.010; and

(2) ensure that a student and the student's parent receive a report of the student's results on the assessment instrument.

(e) Subsection (a)(3) does not prohibit a high school student from selecting and taking, at the student's own expense, an assessment instrument described by that subdivision.

(f) The provisions of this section regarding assessment instruments administered under Subsection (a)(1) or (2) apply only if the legislature appropriates funds for those purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 11, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1006 (H.B. 743), Sec. 3, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 582 (S.B. 825), Sec. 1, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 2.034, eff. June 12, 2019.

Acts 2021, 87th Leg., R.S., Ch. 806 (H.B. 1525), Sec. 17, eff. September 1, 2021.

Sec. 39.0262. ADMINISTRATION OF DISTRICT-REQUIRED ASSESSMENT INSTRUMENTS IN CERTAIN SUBJECT AREAS. (a) In a subject area for which assessment instruments are administered under Section 39.023, a school district may not administer locally required assessment instruments designed to prepare students for state-administered assessment instruments to any student on more than 10 percent of the instructional days in any school year. A campus-level planning and decision-making committee established

under Section 11.251 may limit the administration of locally required assessment instruments under this subsection to 10 percent or a lower percentage of the instructional days in any school year.

(b) The prohibition prescribed by this section does not apply to the administration of a college preparation assessment instrument, an advanced placement test, an international baccalaureate examination, or an assessment instrument administered under Section 39.023.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 11, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 55, eff. June 19, 2009.

Sec. 39.0263. ADMINISTRATION OF DISTRICT-REQUIRED BENCHMARK ASSESSMENT INSTRUMENTS TO PREPARE STUDENTS FOR STATE-ADMINISTERED ASSESSMENT INSTRUMENTS. (a) In this section, "benchmark assessment instrument" means a district-required assessment instrument designed to prepare students for a corresponding state-administered assessment instrument.

(b) Except as provided by Subsection (c), a school district may not administer to any student more than two benchmark assessment instruments to prepare the student for a corresponding state-administered assessment instrument.

(c) The prohibition prescribed by this section does not apply to the administration of a college preparation assessment instrument, including the PSAT, the ACT-Plan, the SAT, or the ACT, an advanced placement test, an international baccalaureate examination, or an independent classroom examination designed or adopted and administered by a classroom teacher.

(d) A parent of or person standing in parental relation to a student who has special needs, as determined in accordance with commissioner rule, may request administration to the student of additional benchmark assessment instruments.

Added by Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 37(a), eff. June 10, 2013.

Sec. 39.027. EXEMPTION.

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

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

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

(A) is a recent unschooled immigrant; or

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

(3) Section 39.023(a), (b), (c), or (l) for a period of up to four years, in addition to the exemption period authorized under Subdivision (1), if the student's initial enrollment in a school in the United States was as an unschooled asylee or refugee.

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

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

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

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

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

(3) as a result of inadequate schooling outside of the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under Section 28.002, as determined by the language proficiency assessment

committee established under Section [29.063](#).

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

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

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

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

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

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

(d) Expired.

(e) The commissioner shall develop an assessment system that shall be used for evaluating the academic progress, including reading proficiency in English, of all emergent bilingual students, as defined by Section [29.052](#). A student who is exempt from the administration of an assessment instrument under Subsection (a)(1) or (2) who achieves reading proficiency in English as determined by the assessment system developed under this subsection shall be

administered the assessment instruments described by Sections 39.023(a) and (c). The performance under the assessment system developed under this subsection of students to whom Subsection (a)(1) or (2) applies shall be included in the indicator systems under Section 39.301, as applicable, the performance report under Section 39.306, and the comprehensive biennial report under Section 39.332. This information shall be provided in a manner that is disaggregated by the bilingual education or special language program, if any, in which the student is enrolled.

(f) In this section, "average daily attendance" is computed in the manner provided by Section 48.005.

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

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1997, 75th Leg., ch. 767, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 397, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 8, Sec. 2, eff. April 11, 2001; Acts 2001, 77th Leg., ch. 725, Sec. 3, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 6.007, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1340 (S.B. 1871), Sec. 4, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 56, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 38(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 413 (S.B. 377), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.044, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. 2066), Sec. 20, eff. September 1, 2021.

Sec. 39.028. COMPARISON OF STATE RESULTS TO NATIONAL RESULTS. The state assessment program shall obtain nationally comparative results for the subject areas and grade levels for which criterion-referenced assessment instruments are adopted under Section 39.023.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 39.030. CONFIDENTIALITY; PERFORMANCE REPORTS. (a) In adopting academic skills assessment instruments under this subchapter, the State Board of Education or a school district shall ensure the security of the instruments and tests in their preparation, administration, and grading. Meetings or portions of meetings held by the State Board of Education or a school district at which individual assessment instruments or assessment instrument items are discussed or adopted are not open to the public under Chapter 551, Government Code, and the assessment instruments or assessment instrument items are confidential.

(b) The results of individual student performance on

academic skills assessment instruments administered under this subchapter are confidential and may be released only in accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

(c) Repealed by Acts 2001, 77th Leg., ch. 767, Sec. 11, eff. June 13, 2001.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 2001, 77th Leg., ch. 767, Sec. 11, eff. June 13, 2001.

Sec. 39.0301. SECURITY IN ADMINISTRATION OF ASSESSMENT INSTRUMENTS. (a) The commissioner:

(1) shall establish procedures for the administration of assessment instruments adopted or developed under Section [39.023](#), including procedures designed to ensure the security of the assessment instruments; and

(2) may establish record retention requirements for school district records related to the security of assessment instruments.

(a-1) In establishing procedures under Subsection (a)(1) for the administration of assessment instruments, the commissioner shall ensure that the procedures are designed to minimize disruptions to school operations and the classroom environment. In implementing the procedures established under Subsection (a)(1) for the administration of assessment instruments, a school district shall minimize disruptions to school operations and the classroom environment.

(b) The commissioner may develop and implement statistical methods and standards for identifying potential violations of procedures established under Subsection (a) to ensure the security of assessment instruments adopted or developed under Section [39.023](#). In developing the statistical methods and standards, the

commissioner may include indicators of:

(1) potential violations that are monitored annually;
and

(2) patterns of inappropriate assessment practices that occur over time.

(c) The commissioner may establish one or more advisory committees to advise the commissioner and agency regarding the monitoring of assessment practices and the use of statistical methods and standards for identifying potential violations of assessment instrument security, including standards to be established by the commissioner for selecting school districts for investigation for a potential assessment security violation under Subsection (e). The commissioner may not appoint an agency employee to an advisory committee established under this subsection.

(d) Any document created for the deliberation of an advisory committee established under Subsection (c) or any recommendation of such a committee is confidential and not subject to disclosure under Chapter 552, Government Code. Except as provided by Subsection (e), the statistical methods and standards adopted under this section and the results of applying those methods and standards are confidential and not subject to disclosure under Chapter 552, Government Code.

(e) The agency may conduct an investigation of a school district for a potential violation of assessment instrument security in accordance with the standards described by Subsection (c). Each school year, after completing all investigations of school districts selected for investigation, the agency shall disclose the identity of each district selected for investigation and the statistical methods and standards used to select the district.

(f) At any time, the commissioner may authorize the audit of a random sample of school districts to determine the compliance of the districts with procedures established under Subsection (a). The identity of each school district selected for audit under this subsection is confidential and not subject to disclosure under Chapter 552, Government Code, except that the agency shall disclose

the identity of each district after completion of the audit.

(g) The state auditor may conduct a risk-based audit of a school district at any time to ensure the security of assessment instruments administered under Section 39.023 in the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 12, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 39, eff. June 10, 2013.

Sec. 39.0302. ISSUANCE OF SUBPOENAS. (a) During an agency investigation or audit of a school district under Section 39.0301(e) or (f), a special investigation under Section 39.003(a)(8) or (14), a compliance review under Section 21.006(k), 22.093(l), or 22.096, or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the commissioner, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state. On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(d) All information and materials subpoenaed or compiled in connection with an investigation or audit described by Subsection (a):

(1) are confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to any person other than:

(A) the commissioner or the State Board for Educator Certification, as applicable;

(B) agency employees or agents involved in the investigation, as applicable; and

(C) the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 12, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 509 (S.B. 123), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 5.003, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 2A.017, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 4.06, eff. September 1, 2021.

Sec. 39.0303. SECURE ASSESSMENT INSTRUMENTS; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person intentionally discloses the contents of any portion of a secure assessment instrument developed or administered under this subchapter, including the answer to any item in the assessment instrument; and

(2) the disclosure affects or is likely to affect the individual performance of one or more students on the assessment instrument.

(b) An offense under this section is a Class C misdemeanor.
Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 12, eff. September 1, 2007.

Sec. 39.0304. TRAINING IN ASSESSMENT INSTRUMENT ADMINISTRATION. (a) To ensure that each administration of assessment instruments under Section 39.023 is valid, reliable, and in compliance with the requirements of this subchapter, the commissioner may require training for school district employees involved in the administration of the assessment instruments,

subject to Subsection (b-1).

(b) The training under Subsection (a) may include a qualifying component to ensure that school district employees involved in the administration of assessment instruments under Section 39.023 possess the necessary skills and knowledge required to administer the assessment instruments.

(b-1) The commissioner may only require the employee at each district campus who oversees the administration of the assessment instruments to annually receive the training required under Subsection (a).

(b-2) The school district employee who oversees test administration on a district campus may, with discretion, require other district employees involved in the administration of assessment instruments to repeat the training under Subsection (a).

(c) The commissioner may adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 12, eff. September 1, 2007.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1045 (S.B. 1267), Sec. 22, eff. June 18, 2021.

Sec. 39.031. COST. The cost of preparing, administering, or grading the assessment instruments and releasing the question and answer keys under Section 39.023(e) shall be paid from amounts appropriated to the agency.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 767, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 41, eff. September 1, 2009.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1210 (S.B. 759), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1210 (S.B. 759), Sec. 2, eff. June 19, 2009.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 57, eff. June 19, 2009.

Sec. 39.034. MEASURE OF ANNUAL IMPROVEMENT IN STUDENT ACHIEVEMENT. (a) The commissioner shall determine a method by which the agency may measure annual improvement in student achievement from one school year to the next on an assessment instrument required under this subchapter.

(b) For emergent bilingual students, as defined by Section 29.052, the agency shall use a student's performance data on reading proficiency assessment instruments in English and one other language to calculate the student's progress toward dual language proficiency.

(c) The agency shall use a student's previous years' performance data on an assessment instrument required under this subchapter to determine the student's expected annual improvement. The agency shall report that expected level of annual improvement and the actual level of annual improvement achieved to the district. The report must state whether the student fell below, met, or exceeded the agency's expectation for improvement.

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

- (1) the grade five assessment instruments;
- (2) the grade eight assessment instruments; and
- (3) the end-of-course assessment instruments required under this subchapter for graduation.

(d-1) The agency shall report the necessary annual improvement required under Subsection (d) to the district. Each year, the report must state whether the student fell below, met, or exceeded the necessary target for improvement.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 895, Sec. 66(1), eff. June 19, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 895, Sec. 66(1), eff. June 19, 2009.

(g) Repealed by Acts 2009, 81st Leg., R.S., Ch. 895, Sec. 66(1), eff. June 19, 2009.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.09, eff. May 31, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 13, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 58, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 66(1), eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. 2066), Sec. 21, eff. September 1, 2021.

Sec. 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 14, eff. September 1, 2007.

Sec. 39.036. VERTICAL SCALE FOR CERTAIN ASSESSMENT INSTRUMENTS. (a) The agency shall develop a vertical scale for assessing student performance on assessment instruments administered under Sections 39.023(a)(1) and (2) in a manner that allows the agency to compare the performance of a student on the assessment instruments from one grade level to the next.

(b) The commissioner shall adopt rules necessary to implement this section.

(c) Expired.

Added by Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 14, eff. September 1, 2007.

Sec. 39.037. INTERNATIONAL ASSESSMENT INSTRUMENT PROGRAM.

(a) In this section, "program" means the international assessment instrument program.

(b) The commissioner shall establish a program under which a participating school district administers international assessment instruments to students in the district.

(c) A school district may apply to the commissioner to participate in the program. The commissioner shall select for participation school districts from both rural and urban areas of the state. If necessary, the commissioner may require a school district to participate in the program.

(d) A participating school district shall administer international assessment instruments as required by the commissioner.

(e) In administering the program, the commissioner shall:

(1) compare the performance on the international assessment instruments of students in this state with students of

the same grade level in other countries;

(2) compare the international assessment instruments with state assessment instruments and state educational goals; and

(3) provide professional development for educators in the interpretation and use of results of the international assessment instruments.

(f) Each biennium the commissioner may use funds appropriated for the Foundation School Program to provide funding for the program in an amount not to exceed \$2 million.

(g) Not later than January 1 of each odd-numbered year, the commissioner shall prepare and deliver a report describing the results of student performance on the international assessment instruments to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, and each school district.

(h) The commissioner may adopt rules necessary to administer this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 754 (H.B. 3259), Sec. 1, eff. June 15, 2007.

Sec. 39.038. RESTRICTION ON APPOINTMENTS TO ADVISORY COMMITTEES. The commissioner may not appoint a person to a committee or panel that advises the commissioner or agency regarding state accountability systems under this title or the content or administration of an assessment instrument if the person is retained or employed by an assessment instrument vendor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 40, eff. June 10, 2013.

Sec. 39.0381. AUDITING AND MONITORING PERFORMANCE UNDER CONTRACTS FOR ASSESSMENT INSTRUMENTS. (a) The agency by rule shall develop a comprehensive methodology for auditing and monitoring performance under contracts for services to develop or administer assessment instruments required by Section 39.023 to verify compliance with contractual obligations.

(b) The agency shall ensure that all new and renewed contracts described by Subsection (a) include a provision that the

agency or a designee of the agency may conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance.

(c) The agency shall adopt rules to administer this section. Added by Acts 2015, 84th Leg., R.S., Ch. 1006 (H.B. 743), Sec. 4, eff. June 19, 2015.

Sec. 39.039. PROHIBITION ON POLITICAL CONTRIBUTION OR ACTIVITY BY CERTAIN CONTRACTORS. (a) A person who is an agent of an entity that has been contracted to develop or implement assessment instruments required under Section 39.023 commits an offense if the person makes or authorizes a political contribution to or takes part in, directly or indirectly, the campaign of any person seeking election to or serving on the State Board of Education.

(b) A person who is an agent of an entity that has been contracted to develop or implement assessment instruments required under Section 39.023 commits an offense if the person serves as a member of a formal or informal advisory committee established by the commissioner, agency staff, or the State Board of Education to advise the commissioner, agency staff, or the State Board of Education regarding policies or implementation of the requirements of this subchapter.

(c) An offense under this section is a Class B misdemeanor. Added by Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 41(a), eff. June 10, 2013.

SUBCHAPTER C. ACCREDITATION

Sec. 39.051. ACCREDITATION STATUS. Accreditation of a school district is determined in accordance with this subchapter. The commissioner by rule shall determine in accordance with this subchapter the criteria for the following accreditation statuses:

- (1) accredited;
- (2) accredited-warned; and
- (3) accredited-probation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 767, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.20, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 397, Sec. 7, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1422, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 8, Sec. 3, eff. April 11, 2001; Acts 2001, 77th Leg., ch. 725, Sec. 4, 5, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 834, Sec. 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 4.007, 4.008, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, Sec. 26, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 433, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 805, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.10, eff. May 26, 2006.

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.11, eff. May 26, 2006.

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.13, eff. May 26, 2006.

Acts 2007, 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1340 (S.B. 1871), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.052. DETERMINATION OF ACCREDITATION STATUS OR PERFORMANCE RATING. (a) Each year, the commissioner shall determine the accreditation status of each school district.

(b) In determining the accreditation status of a school district, the commissioner:

(1) shall evaluate and consider:

(A) performance on achievement indicators described by Section 39.053; and

(B) performance under the financial accountability rating system developed under Subchapter D; and

(2) may evaluate and consider:

(A) the district's compliance with statutory

requirements and requirements imposed by rule of the commissioner or State Board of Education under specific statutory authority that relate to:

(i) reporting data through the Public Education Information Management System (PEIMS) or other reports required by state or federal law or court order;

(ii) the high school graduation requirements under Section 28.025; or

(iii) an item listed under Sections 7.056(e)(3)(C)-(I) that applies to the district;

(B) the effectiveness of the district's programs for special populations; and

(C) the effectiveness of the district's career and technology program.

(c) Based on a school district's performance under Subsection (b), the commissioner shall:

(1) assign each district an accreditation status; or

(2) revoke the accreditation of the district and order closure of the district.

(d) A school district's accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this subchapter.

(e) The commissioner shall notify a school district that receives an accreditation status of accredited-warned or accredited-probation or a campus that performs below a standard required under this subchapter that the performance of the district or campus is below a standard required under this subchapter. The commissioner shall require the district to notify the parents of students enrolled in the district and property owners in the district of the district's accreditation status and the implications of that accreditation status.

(f) A school district that is not accredited may not receive funds from the agency or hold itself out as operating a public school of this state.

(g) This chapter may not be construed to invalidate a diploma awarded, course credit earned, or grade promotion granted

by a school district before the commissioner revoked the district's accreditation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1999, 76th Leg., ch. 396, Sec. 2.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1514, Sec. 1, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 4.009, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1269, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.12, eff. May 26, 2006.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 14, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 7, eff. June 15, 2017.

Sec. 39.053. PERFORMANCE INDICATORS: ACHIEVEMENT. (a) The commissioner shall adopt a set of indicators of the quality of learning and achievement, including the indicators under Subsection (c). The commissioner periodically shall review the indicators for the consideration of appropriate revisions.

(a-1) The indicators adopted by the commissioner under Subsection (a) must measure and evaluate school districts and campuses with respect to:

(1) improving student preparedness for success in:
(A) subsequent grade levels; and
(B) entering the workforce, the military, or postsecondary education;

(2) reducing, with the goal of eliminating, student academic achievement differentials among students from different racial and ethnic groups and socioeconomic backgrounds; and

(3) informing parents and the community regarding campus and district performance.

(b) Performance on the achievement indicators adopted under Subsection (c) shall be compared to state-established standards. The indicators must be based on information that is

disaggregated by race, ethnicity, and socioeconomic status.

(c) School districts and campuses must be evaluated based on three domains of indicators of achievement adopted under this section that include:

(1) in the student achievement domain, indicators of student achievement that must include:

(A) for evaluating the performance of districts and campuses generally:

(i) an indicator that accounts for the results of assessment instruments required under Sections [39.023\(a\)](#), (c), and (l), as applicable for the district and campus, including the results of assessment instruments required for graduation retaken by a student, aggregated across grade levels by subject area, including:

(a) for the performance standard determined by the commissioner under Section [39.0241\(a\)](#), the percentage of students who performed satisfactorily on the assessment instruments, aggregated across grade levels by subject area; and

(b) for the college readiness performance standard as determined under Section [39.0241](#), the percentage of students who performed satisfactorily on the assessment instruments, aggregated across grade levels by subject area; and

(ii) an indicator that accounts for the results of assessment instruments required under Section [39.023\(b\)](#), as applicable for the district and campus, including the percentage of students who performed satisfactorily on the assessment instruments, as determined by the performance standard adopted by the agency, aggregated across grade levels by subject area; and

(B) for evaluating the performance of high school campuses and districts that include high school campuses, indicators that account for:

(i) students who satisfy the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Texas Higher Education Coordinating Board under Section [51.334](#) on

an assessment instrument in reading or mathematics designated by the coordinating board under that section;

(ii) students who satisfy relevant performance standards on advanced placement tests or similar assessments;

(iii) students who earn dual course credits in the dual credit courses;

(iv) students who enlist in the armed forces of the United States or the Texas National Guard;

(v) students who earn industry certifications;

(vi) students admitted into postsecondary industry certification programs that require as a prerequisite for entrance successful performance at the secondary level;

(vii) students whose successful completion of a course or courses under Section 28.014 indicates the student's preparation to enroll and succeed, without remediation, in an entry-level general education course for a baccalaureate degree or associate degree;

(viii) students who successfully met standards on a composite of indicators that through research indicates the student's preparation to enroll and succeed, without remediation, in an entry-level general education course for a baccalaureate degree or associate degree;

(ix) high school graduation rates, computed in accordance with standards and definitions adopted in compliance with the Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.) subject to the exclusions provided by Subsections (g), (g-1), (g-2), (g-3), and (g-4);

(x) students who successfully completed an OnRamps dual enrollment course;

(xi) students who successfully completed a practicum or internship approved by the State Board of Education;

(xii) students who are awarded an associate degree; and

(xiii) students who successfully completed a program of study in career and technical education;

(2) in the school progress domain, indicators for effectiveness in promoting student learning, which must include:

(A) for assessment instruments, including assessment instruments under Subdivisions (1)(A)(i) and (ii), the percentage of students who met the standard for improvement, as determined by the commissioner; and

(B) for evaluating relative performance, the performance of districts and campuses compared to similar districts or campuses; and

(3) in the closing the gaps domain, the use of disaggregated data to demonstrate the differentials among students from different racial and ethnic groups, socioeconomic backgrounds, and other factors, including:

(A) students formerly receiving special education services;

(B) students continuously enrolled; and

(C) students who are mobile.

(c-1) An indicator adopted under Subsection (c) that would measure improvements in student achievement cannot negatively affect the commissioner's review of a school district or campus if that district or campus is already achieving at the highest level for that indicator.

(c-2) The commissioner by rule shall determine a method by which a student's performance may be included in determining the performance rating of a school district or campus under Section [39.054](#) if, before the student graduates, the student:

(1) satisfies the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Texas Higher Education Coordinating Board under Section [51.334](#) on an assessment instrument designated by the coordinating board under that section; or

(2) performs satisfactorily on an assessment instrument under Section [39.023](#)(c), notwithstanding Subsection (d) of this section.

(c-3) Any standard for improvement determined by the commissioner as described by Subsection (c)(2)(A) must allow for appropriately crediting a student for growth if the student

performs at the highest achievement standard in the previous and current school year.

(d) For purposes of Subsection (c), the commissioner by rule shall determine the period within which a student must retake an assessment instrument for that assessment instrument to be considered in determining the performance rating of the district under Section 39.054.

(d-1) In aggregating results of assessment instruments across grade levels by subject in accordance with Subsection (c)(1)(A)(i), the performance of a student enrolled below the high school level on an assessment instrument required under Section 39.023(c) is included with results relating to other students enrolled at the same grade level.

(e) For purposes of Subsection (c)(3)(A), a student formerly receiving special education services means a student whose enrollment information:

(1) for the preceding school year, as reported through the Public Education Information Management System (PEIMS), indicates the student was enrolled at the campus and was participating in a special education program; and

(2) for the current school year, as reported through the Public Education Information Management System (PEIMS) and as reported on assessment instruments administered to the student under Section 39.023, indicates the student is enrolled at the campus and is not participating in a special education program.

(f) Annually, the commissioner shall define the state standard for the current school year for each achievement indicator adopted under this section. In consultation with educators, parents, and business and industry representatives, as necessary, the commissioner shall establish and modify standards to continuously improve student performance to achieve the goals of eliminating achievement gaps based on race, ethnicity, and socioeconomic status and to ensure this state is a national leader in preparing students for postsecondary success.

(g) In computing dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner may not consider as a dropout a student whose failure

to attend school results from:

(1) the student's expulsion under Section 37.007; and

(2) as applicable:

(A) adjudication as having engaged in delinquent conduct or conduct indicating a need for supervision, as defined by Section 51.03, Family Code; or

(B) conviction of and sentencing for an offense under the Penal Code.

(g-1) In computing dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner shall exclude:

(1) students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate;

(2) students who were previously reported to the state as dropouts, including a student who is reported as a dropout, reenrolls, and drops out again, regardless of the number of times of reenrollment and dropping out;

(3) students in attendance who are not in membership for purposes of average daily attendance;

(4) students whose initial enrollment in a school in the United States in grades 7 through 12 was as an unschooled asylee or refugee as defined by Section 39.027(a-1);

(5) students who are detained at a county pre-adjudication or post-adjudication juvenile detention facility and:

(A) in the district exclusively as a function of having been detained at the facility but are otherwise not students of the district in which the facility is located; or

(B) provided services by an open-enrollment charter school exclusively as the result of having been detained at the facility;

(6) students who are incarcerated in state jails and federal penitentiaries as adults and as persons certified to stand trial as adults; and

(7) students who have suffered a condition, injury, or illness that requires substantial medical care and leaves the

student:

(A) unable to attend school; and

(B) assigned to a medical or residential treatment facility.

(g-2) In computing completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner shall exclude students who:

(1) are at least 18 years of age as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission and have satisfied the credit requirements for high school graduation;

(2) have not completed their individualized education program under 19 T.A.C. Section 89.1070(b)(2) and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); and

(3) are enrolled and receiving individualized education program services.

(g-3) In the computation of dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), a student who is released from a juvenile pre-adjudication secure detention facility or juvenile post-adjudication secure correctional facility and fails to enroll in school or a student who leaves a residential treatment center after receiving treatment for fewer than 85 days and fails to enroll in school may not be considered to have dropped out from the school district or campus serving the facility or center unless that district or campus is the one to which the student is regularly assigned. The agency may not limit an appeal relating to dropout computations under this subsection.

(g-4) For purposes of the computation of dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner shall exclude a student who was reported as having dropped out of school under Section [48.009\(b-4\)](#), and the student may not be considered to have dropped out from the school district or campus in which the student was last enrolled.

(h) Each school district shall cooperate with the agency in

determining whether a student is a dropout for purposes of accreditation and evaluating performance by school districts and campuses under this chapter.

(i) Each school district shall submit the data required for the indicators adopted under this section to the commissioner.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1999, 76th Leg., ch. 510, Sec. 2, eff. Sept. 1,

1999; Acts 1999, 76th Leg., ch. 1417, Sec. 2, eff. June 19, 1999;

Acts 2001, 77th Leg., ch. 725, Sec. 6, eff. June 13, 2001; Acts

2001, 77th Leg., ch. 834, Sec. 11, eff. Sept. 1, 2001; Acts 2001,

77th Leg., ch. 1420, Sec. 4.010, eff. Sept. 1, 2001; Acts 2003,

78th Leg., ch. 1055, Sec. 24, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 307 (H.B. 2135), Sec. 5, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 42(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 43(a), eff. June 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 1, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 2, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 22, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1222 (S.B. 1867), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 8, eff. June 15, 2017.

Transferred, redesignated and amended from Education Code, Section 39.054(f) by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 12, eff. June 15, 2017.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 842 (H.B. 2223), Sec. 2.05, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 890 (H.B. [3075](#)), Sec. 1, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1088 (H.B. [3593](#)), Sec. 4, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. [4170](#)), Sec. 5.022, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. [4170](#)), Sec. 5.023, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 719 (H.B. [330](#)), Sec. 1, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1060 (H.B. [1051](#)), Sec. 6, eff. June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 150 (H.B. [773](#)), Sec. 1, eff. May 28, 2021.

Acts 2021, 87th Leg., R.S., Ch. 205 (H.B. [1147](#)), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 806 (H.B. [1525](#)), Sec. 18, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. [3607](#)), Sec. 5.019(b), eff. September 1, 2021.

Sec. 39.054. METHODS AND STANDARDS FOR EVALUATING PERFORMANCE. (a) Except as provided by Subsection (a-4), the commissioner shall adopt rules to evaluate school district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F. In addition to the overall performance rating, the commissioner shall assign each district and campus a separate domain performance rating of A, B, C, D, or F for each domain under Section [39.053](#)(c). An overall or domain performance rating of A reflects exemplary performance. An overall or domain performance rating of B reflects recognized performance. An overall or domain performance rating of C reflects acceptable performance. An overall or domain performance rating of D reflects performance that needs improvement. An overall or domain performance rating of F reflects unacceptable performance. A district may not receive an overall or domain performance rating of A if the district includes any campus with a

corresponding overall or domain performance rating of D or F. If a school district has been approved under Section 39.0544 to assign campus performance ratings and the commissioner has not assigned a campus an overall performance rating of D or F, the commissioner shall assign the campus an overall performance rating based on the school district assigned performance rating under Section 39.0544.

(a-1) For purposes of assigning an overall performance rating for a district or campus under Subsection (a), the commissioner shall:

(1) consider either the district's or campus's performance rating under the student achievement domain under Section 39.053(c)(1) or the school progress domain under Section 39.053(c)(2), whichever performance rating is higher, unless the district or campus received a performance rating of F in either domain, in which case the district or campus may not be assigned a performance rating higher than a B for the composite for the two domains; and

(2) attribute not less than 30 percent of the performance rating to the closing the gaps domain under Section 39.053(c)(3).

(a-2) The commissioner by rule may adopt procedures to ensure that a repeated performance rating of D or F or unacceptable in one domain, particularly performance that is not significantly improving, is reflected in the overall performance rating of a district or campus under this section or a campus under Section 39.0544 and is not compensated for by a performance rating of A, B, or C in another domain.

(a-3) Not later than August 15 of each year, the following information shall be made publicly available as provided by rules adopted under this section:

(1) the performance ratings for each school district and campus; and

(2) if applicable, the number of consecutive school years of unacceptable performance ratings for each district and campus.

(a-4) Notwithstanding any other law, the commissioner may assign a school district or campus an overall performance rating of

"Not Rated" if the commissioner determines that the assignment of a performance rating of A, B, C, D, or F would be inappropriate because:

(1) the district or campus is located in an area that is subject to a declaration of a state of disaster under Chapter [418](#), Government Code, and due to the disaster, performance indicators for the district or campus are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus;

(2) the district or campus has experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators is not possible;

(3) the number of students enrolled in the district or campus is insufficient to accurately evaluate the performance of the district or campus; or

(4) for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect quality of learning and achievement for the district or campus.

(a-5) Notwithstanding any other law, an overall performance rating of "Not Rated" is not included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings for purposes of any provision of this code.

(b) For purposes of assigning school districts and campuses an overall and a domain performance rating under Subsection (a), the commissioner shall ensure that the method used to evaluate performance is implemented in a manner that provides the mathematical possibility that all districts and campuses receive an A rating.

(b-1) Consideration of the effectiveness of district programs under Section [39.052](#)(b)(2)(B) or (C):

(1) must:

(A) be based on data collected through the Public Education Information Management System (PEIMS) for purposes of accountability under this chapter; and

(B) include the results of assessments required

under Section 39.023; and

(2) may be based on the results of a special investigation conducted under Section 39.003.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 19(1), eff. September 1, 2017.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1094 , Sec. 22, eff. June 19, 2015.

(d-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1094 , Sec. 22, eff. June 19, 2015.

(e) Each annual performance review under this section shall include an analysis of the achievement indicators adopted under Section 39.053, including Subsection (c) of that section, to determine school district and campus performance in relation to standards established for each indicator.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 44(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 45(a), eff. June 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 4, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 5, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 22, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 10, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 11, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 19(1), eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.06, eff. September 1, 2021.

Sec. 39.0541. ADOPTION OF INDICATORS AND STANDARDS. The commissioner may adopt indicators and standards under this subchapter at any time during a school year before the evaluation of a school district or campus.

Added by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 13, eff. June 15, 2017.

Sec. 39.0542. EXPLANATORY MATERIALS FOR ACCOUNTABILITY RATING SYSTEM. (a) Each school year, the commissioner shall provide each school district a document in a simple, accessible format that explains the accountability performance measures, methods, and procedures that will be applied for that school year in assigning each school district and campus a performance rating under Section 39.054.

(b) The document provided under Subsection (a) must be provided in a format that a school district is able to easily distribute to parents of students enrolled in the district and other interested members of the public.

(c) The commissioner, in collaboration with interested stakeholders, shall develop standardized language for each domain that does not exceed 250 words and that clearly describes the annual status of a district and campus relating to district and campus performance on the indicators used for that domain to determine the letter performance rating assigned to a district and campus.

Added by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 14, eff. June 15, 2017.

For expiration of Subsections (b-1), (b-2), and (b-3), see
Subsection (b-3).

Sec. 39.0543. PERFORMANCE RATING REQUIRING INTERVENTION OR OTHER ACTION. (a) A reference in law to an acceptable performance rating or acceptable performance includes an overall or domain performance rating of A, B, or C or performance that is exemplary, recognized, or acceptable. A reference in law to an unacceptable performance rating or unacceptable performance includes an overall or domain performance rating of F. For the purposes of public reporting requirements, an overall or domain performance rating of

D shall be referred to as performance that needs improvement.

(b) A reference in law to an acceptable performance rating or acceptable performance for a school district, open-enrollment charter school, district campus, or charter school campus includes an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district, charter school, district campus, or charter school campus:

(1) has not previously received more than one overall performance rating of D; or

(2) has not received an overall performance rating of F.

(b-1) For the purposes of this section, an overall performance rating issued in a previous school year for a school district, open-enrollment charter school, district campus, or charter school campus of:

(1) met standard, academically acceptable, recognized, exemplary, A, B, or C is considered to be a performance rating of C or higher; and

(2) performance that needs improvement, academically unacceptable, or F is considered to be a rating of F.

(b-2) For purposes of determining whether a reference in law to an acceptable performance rating or acceptable performance includes an overall performance rating of D under Subsection (b), a performance rating of D assigned to a school district, open-enrollment charter school, district campus, or charter school campus prior to the 2018-2019 school year shall not be considered.

(b-3) Subsections (b-1) and (b-2) and this subsection expire September 1, 2027.

(c) A reference in law to an unacceptable performance rating or unacceptable performance includes a performance rating of D if the rating does not satisfy Subsection (b).

(d) For purposes of Subsection (b), a school district, open-enrollment charter school, district campus, or charter school campus that has never received an overall performance rating shall be considered to have previously received an overall performance rating of C or higher.

Added by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. [1365](#)), Sec.

2.07, eff. September 1, 2021.

Sec. 39.0544. LOCAL ACCOUNTABILITY SYSTEM. (a) The commissioner shall adopt rules regarding the assignment of campus performance ratings by school districts and open-enrollment charter schools. The rules:

(1) must require a district or school, in assigning an overall performance rating for a campus, to incorporate:

(A) domain performance ratings assigned by the commissioner under Section 39.054; and

(B) performance ratings based on locally developed domains or sets of accountability measures;

(2) may permit a district or school to assign weights to each domain or set of accountability measures described in Subdivision (1), as determined by the district or school, provided that the domains specified in Subdivision (1)(A) must in the aggregate account for at least 50 percent of the overall performance rating;

(3) must require that each locally developed domain or set of accountability measures:

(A) contains levels of performance that allow for differentiation, with assigned standards for achieving the differentiated levels;

(B) provides for the assignment of a letter grade of A, B, C, D, or F; and

(C) meets standards for reliability and validity;

(4) must require that calculations for overall performance ratings and each locally developed domain or set of accountability measures be capable of being audited by a third party;

(5) must require that a district or school produce a campus score card that may be displayed on the agency's website; and

(6) must require that a district or school develop and make available to the public an explanation of the methodology used to assign performance ratings under this section.

(b) The commissioner shall develop a process to approve a

request by a school district or open-enrollment charter school to assign campus performance ratings in accordance with this section. Under that process, a district or school must obtain approval of a local accountability plan submitted by the district or school to the agency. A plan may be approved only if:

(1) after review, the agency determines the plan meets the minimum requirements under this section and agency rule;

(2) at the commissioner's discretion, an audit conducted by the agency verifies the calculations included in the plan; and

(3) subject to Subsection (d), a review panel appointed under Subsection (c) approves the plan.

(c) The commissioner shall appoint a review panel for purposes of Subsection (b)(3) that includes a majority of members who are superintendents or members of the board of trustees or governing body of school districts or open-enrollment charter schools with approved local accountability plans.

(d) The requirement under Subsection (b)(3) applies only after performance ratings are issued in August 2019 and only if at least 10 school districts or open-enrollment charter schools have obtained approval of locally developed accountability plans.

(e) A school district or open-enrollment charter school authorized under this section to assign campus performance ratings shall evaluate the performance of each campus as provided by this section and assign each campus a performance rating of A, B, C, D, or F for overall performance and for each locally developed domain or set of accountability measures. Not later than a date established by the commissioner, the district or school shall:

(1) report the performance ratings to the agency; and

(2) make the performance ratings available to the public as provided by commissioner rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 14, eff. June 15, 2017.

For expiration of this section, see Subsection (g).

Sec. 39.0545. ALTERNATIVE METHODS AND STANDARDS FOR EVALUATING PERFORMANCE FOR 2020-2021 SCHOOL YEAR. (a) This

section applies to a campus:

(1) that meets the participation requirements for all students in all subject areas for the annual measurement of achievement under Section 1111, Every Student Succeeds Act (20 U.S.C. Section 6311(c)(4)(E)); and

(2) to which the most recent performance rating assigned, other than a "Not Rated" rating, is a D, F, or performance that needs improvement.

(b) Notwithstanding any other law, the commissioner shall adopt rules to develop and implement alternative methods and standards for evaluating the performance for the 2020-2021 school year of a campus to which this section applies. The rules adopted under this section must evaluate a campus under the domains of indicators of achievement listed in Sections 39.053(c)(1) and (2).

(c) The commissioner shall review a campus to which this section applies under the alternative methods and standards adopted under Subsection (b) on the request of the school district in which the campus is located made by the deadline established by commissioner rule.

(d) An acceptable performance rating assigned under the alternative methods and standards adopted by the commissioner under Subsection (b) is considered a break in consecutive school years of unacceptable performance ratings under this code.

(e) If the commissioner determines that the campus would not be assigned an acceptable performance rating, the commissioner shall instead assign the campus a rating of "Not Rated."

(f) This section does not apply to an intervention ordered on the basis of consecutive school years of unacceptable performance ratings accrued before the effective date of this section.

(g) This section expires September 1, 2027.

Added by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.08, eff. September 1, 2021.

For expiration of this section, see Subsection (d).

Sec. 39.0546. COVID-19 RECOVERY ACCOUNTABILITY FOR 2021-2022 SCHOOL YEAR. (a) Notwithstanding any other law, the

commissioner shall assign to a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under Section 39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher.

(b) Regardless of the rating assigned under this section, if the commissioner would have otherwise assigned a campus an unacceptable performance rating, the campus is considered to be a campus assigned an unacceptable performance rating for purposes of determining a student's eligibility for a public education grant under Section 29.202.

(c) Notwithstanding any other law, the commissioner shall take an action described by Section 39A.111(1) or (2) if a campus:

(1) is not assigned an overall performance rating of C or higher for the 2021-2022 school year; and

(2) has been assigned an unacceptable performance rating for five or more school years prior to the 2021-2022 school year.

(d) This section expires September 1, 2028.

Added by Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.08, eff. September 1, 2021.

Sec. 39.0548. EVALUATING DROPOUT RECOVERY SCHOOLS.

(a) For purposes of evaluating performance under Section 39.053(c), the commissioner shall designate as a dropout recovery school a school district or an open-enrollment charter school or a campus of a district or of an open-enrollment charter school:

(1) that:

(A) serves students in grades 9 through 12 and has an enrollment of which at least 60 percent of the students are 16 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; or

(B) applies for and receives designation as a dropout recovery school in accordance with commissioner rule; and

(2) that meets the eligibility requirements for and is

registered under alternative education accountability procedures adopted by the commissioner.

(b) Notwithstanding Section 39.053(c)(1)(B)(ix), the commissioner shall use the alternative completion rate under this subsection to determine the graduation rate indicator under Section 39.053(c)(1)(B)(ix) for a dropout recovery school. The alternative completion rate shall be the ratio of the total number of students who graduate, continue attending school into the next academic year, or receive a high school equivalency certificate to the total number of students in the longitudinal cohort of students.

(c) Notwithstanding Section 39.053(c)(1)(B)(ix), in determining the performance rating under Section 39.054 of a dropout recovery school, the commissioner shall include any student described by Section 39.053(g-1) who graduates or receives a high school equivalency certificate.

(d) Notwithstanding Section 39.053(c), for purposes of evaluating a dropout recovery school under the accountability procedures adopted by the commissioner to determine the performance rating of the school under Section 39.054, only the best result from the primary administration or any retake of an assessment instrument administered to a student in the school year evaluated may be considered.

Added by Acts 2013, 83rd Leg., R.S., Ch. 167 (S.B. 1538), Sec. 1, eff. May 24, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 6, eff. June 19, 2015.

Redesignated from Education Code, Section 39.0545 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(11), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 15, eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 93 (S.B. 879), Sec. 3, eff. May 24, 2021.

Sec. 39.055. STUDENT ORDERED BY A JUVENILE COURT OR STUDENT IN RESIDENTIAL FACILITY NOT CONSIDERED FOR ACCOUNTABILITY PURPOSES. Notwithstanding any other provision of this code except to the extent otherwise provided under Section 39.053(g-3), for purposes of determining the performance of a school district, campus, or open-enrollment charter school under this chapter, a student ordered by a juvenile court into a residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity or any student who is receiving treatment in a residential facility is not considered to be a student of the school district in which the program or facility is physically located or of an open-enrollment charter school, as applicable. The performance of such a student on an assessment instrument or other achievement indicator adopted under Section 39.053 or reporting indicator adopted under Section 39.301 shall be determined, reported, and considered separately from the performance of students attending a school of the district in which the program or facility is physically located or an open-enrollment charter school, as applicable.

Added by Acts 2001, 77th Leg., ch. 834, Sec. 12, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 201, Sec. 27, 61(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 903, Sec. 1, 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 517 (S.B. 306), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 15, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 16, eff. June 15, 2017.

Sec. 39.0552. MEMORANDUM OF UNDERSTANDING BETWEEN SCHOOL DISTRICT AND STATE HOSPITAL FOR ACCOUNTABILITY PURPOSES. A memorandum of understanding between a school district and a state

hospital under which the district provides educational services to a student who resides in the state hospital must provide that the school district include the performance of the student on an assessment instrument or other achievement indicator adopted under Section 39.053 or a reporting indicator adopted under Section 39.301 in determining the performance of that school district.

Added by Acts 2019, 86th Leg., R.S., Ch. 1109 (H.B. 2210), Sec. 1, eff. June 14, 2019.

Sec. 39.056. MONITORING REVIEWS. (a) The commissioner may direct the agency to conduct monitoring reviews and random on-site visits of a school district at any time as authorized by Section 7.028.

(b) The commissioner shall determine the frequency of monitoring reviews by the agency according to:

(1) annual comprehensive analyses of student performance and equity in relation to the achievement indicators adopted under Section 39.053;

(2) reviews of fiscal reports and other fiscal data as set forth in Section 44.010; or

(3) comprehensive analyses of financial accountability standards under Subchapter D.

(c) In conducting a monitoring review, the agency may obtain information from administrators, other district employees, parents of students enrolled in the school district, and other persons as necessary. The commissioner shall adopt rules for:

(1) obtaining information from parents and using that information in the monitoring review report; and

(2) obtaining information from other district employees in a manner that prevents a district or campus from screening the information.

(d) The agency shall give written notice to the superintendent and the board of trustees of a school district of any impending monitoring review.

(e) The agency shall report in writing to the superintendent and president of the board of trustees of the school district and shall make recommendations concerning any necessary improvements

or sources of aid such as regional education service centers.

(f) A district which takes action with regard to the recommendations provided by the agency as prescribed by Subsection (e) shall make a reasonable effort to seek assistance from a third party in developing an action plan to improve district performance using improvement techniques that are goal oriented and research based.

(g) A monitoring review may include desk reviews and on-site visits, including random on-site visits.

(h) The commissioner may at any time convert a monitoring review to a special investigation under Section 39.003, provided the commissioner promptly notifies the school district of the conversion.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 47, eff. June 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 7, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 16, eff. June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 4.07, eff. September 1, 2021.

Sec. 39.059. DATA TRANSPARENCY. (a) In this section:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

(b) Before the initial release of academic accountability ratings for a school year:

(1) the coordinating board shall provide to each school district a copy of all source data as submitted to the coordinating board by an institution of higher education that the coordinating board provides to the agency to consider in:

(A) determining the district's accreditation

status under Section 39.052; or

(B) assigning performance ratings for the district or the district's campuses under Section 39.054; and

(2) the agency shall provide to each school district a copy of all source data as submitted to the agency by an entity other than the district that the agency considers in:

(A) determining the district's accreditation status under Section 39.052; or

(B) assigning performance ratings for the district or the district's campuses under Section 39.054.

Added by Acts 2019, 86th Leg., R.S., Ch. 870 (H.B. 3007), Sec. 1, eff. September 1, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 871 (H.B. 3011), Sec. 1, eff. September 1, 2019.

Reenacted and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 5.015, eff. September 1, 2021.

SUBCHAPTER D. FINANCIAL ACCOUNTABILITY

Sec. 39.081. DEFINITIONS. In this subchapter:

(1) "Parent" includes a guardian or other person having lawful control of a student.

(2) "System" means a financial accountability rating system developed under this subchapter.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.082. DEVELOPMENT AND IMPLEMENTATION. (a) The commissioner shall, in consultation with the comptroller, develop and implement separate financial accountability rating systems for school districts and open-enrollment charter schools in this state that:

(1) distinguish among school districts and distinguish among open-enrollment charter schools, as applicable, based on levels of financial performance;

(2) include procedures to:

(A) provide additional transparency to public education finance; and

(B) enable the commissioner and school district and open-enrollment charter school administrators to provide meaningful financial oversight and improvement; and

(3) include processes for anticipating the future financial solvency of each school district and open-enrollment charter school, including analysis of district and school revenues and expenditures for preceding school years.

(b) The system must include uniform indicators adopted by commissioner rule by which to measure the financial management performance and future financial solvency of a district or open-enrollment charter school. In adopting indicators under this subsection, the commissioner shall assign a point value to each indicator to be used in a scoring matrix developed by the commissioner. Any reference to a teacher in an indicator adopted by the commissioner under this subsection means a classroom teacher.

(c) The system may not include an indicator under Subsection (b) or any other performance measure that:

(1) requires a school district to spend at least 65 percent or any other specified percentage of district operating funds for instructional purposes; or

(2) lowers the financial management performance rating of a school district for failure to spend at least 65 percent or any other specified percentage of district operating funds for instructional purposes.

(c-1) The system may not include an indicator under Subsection (b) or any other performance measure that penalizes a school district for failure to collect the amount of taxes equal to the total amount of tax refunds provided under Section [26.1115\(c\)](#), Tax Code.

(d) The commissioner shall evaluate indicators adopted under Subsection (b) at least once every three years.

(e) Under the financial accountability rating system developed under this section, each school district or open-enrollment charter school, as applicable, shall be assigned a

financial accountability rating. In adopting rules under this section, the commissioner, in consultation with the comptroller, shall determine the criteria for each designated performance rating.

(e-1) The financial performance of a charter school operated by a public institution of higher education under Subchapter D or E, Chapter 12, shall be evaluated using only the indicators adopted under this section determined by the commissioner by rule as appropriate to accurately measure the financial performance of such charter schools.

(f) A district or open-enrollment charter school shall receive the lowest rating under the system if the district or school fails to achieve a satisfactory rating on:

(1) an indicator adopted under Subsection (b) relating to financial management or solvency that the commissioner determines to be critical; or

(2) a category of indicators that suggest trends leading to financial distress as determined by the commissioner.

(g) Before assigning a final rating under the system, the commissioner shall assign each district or open-enrollment charter school a preliminary rating. A district or school may submit additional information to the commissioner relating to any indicator on which performance was considered unsatisfactory. The commissioner shall consider any additional information submitted by a district or school before assigning a final rating. If the commissioner determines that the additional information negates the concern raised by the indicator on which performance was considered unsatisfactory, the commissioner may not penalize the district or school on the basis of the indicator.

(h) The commissioner shall adopt rules for the implementation of this section.

(i) Not later than August 8 of each year, the financial accountability rating of each school district and open-enrollment charter school under the financial accountability rating system developed under this section shall be made publicly available as provided by rules adopted under this section.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 49(a), eff. June 10, 2013.

Acts 2017, 85th Leg., R.S., Ch. 756 (S.B. 1837), Sec. 1, eff. June 12, 2017.

Acts 2021, 87th Leg., 2nd C.S., Ch. 12 (S.B. 8), Sec. 5, eff. January 1, 2022.

Sec. 39.0821. COMPTROLLER REVIEW OF RESOURCE ALLOCATION PRACTICES. (a) The comptroller shall identify school districts and campuses that use resource allocation practices that contribute to high academic achievement and cost-effective operations. In identifying districts and campuses under this section, the comptroller shall:

(1) evaluate existing academic accountability and financial data by integrating the data;

(2) rank the results of the evaluation under Subdivision (1) to identify the relative performance of districts and campuses; and

(3) identify potential areas for district and campus improvement.

(b) In reviewing resources allocation practices of districts and campuses under this section, the comptroller shall ensure resources are being used for the instruction of students by evaluating:

(1) the operating cost for each student;

(2) the operating cost for each program; and

(3) the staffing cost for each student.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.0823. PROJECTED DEFICIT. (a) If the commissioner, based on the indicators adopted under Section 39.082 or other relevant information, projects a deficit for a school district or open-enrollment charter school general fund within the following

three school years, the agency shall provide the district or school interim financial reports, including projected revenues and expenditures, to evaluate the current budget status of the district or school.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(b)(5), eff. September 1, 2014.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 211, Sec. 78(b)(5), eff. September 1, 2014.

(d) The agency may require a district or open-enrollment charter school to submit additional information needed to produce a financial report under Subsection (a). If a district or school fails to provide information requested under this subsection or if the commissioner determines that the information submitted by a district or school is unreliable, the commissioner may order the district or school to acquire professional services as provided by Section [39A.902](#).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. [3](#)), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. [5](#)), Sec. 50(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. [5](#)), Sec. 78(b)(5), eff. September 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 21.003(22), eff. September 1, 2017.

Sec. 39.0824. CORRECTIVE ACTION PLAN. (a) A school district or open-enrollment charter school assigned the lowest rating under Section [39.082](#) shall submit to the commissioner a corrective action plan to address the financial weaknesses of the district or school. A corrective action plan must identify the specific areas of financial weaknesses, such as financial weaknesses in transportation, curriculum, or teacher development, and include strategies for improvement.

(b) The commissioner may impose appropriate sanctions under Chapter [39A](#) against a district or school failing to submit or implement a corrective action plan required under Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 51(a), eff. June 10, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(23), eff. September 1, 2017.

Sec. 39.083. REPORTING. (a) The commissioner shall develop, as part of the system, a reporting procedure under which:

(1) each school district is required to prepare and distribute an annual financial management report; and

(2) the public is provided an opportunity to comment on the report at a hearing.

(b) The annual financial management report must include:

(1) a description of the district's financial management performance based on a comparison, provided by the agency, of the district's performance on the indicators adopted under Section 39.082(b) to:

(A) state-established standards; and

(B) the district's previous performance on the indicators; and

(2) any descriptive information required by the commissioner.

(c) The report may include:

(1) information concerning the district's:

(A) financial allocations;

(B) tax collections;

(C) financial strength;

(D) operating cost management;

(E) personnel management;

(F) debt management;

(G) facility acquisition and construction management;

(H) cash management;

(I) budgetary planning;

(J) overall business management;

(K) compliance with rules; and

(L) data quality; and

(2) any other information the board of trustees determines to be necessary or useful.

(d) The board of trustees of each school district shall hold a public hearing on the report. The board shall give notice of the hearing to owners of real property in the district and to parents of district students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the district; and

(2) through electronic mail to media serving the district.

(e) After the hearing, the report shall be disseminated in the district in the manner prescribed by the commissioner.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 52(a), eff. June 10, 2013.

Sec. 39.085. RULES. The commissioner shall adopt rules as necessary for the implementation and administration of this subchapter.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.086. SOFTWARE STANDARDS. (a) The Department of Information Resources, in cooperation with the commissioner, shall adopt performance and interoperability standards for software used by school districts for financial accounting or attendance reporting.

(b) Standards adopted under this section must ensure that the software will enable a school district to share and report information in a timely manner for purposes of financial management, operational decision-making, and transparency of district operations to the public.

(c) The Department of Information Resources:

(1) shall include compliance with standards adopted under this section as a requirement in any solicitation for software anticipated to be used for a purpose described by Subsection (a);

(2) shall require a vendor awarded a contract in response to a solicitation described by Subdivision (1) to certify that the software complies with the standards adopted under this section; and

(3) may negotiate state contract pricing for software that complies with the standards adopted under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 2.06, eff. September 1, 2009.

Transferred and redesignated from Education Code, Section 39.205 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(6), eff. September 1, 2011.

SUBCHAPTER E. ACCREDITATION INTERVENTIONS AND SANCTIONS

Without reference to the amendment of this section, this section was repealed by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 5.025(b), eff. September 1, 2019.

Sec. 39.102. INTERVENTIONS AND SANCTIONS FOR DISTRICTS.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 925 (S.B. 1566), Sec. 15

(a) If a school district does not satisfy the accreditation criteria under Section 39.052, the academic performance standards under Section 39.053 or 39.054, or any financial accountability standard as determined by commissioner rule, or if considered appropriate by the commissioner on the basis of a special accreditation investigation under Section 39.057, the commissioner shall take any of the following actions to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees

of the district for the purpose of notifying the public of the insufficient performance, the improvements in performance expected by the agency, and the interventions and sanctions that may be imposed under this section if the performance does not improve;

(3) order the preparation of a student achievement improvement plan that addresses each academic achievement indicator under Section 39.053(c) for which the district's performance is insufficient, the submission of the plan to the commissioner for approval, and implementation of the plan;

(4) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees of the district and the superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;

(5) arrange a monitoring review of the district;

(6) appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees or the superintendent;

(7) appoint a conservator to oversee the operations of the district;

(8) appoint a management team to direct the operations of the district in areas of insufficient performance or require the district to obtain certain services under a contract with another person;

(9) authorize the district to enter into a memorandum of understanding with an institution of higher education that provides for the assistance of the institution of higher education in improving the district's performance;

(10) if a district has a current accreditation status of accredited-warned or accredited-probation, fails to satisfy any standard under Section 39.054(e), or fails to satisfy financial accountability standards as determined by commissioner rule, appoint a board of managers to exercise the powers and duties of the board of trustees;

(11) if for two consecutive school years, including the current school year, a district has received an accreditation status of accredited-warned or accredited-probation, has failed to

satisfy any standard under Section 39.054(e), or has failed to satisfy financial accountability standards as determined by commissioner rule, revoke the district's accreditation and:

(A) order closure of the district and annex the district to one or more adjoining districts under Section 13.054; or

(B) in the case of a home-rule school district or open-enrollment charter school, order closure of all programs operated under the district's or school's charter; or

(12) order the use of the board improvement and evaluation tool as provided by Section 11.182.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 9, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 17, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.002(1), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 823 (H.B. 1553), Sec. 1, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 925 (S.B. 1566), Sec. 15, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 5.025(b), eff. September 1, 2019.

SUBCHAPTER F. PROCEDURES FOR CHALLENGE OF ACCOUNTABILITY

DETERMINATION

Sec. 39.151. REVIEW BY COMMISSIONER: ACCOUNTABILITY DETERMINATION. (a) The commissioner by rule shall provide a process for a school district or open-enrollment charter school to challenge an agency decision made under this chapter relating to an academic or financial accountability rating that affects the district or school, including a determination of consecutive school years of unacceptable performance ratings.

(b) The rules under Subsection (a) must provide for the commissioner to appoint a committee to make recommendations to the commissioner on a challenge made to an agency decision relating to an academic performance rating or determination, including a determination of consecutive school years of unacceptable performance ratings, or financial accountability rating. The commissioner may not appoint an agency employee as a member of the committee.

(c) The commissioner may limit a challenge under this section to a written submission of any issue identified by the school district or open-enrollment charter school challenging the agency decision.

(d) The commissioner shall make a final decision under this section after considering the recommendation of the committee described by Subsection (b). The commissioner's decision may not be appealed under Section 7.057 or other law.

(e) A school district or open-enrollment charter school may not challenge an agency decision relating to an academic or financial accountability rating under this chapter, including a decision relating to a determination of consecutive school years of unacceptable performance ratings, in another proceeding if the district or school has had an opportunity to challenge the decision under this section.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 2.09, eff. September 1, 2021.

SUBCHAPTER G. DISTINCTION DESIGNATIONS

Sec. 39.201. DISTINCTION DESIGNATIONS. (a) Not later than August 8 of each year, the commissioner shall award distinction designations for outstanding performance as provided by this subchapter. A distinction designation awarded to a district or campus under this subchapter shall be referenced directly in connection with the performance rating assigned to the district or

campus and made publicly available together with the performance ratings as provided by rules adopted under Section 39.054(a).

(b) A district or campus may not be awarded a distinction designation under this subchapter unless the district or campus has acceptable performance under Section 39.054.

(c) In addition to the condition prescribed by Subsection (b), an open-enrollment charter school may not be awarded a distinction designation under this subchapter if the charter school is evaluated under alternative education accountability procedures adopted by the commissioner.

Added by Acts 2001, 77th Leg., ch. 914, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 662 (S.B. 1484), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 53(a), eff. June 10, 2013.

Sec. 39.2011. APPLICABILITY TO CHARTER SCHOOLS. In this subchapter:

(1) a district includes an open-enrollment charter school that operates on more than one campus; and

(2) a campus includes an open-enrollment charter school campus.

Added by Acts 2011, 82nd Leg., R.S., Ch. 662 (S.B. 1484), Sec. 2, eff. June 17, 2011.

Sec. 39.202. ACADEMIC DISTINCTION DESIGNATION FOR DISTRICTS AND CAMPUSES. The commissioner by rule shall establish an academic distinction designation for districts and campuses for outstanding performance in attainment of postsecondary readiness. The commissioner shall adopt criteria for the designation under this section, including:

(1) percentages of students who:

(A) performed satisfactorily, as determined under the college readiness performance standard under Section

39.0241, on assessment instruments required under Section 39.023(a), (b), (c), or (l), aggregated across grade levels by subject area; or

(B) met the standard for annual improvement, as determined by the agency under Section 39.034, on assessment instruments required under Section 39.023(a), (b), (c), or (l), aggregated across grade levels by subject area, for students who did not perform satisfactorily as described by Paragraph (A);

(2) percentages of:

(A) students who earned a nationally or internationally recognized business or industry certification or license;

(B) students who completed a coherent sequence of career and technical courses;

(C) students who completed a dual credit course or an articulated postsecondary course provided for local credit;

(D) students who achieved applicable College Readiness Benchmarks or the equivalent on the Preliminary Scholastic Assessment Test (PSAT), the Scholastic Assessment Test (SAT), the American College Test (ACT), or the ACT-Plan assessment program; and

(E) students who received a score on either an advanced placement test or an international baccalaureate examination to be awarded college credit; and

(3) other factors for determining sufficient student attainment of postsecondary readiness.

Added by Acts 2001, 77th Leg., ch. 914, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 2.05, eff. May 31, 2006.

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 54(a), eff. June 10, 2013.

Sec. 39.203. CAMPUS DISTINCTION DESIGNATIONS. (a) The commissioner shall award a campus a distinction designation for

outstanding performance in improvement in student achievement if the campus is ranked in the top 25 percent of campuses in the state in annual improvement in student achievement as determined under Section 39.034.

(b) In addition to the distinction designation described by Subsection (a), the commissioner shall award a campus a distinction designation for outstanding performance in closing student achievement differentials if the campus demonstrates an ability to significantly diminish or eliminate performance differentials between student subpopulations and is ranked in the top 25 percent of campuses in this state under the performance criteria described by this subsection. The commissioner shall adopt rules related to the distinction designation under this subsection to ensure that a campus does not artificially diminish or eliminate performance differentials through inhibiting the achievement of the highest achieving student subpopulation.

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

(d) In addition to the distinction designations otherwise described by this section, the commissioner may award a distinction designation for outstanding performance in advanced middle or junior high school student achievement to a campus with a significant number of students below grade nine who perform satisfactorily on an end-of-course assessment instrument administered under Section 39.023(c).

Added by Acts 2001, 77th Leg., ch. 914, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 307 (H.B. 2135), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 55(a), eff. June 10, 2013.

Sec. 39.204. CAMPUS DISTINCTION DESIGNATION CRITERIA; COMMITTEES. (a) The commissioner by rule shall establish:

(1) standards for considering campuses for distinction designations under Section 39.203(c); and

(2) methods for awarding distinction designations to campuses.

(b) In adopting rules under this section, the commissioner shall establish a separate committee to develop criteria for each distinction designation under Section 39.203(c).

(c) Each committee established under this section must include:

(1) individuals who practice as professionals in the content area relevant to the distinction designation, as applicable;

(2) individuals with subject matter expertise in the content area relevant to the distinction designation;

(3) educators with subject matter expertise in the content area relevant to the distinction designation; and

(4) community leaders, including leaders from the business community.

(d) For each committee, the governor, lieutenant governor, and speaker of the house of representatives may each appoint a person described by each subdivision of Subsection (c).

(e) In developing criteria for distinction designations under this section, each committee shall:

(1) identify a variety of indicators for measuring excellence; and

(2) consider categories for distinction designations, with criteria relevant to each category, based on:

(A) the level of a program, whether elementary school, middle or junior high school, or high school; and

(B) the student enrollment of a campus.

Added by Acts 2001, 77th Leg., ch. 914, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

SUBCHAPTER H. ADDITIONAL REWARDS

Sec. 39.232. EXCELLENCE EXEMPTIONS. (a) Except as provided by Subsection (b), a school campus or district that is rated exemplary under Subchapter G is exempt from requirements and prohibitions imposed under this code including rules adopted under this code.

(b) A school campus or district is not exempt under this section from:

(1) a prohibition on conduct that constitutes a criminal offense;

(2) requirements imposed by federal law or rule, including requirements for special education or bilingual education programs; or

(3) a requirement, restriction, or prohibition relating to:

(A) curriculum essential knowledge and skills under Section 28.002 or high school graduation requirements under Section 28.025;

(B) public school accountability as provided by Subchapters B, C, D, and J and Chapter 39A;

(C) extracurricular activities under Section 33.081;

(D) health and safety under Chapter 38;

(E) purchasing under Subchapter B, Chapter 44;

(F) elementary school class size limits, except as provided by Subsection (d) or Section 25.112;

(G) removal of a disruptive student from the classroom under Subchapter A, Chapter 37;

(H) at risk programs under Subchapter C, Chapter 29;

(I) prekindergarten programs under Subchapter E, Chapter 29;

(J) rights and benefits of school employees;

(K) special education programs under Subchapter A, Chapter 29; or

(L) bilingual education programs under Subchapter B, Chapter 29.

(c) The agency shall monitor and evaluate deregulation of a school campus or district under this section and Section 7.056.

(d) The commissioner may exempt an exemplary school campus under Subchapter G from elementary class size limits under this section if the school campus submits to the commissioner a written plan showing steps that will be taken to ensure that the exemption from the class size limits will not be harmful to the academic achievement of the students on the school campus. The commissioner shall review achievement levels annually. The exemption remains in effect until the commissioner determines that achievement levels of the campus have declined.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(25), eff. September 1, 2017.

Sec. 39.235. INNOVATION GRANT INITIATIVE FOR MIDDLE, JUNIOR HIGH, AND HIGH SCHOOL CAMPUSES.

(a) From funds appropriated for that purpose, the commissioner may establish a grant program under which grants are awarded to middle, junior high, and high school campuses and school districts to support:

(1) the implementation of innovative improvement programs that are based on the best available research regarding middle, junior high, or high school reform, dropout prevention, and preparing students for postsecondary coursework or employment; and

(2) enhancing education practices that have been demonstrated by significant evidence of effectiveness.

(b) Before awarding a grant under this section, the commissioner may require a campus or school district to:

(1) obtain local matching funds; or

(2) meet other conditions, including developing a personal graduation plan under Section 28.0212 or 28.02121, as applicable, for each student enrolled at the campus or in a district

middle, junior high, or high school.

(c) The commissioner may:

(1) accept gifts, grants, or donations from a private foundation to implement a grant program under this section; and

(2) coordinate gifts, grants, or donations with other available funding to implement a grant program under this section.

(d) The commissioner may use funds appropriated under this section to support technical assistance services for school districts and open-enrollment charter schools to implement an improvement program under this section.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 56(a), eff. June 10, 2013.

Acts 2019, 86th Leg., R.S., Ch. 439 (S.B. 1376), Sec. 1.06, eff. June 4, 2019.

Sec. 39.236. GIFTED AND TALENTED STANDARDS. The commissioner shall adopt standards to evaluate school district programs for gifted and talented students to determine whether a district operates a program for gifted and talented students in accordance with:

(1) the Texas Performance Standards Project; or

(2) another program approved by the commissioner that meets the requirements of the state plan for the education of gifted and talented students under Section 29.123.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

SUBCHAPTER I. SUCCESSFUL SCHOOL AWARDS

Sec. 39.261. CREATION OF SYSTEM. The Texas Successful Schools Awards System is created to recognize and reward those schools and school districts that demonstrate progress or success in achieving the education goals of the state.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.262. TYPES OF AWARDS. (a) The governor may present a financial award to the schools or districts that the commissioner determines have demonstrated the highest levels of sustained success or the greatest improvement in achieving the education goals. For each student in average daily attendance, each of those schools or districts is entitled to an amount set for the award for which the school or district is selected by the commissioner, subject to any limitation set by the commissioner on the total amount that may be awarded to a school or district.

(b) The governor may present proclamations or certificates to additional schools and districts determined to have met or exceeded the education goals.

(c) The commissioner may establish additional categories of awards and award amounts for a school or district determined to be successful under Subsection (a) or (b) that are contingent on the school's or district's involvement with paired, lower-performing schools.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.263. AWARDS. (a) The criteria that the commissioner shall use to select successful schools and districts must be related to the goals in Section 4.002 and must include consideration of performance on the achievement indicators adopted under Section 39.053(c) and consideration of the distinction designation criteria prescribed by or developed under Subchapter G.

(b) For purposes of selecting schools and districts under Section 39.262(a), each school's performance shall be compared to state standards and to its previous performance.

(c) The commissioner shall select annually schools and districts qualified to receive successful school awards for their performance.

(d) The agency shall notify each school district of the manner in which the district or a school in the district may qualify for a successful school award.

Added by Acts 2007, 80th Leg., R.S., Ch. 1058 (H.B. [2237](#)), Sec. 14, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. [3](#)), Sec. 59, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. [2804](#)), Sec. 18, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1203 (S.B. [1455](#)), Sec. 2, eff. September 1, 2015.

Sec. 39.264. USE OF AWARDS. (a) In determining the use of a monetary award received under this subchapter, a school or district shall give priority to academic enhancement purposes. The award may not be used for any purpose related to athletics, and it may not be used to substitute for or replace funds already in the regular budget for a school or district.

(b) The campus-level committee established under Section [11.253](#) shall determine the use of the funds awarded to a school under this subchapter. The professional staff of the district shall determine the use of the funds awarded to the school district under this subchapter.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. [3](#)), Sec. 59, eff. June 19, 2009.

Sec. 39.265. FUNDING. The award system may be funded by donations, grants, or legislative appropriations. The commissioner may solicit and receive grants and donations for the purpose of making awards under this subchapter. A small portion of the award funds may be used by the commissioner to pay for the costs associated with sponsoring a ceremony to recognize or present awards to schools or districts under this subchapter. The donations, grants, or legislative appropriations shall be accounted for and distributed by the agency. The awards are

subject to audit requirements established by the State Board of Education.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.266. CONFIDENTIALITY. All information and reports received by the commissioner under this subchapter from schools or school districts deemed confidential under Chapter 552, Government Code, are confidential and may not be disclosed in any public or private proceeding.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

SUBCHAPTER J. PARENT AND EDUCATOR REPORTS

Sec. 39.301. ADDITIONAL PERFORMANCE INDICATORS: REPORTING.

(a) In addition to the indicators adopted under Section 39.053, the commissioner shall adopt indicators of the quality of learning for the purpose of preparing reports under this chapter. The commissioner biennially shall review the indicators for the consideration of appropriate revisions.

(b) Performance on the indicators adopted under this section shall be evaluated in the same manner provided for evaluation of the achievement indicators under Section 39.053(c).

(c) Indicators for reporting purposes must include:

(1) the percentage of graduating students who meet the course requirements established by State Board of Education rule for:

(A) the foundation high school program;

(B) the distinguished level of achievement under the foundation high school program; and

(C) each endorsement described by Section 28.025(c-1);

(2) the results of the SAT, ACT, and certified workforce training programs described by Chapter 311, Labor Code;

(3) for students who have failed to perform satisfactorily, under each performance standard under Section 39.0241, on an assessment instrument required under Section 39.023(a) or (c), the performance of those students on subsequent assessment instruments required under those sections, aggregated by grade level and subject area;

(4) for each campus, the number of students, disaggregated by major student subpopulations, that take courses under the foundation high school program and take additional courses to earn an endorsement under Section 28.025(c-1), disaggregated by type of endorsement;

(5) the percentage of students, aggregated by grade level, provided accelerated instruction under Section 28.0211, the results of assessment instruments administered under that section, the subject of the assessment instrument on which each student failed to perform satisfactorily under each performance standard under Section 39.0241, and the performance of those students in the subsequent school year on the assessment instruments required under Section 39.023;

(6) the percentage of emergent bilingual students exempted from the administration of an assessment instrument under Sections 39.027(a)(1) and (2);

(7) the percentage of students in a special education program under Subchapter A, Chapter 29, assessed through assessment instruments developed or adopted under Section 39.023(b);

(8) the percentage of students who satisfy the college readiness measure;

(9) the measure of progress toward dual language proficiency under Section 39.034(b), for emergent bilingual students, as defined by Section 29.052;

(10) the percentage of students who are not educationally disadvantaged;

(11) the percentage of students who enroll and begin instruction at an institution of higher education in the school year following high school graduation; and

(12) the percentage of students who successfully complete the first year of instruction at an institution of higher

education without needing a developmental education course.

(d) Performance on the indicators described by Section 39.053(c) and Subsections (c)(3), (4), and (9) must be based on longitudinal student data that is disaggregated by the bilingual education or special language program, if any, in which emergent bilingual students, as defined by Section 29.052, are or former emergent bilingual students were enrolled. If a student described by this subsection is not or was not enrolled in specialized language instruction, the number and percentage of those students shall be provided.

(e) Section 39.055 applies in evaluating indicators described by Subsection (c).

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.22, eff. May 31, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 57(a), eff. June 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 19, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 189 (S.B. 22), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 18, eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 910 (H.B. 4545), Sec. 6, eff. June 16, 2021.

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. 2066), Sec. 22, eff. September 1, 2021.

Acts 2021, 87th Leg., 2nd C.S., Ch. 5 (S.B. 15), Sec. 5, eff. September 9, 2021.

Sec. 39.302. REPORT TO DISTRICT: COMPARISONS FOR ANNUAL PERFORMANCE ASSESSMENT. (a) The agency shall report to each school district the comparisons of student performance made under Section 39.034.

(b) To the extent practicable, the agency shall combine the

report of comparisons with the report of the student's performance on assessment instruments under Section 39.023.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.22, eff. May 31, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.303. REPORT TO PARENTS. (a) The school district a student attends shall provide a record of the comparisons made under Section 39.034 and provided to the district under Section 39.302 in a written notice to the student's parent or other person standing in parental relationship.

(b) For a student who failed to perform satisfactorily as determined under either performance standard under Section 39.0241 on an assessment instrument administered under Section 39.023(a), (c), or (l), the school district shall include in the notice specific information relating to access to educational resources at the appropriate assessment instrument content level, including assessment instrument questions and answers released under Section 39.023(e).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 63, eff. July 19, 2011.

Sec. 39.304. TEACHER REPORT CARD. (a) Each school district shall prepare a report of the comparisons made under Section 39.034 and provided to the district under Section 39.302 and provide the report at the beginning of the school year to:

(1) each teacher for all students, including incoming students, who were assessed on an assessment instrument under Section 39.023; and

(2) all students under Subdivision (1) who were provided instruction by that teacher in the subject for which the assessment instrument was administered under Section 39.023.

(b) The report shall indicate whether the student performed satisfactorily or, if the student did not perform satisfactorily, whether the student met the standard for annual improvement under Section 39.034.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.305. CAMPUS REPORT CARD. (a) Each school year, the agency shall prepare and distribute to each school district a report card for each campus. The campus report cards must be based on the most current data available disaggregated by student groups. Campus performance must be compared to previous campus and district performance, current district performance, and state established standards.

(b) The report card shall include the following information:

(1) where applicable, the achievement indicators described by Section 39.053(c) and the reporting indicators described by Sections 39.301(c)(1) through (5);

(2) average class size by grade level and subject;

(3) the administrative and instructional costs per student, computed in a manner consistent with Section 44.0071; and

(4) the district's instructional expenditures ratio and instructional employees ratio computed under Section 44.0071, and the statewide average of those ratios, as determined by the commissioner.

(c) The commissioner shall adopt rules requiring dissemination of the information required under Subsection (b)(4) and appropriate class size and student performance portions of campus report cards annually to the parent, guardian, conservator, or other person having lawful control of each student at the campus. On written request, the school district shall provide a copy of a campus report card to any other party.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 20, eff. June 19, 2015.

Sec. 39.306. PERFORMANCE REPORT. (a) Each board of trustees shall publish an annual report describing the educational performance of the district and of each campus in the district that includes uniform student performance and descriptive information as determined under rules adopted by the commissioner. The annual report must also include:

(1) campus performance objectives established under Section 11.253 and the progress of each campus toward those objectives, which shall be available to the public;

(2) information indicating the district's accreditation status and identifying each district campus awarded a distinction designation under Subchapter G or considered an unacceptable campus under Chapter 39A;

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

(4) a statement of the number, rate, and type of violent or criminal incidents that occurred on each district campus, to the extent permitted under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g);

(5) information concerning school violence prevention and violence intervention policies and procedures that the district is using to protect students;

(6) the findings that result from evaluations conducted under the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. Section 7101 et seq.);

(7) information received under Section 51.403(e) for each high school campus in the district, presented in a form determined by the commissioner; and

(8) the progress of the district and each campus in the district toward meeting the goals set in the district's:

(A) early childhood literacy and mathematics proficiency plans adopted under Section 11.185; and

(B) college, career, and military readiness plans adopted under Section 11.186.

(b) Supplemental information to be included in the reports shall be determined by the board of trustees. Performance information in the annual reports on the indicators described by Sections 39.053 and 39.301 and descriptive information required by this section shall be provided by the agency.

(c) The board of trustees shall hold a hearing for public discussion of the report. The board of trustees shall give notice of the hearing to property owners in the district and parents of and other persons standing in parental relation to a district student. The notification must include notice to a newspaper of general circulation in the district and notice to electronic media serving the district. After the hearing the report shall be widely disseminated within the district in a manner to be determined under rules adopted by the commissioner.

(d) The report must also include a comparison provided by the agency of:

(1) the performance of each campus to its previous performance and to state-established standards; and

(2) the performance of each district to its previous performance and to state-established standards.

(d-1) The report must also include the number of school counselors providing counseling services at each campus.

(e) The report may include the following information:

(1) student information, including total enrollment, enrollment by ethnicity, socioeconomic status, and grade groupings and retention rates;

(2) financial information, including revenues and expenditures;

(3) staff information, including number and type of staff by sex, ethnicity, years of experience, and highest degree held, teacher and administrator salaries, and teacher turnover;

(4) program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and

(5) the number of students placed in a disciplinary alternative education program under Chapter 37.

(f) The commissioner by rule shall authorize the

combination of this report with other reports and financial statements and shall restrict the number and length of reports that school districts, school district employees, and school campuses are required to prepare.

(g) The report must include a statement of the amount, if any, of the school district's unencumbered surplus fund balance as of the last day of the preceding fiscal year and the percentage of the preceding year's budget that the surplus represents.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(26), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 550 (S.B. 490), Sec. 2, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 2.035, eff. June 12, 2019.

Sec. 39.307. USES OF PERFORMANCE REPORT. The information required to be reported under Section 39.306 shall be:

(1) the subject of public hearings or meetings required under Sections 11.252, 11.253, and 39.306;

(2) a primary consideration in school district and campus planning; and

(3) a primary consideration of:

(A) the State Board of Education in the evaluation of the performance of the commissioner;

(B) the commissioner in the evaluation of the performance of the directors of the regional education service centers;

(C) the board of trustees of a school district in the evaluation of the performance of the superintendent of the district; and

(D) the superintendent in the evaluation of the performance of the district's campus principals.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff.

June 19, 2009.

Sec. 39.308. ANNUAL AUDIT OF DROPOUT RECORDS; REPORT. (a) The commissioner shall develop a process for auditing school district dropout records electronically. The commissioner shall also develop a system and standards for review of the audit or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate dropout records and that, as a result, require on-site monitoring of dropout records.

(b) If the electronic audit of a school district's dropout records indicates that a district is not at high risk of having inaccurate dropout records, the district may not be subject to on-site monitoring under this subsection.

(c) If the risk-based system indicates that a school district is at high risk of having inaccurate dropout records, the district is entitled to an opportunity to respond to the commissioner's determination before on-site monitoring may be conducted. The district must respond not later than the 30th day after the date the commissioner notifies the district of the commissioner's determination. If the district's response does not change the commissioner's determination that the district is at high risk of having inaccurate dropout records or if the district does not respond in a timely manner, the commissioner shall order agency staff to conduct on-site monitoring of the district's dropout records.

(d) The commissioner shall notify the board of trustees of a school district of any objection the commissioner has to the district's dropout data, any violation of sound accounting practices or of a law or rule revealed by the data, or any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general.

(e) The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of district dropout data.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.309. TEXAS SCHOOL ACCOUNTABILITY DASHBOARD.

(a) The agency shall develop and maintain an Internet website, separate from the agency's Internet website, to be known as the Texas School Accountability Dashboard for the public to access school district and campus accountability information.

(b) The commissioner shall adopt, for use on the Texas School Accountability Dashboard, a performance index in each of the following areas:

- (1) student achievement;
- (2) student progress;
- (3) closing performance gaps; and
- (4) postsecondary readiness.

(c) The Texas School Accountability Dashboard developed under Subsection (a) must include:

(1) performance information for each school district and campus in areas specified by Subsection (b) and must allow for comparison between districts and campuses in each of the areas;

(2) a comparison of the number of students enrolled in each school district, including:

(A) the percentage of emergent bilingual students, as defined by Section 29.052;

(B) the percentage of students who are unschooled asylees or refugees, as defined by Section 39.027(a-1);

(C) the percentage of students who are educationally disadvantaged; and

(D) the percentage of students with disabilities;

(3) a comparison of performance information for each district and campus disaggregated by race, ethnicity, and populations served by special programs, including special education, bilingual education, and special language programs; and

(4) a comparison of performance information by subject area.

Added by Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 58, eff. June 10, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. 2066), Sec. 23, eff. September 1, 2021.

SUBCHAPTER K. REPORTS BY TEXAS EDUCATION AGENCY

Sec. 39.331. GENERAL REQUIREMENTS. (a) Each report required by this subchapter must:

(1) unless otherwise specified, contain summary information and analysis only, with an indication that the agency will provide the data underlying the report on request;

(2) specify a person at the agency who may be contacted for additional information regarding the report and provide the person's telephone number; and

(3) identify other sources of related information, indicating the level of detail and format of information that may be obtained, including the availability of any information on the Texas Education Network.

(b) Each component of a report required by this subchapter must:

(1) identify the substantive goal underlying the information required to be reported;

(2) analyze the progress made and longitudinal trends in achieving the underlying substantive goal;

(3) offer recommendations for improved progress in achieving the underlying substantive goal; and

(4) identify the relationship of the information required to be reported to state education goals.

(c) Unless otherwise provided, each report required by this subchapter is due not later than December 1 of each even-numbered year.

(d) Subsections (a) and (b) apply to any report required by statute that the agency or the State Board of Education must prepare and deliver to the governor, lieutenant governor, speaker of the house of representatives, or legislature.

(e) Unless otherwise provided by law, any report required by statute that the agency or the State Board of Education must prepare and deliver to the governor, lieutenant governor, speaker of the house of representatives, or legislature may be combined, at the discretion of the commissioner, with a report required by this subchapter.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Sec. 39.332. COMPREHENSIVE BIENNIAL REPORT. (a) Not later than December 1 of each even-numbered year, the agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a comprehensive report covering the two preceding school years and containing the information described by Subsection (b).

(b)(1) The report must contain an evaluation of the achievements of the state educational program in relation to the statutory goals for the public education system under Section 4.002.

(2) The report must contain an evaluation of the status of education in the state as reflected by:

(A) the achievement indicators described by Section 39.053; and

(B) the reporting indicators described by Section 39.301.

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

(4) The report must contain a summary compilation of overall performance of students placed in a disciplinary alternative education program established under Section 37.008 on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status.

(5) The report must contain a summary compilation of overall performance of students at risk of dropping out of school, as defined by Section 29.081(d), on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status.

(6) The report must contain an evaluation of the correlation between student grades and student performance on academic skills assessment instruments required by Section 39.023.

(7) The report must contain a statement of the dropout rate of students in grade levels 7 through 12, expressed in the aggregate and by grade level, and a statement of the completion rates of students for grade levels 9 through 12.

(8) The report must contain a statement of:

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

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

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

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

certificate; and

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

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

(10) The report must contain a description of a systematic, measurable plan for reducing the projected cross-sectional and longitudinal dropout rates to five percent or less.

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

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

(B) the performance of retained students on assessment instruments required under Section 39.023(a).

(12) The report must contain information, aggregated by district type and disaggregated by race, ethnicity, gender, and socioeconomic status, on:

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

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

(C) the academic performance of students on assessment instruments required under Section 39.023(a) during the year preceding and during the year following placement in a disciplinary alternative education program; and

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

(13) The report must contain a list of each school district or campus that does not satisfy performance standards, with an explanation of the actions taken by the commissioner to

improve student performance in the district or campus and an evaluation of the results of those actions.

(14) The report must contain an evaluation of the status of the curriculum taught in public schools, with recommendations for legislative changes necessary to improve or modify the curriculum required by Section [28.002](#).

(15) The report must contain a description of all funds received by and each activity and expenditure of the agency.

(16) The report must contain a summary and analysis of the instructional expenditures ratios and instructional employees ratios of school districts computed under Section [44.0071](#).

(17) The report must contain a summary of the effect of deregulation, including exemptions and waivers granted under Section [7.056](#) or [39.232](#).

(18) The report must contain a statement of the total number and length of reports that school districts and school district employees must submit to the agency, identifying which reports are required by federal statute or rule, state statute, or agency rule, and a summary of the agency's efforts to reduce overall reporting requirements.

(19) The report must contain a list of each school district that is not in compliance with state special education requirements, including:

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

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

(C) an explanation of the actions taken by the commissioner to ensure compliance and an evaluation of the results of those actions.

(20) The report must contain a comparison of the performance of open-enrollment charter schools and school districts on the achievement indicators described by Section [39.053\(c\)](#), the reporting indicators described by Section [39.301\(c\)](#), and the accountability measures adopted under Section [39.053\(i\)](#), with a separately aggregated comparison of the

performance of open-enrollment charter schools predominantly serving students at risk of dropping out of school, as described by Section 29.081(d), with the performance of school districts.

(21) The report must contain a summary of the information required by Section 38.0141 regarding student health and physical activity from each school district.

(22) The report must contain a summary compilation of overall student performance under the assessment system developed to evaluate the longitudinal academic progress as required by Section 39.027(e), disaggregated by bilingual education or special language program instructional model, if any.

(23) The report must contain an evaluation of the availability of endorsements under Section 28.025(c-1), including the following information for each school district:

(A) the endorsements under Section 28.025(c-1) for which the district offers all courses for curriculum requirements as determined by board rule; and

(B) the district's economic, geographic, and demographic information, as determined by the commissioner.

(24) The report must contain any additional information considered important by the commissioner or the State Board of Education.

(c) In reporting the information required by Subsection (b)(3) or (4), the agency may separately aggregate the performance data of students enrolled in a special education program under Subchapter A, Chapter 29.

(d) In reporting the information required by Subsections (b)(3), (5), and (7), the agency shall separately aggregate the longitudinal performance data of all students identified as emergent bilingual students, as defined by Section 29.052, or former emergent bilingual students, disaggregated by bilingual education or special language program instructional model, if any, in which the students are or were enrolled.

(e) Each report must contain the most recent data available.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 59(a), eff. June 10, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 21, eff. June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 973 (S.B. 2066), Sec. 24, eff. September 1, 2021.

Sec. 39.333. REGIONAL AND DISTRICT LEVEL REPORT. As part of the comprehensive biennial report under Section 39.332, the agency shall submit a regional and district level report covering the preceding two school years and containing:

(1) a summary of school district compliance with the student/teacher ratios and class-size limitations prescribed by Sections 25.111 and 25.112, including:

(A) the number of campuses and classes at each campus granted an exception from Section 25.112; and

(B) for each campus granted an exception from Section 25.112, a statement of whether the campus has been awarded a distinction designation under Subchapter G or has been identified as an unacceptable campus under Chapter 39A;

(2) a summary of the exemptions and waivers granted to campuses and school districts under Section 7.056 or 39.232 and a review of the effectiveness of each campus or district following deregulation;

(3) an evaluation of the performance of the system of regional education service centers based on the indicators adopted under Section 8.101 and client satisfaction with services provided under Subchapter B, Chapter 8;

(4) an evaluation of accelerated instruction programs offered under Section 28.006, including an assessment of the quality of such programs and the performance of students enrolled in such programs; and

(5) the number of classes at each campus that are

currently being taught by individuals who are not certified in the content areas of their respective classes.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 10, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(27), eff. September 1, 2017.

Sec. 39.334. TECHNOLOGY REPORT. The agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a technology report covering the preceding two school years and containing information on the status of the implementation of and revisions to the long-range technology plan required by Section 32.001, including the equity of the distribution and use of technology in public schools.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

SUBCHAPTER L. NOTICE OF PERFORMANCE

Sec. 39.361. NOTICE IN STUDENT GRADE REPORT. The first written notice of a student's performance that a school district gives during a school year as required by Section 28.022(a)(2) must include:

(1) a statement of whether the campus at which the student is enrolled has been awarded a distinction designation under Subchapter G or has been identified as an unacceptable campus under Chapter 39A; and

(2) an explanation of the significance of the information provided under Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 1058 (H.B. [2237](#)), Sec. 14, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. [3](#)), Sec. 59, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 21.003(28), eff. September 1, 2017.

Sec. 39.362. NOTICE ON DISTRICT WEBSITE. Not later than the 10th day after the first day of instruction of each school year, a school district that maintains an Internet website shall make the following information available to the public on the website:

(1) the information contained in the most recent campus report card for each campus in the district under Section [39.305](#);

(2) the information contained in the most recent performance report for the district under Section [39.306](#);

(3) the most recent accreditation status and performance rating of the district under Sections [39.052](#) and [39.054](#); and

(4) a definition and explanation of each accreditation status under Section [39.051](#), based on commissioner rule adopted under that section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1058 (H.B. [2237](#)), Sec. 14, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. [3](#)), Sec. 59, eff. June 19, 2009.

Sec. 39.363. NOTICE ON AGENCY WEBSITE. Not later than October 1 of each year, the agency shall make the following information available to the public on the agency's Internet website:

(1) the letter performance rating assigned to each school district and campus under Section [39.054](#) and each distinction designation awarded to a school district or campus under Subchapter G;

(2) the performance rating assigned to a school district and each campus in the district by the district under Section 39.0545; and

(3) the financial accountability rating assigned to each school district and open-enrollment charter school under Section 39.082.

Added by Acts 2013, 83rd Leg., R.S., Ch. 211 (H.B. 5), Sec. 60(a), eff. June 10, 2013.

SUBCHAPTER M. HIGH SCHOOL COMPLETION AND SUCCESS INITIATIVE

Sec. 39.408. ELIGIBILITY CRITERIA FOR CERTAIN GRANT PROGRAMS. A school district or campus is eligible to participate in programs under Sections 29.095 and 29.096 if the district or campus exhibited during each of the three preceding school years characteristics that strongly correlate with high dropout rates.

Redesignated by Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.045, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1045 (S.B. 1267), Sec. 23, eff. June 18, 2021.