Chapter 101. Assessment

Subchapter BB. Commissioner's Rules Concerning Grade Advancement and Accelerated Instruction

Statutory Authority: The provisions of this Subchapter BB issued under the Texas Education Code, §28.021 and §28.0211, unless otherwise noted.

§101.2001. Policy.

(a) School districts shall implement grade advancement requirements in accordance with this subchapter and the Texas Education Agency (TEA) procedures outlined in the official Grade Placement Committee (GPC) manual, published annually by the TEA. As specified in §101.2009 of this title (relating to Notice to Parents or Guardians), school districts will make public at the beginning of the school year grade advancement requirements as determined by the school district.

(b) In addition to local policy relating to grade advancement, students in Grades 5 and 8 shall demonstrate proficiency in the subjects required by the Texas Education Code (TEC), §28.0211(a), in order to advance to the next grade. Demonstrated proficiency is defined under this section as meeting the passing standard on the appropriate assessment instruments specified by §101.2003(a) of this title (relating to Grade Advancement Testing Requirements) or on a state-approved alternate assessment authorized in §101.2011 of this title (relating to Alternate Assessment). A student who does not demonstrate proficiency as described in this section may advance to the next grade only if:

(1) the student has completed the required accelerated instruction under §101.2006 of this title (relating to Accelerated Instruction);

(2) the student's GPC, as specified in §101.2007 of this title (relating to Role of Grade Placement Committee), determines by unanimous decision, in accordance with the standards for promotion established by the local school board, that the student is likely to perform at grade level at the end of the next year given additional accelerated instruction. In accordance with the TEC, §28.021, to determine grade promotion, a school district is required to consider the recommendation of the student's teacher, the student's grades, the student's assessment scores, and any other necessary academic information; and

(3) in accordance with the TEC, §28.0211(n), the school district will ensure that a student who is promoted by a GPC under §101.2007 of this title shall be assigned in each subject in which the student failed to perform satisfactorily on an assessment instrument specified under the TEC, §28.0211(a), to a teacher who meets all state and federal qualifications to teach that subject and grade.

(c) Students in Grades 3-8 shall be provided accelerated instruction required by the TEC, §28.0211, as specified in §101.2006 of this title.

Source: The provisions of this §101.2001 adopted to be effective May 26, 2002, 27 TexReg 4337; amended to be effective April 19, 2010, 35 TexReg 3030.

§101.2003. Grade Advancement Testing Requirements.

(a) Each school district and charter school shall test eligible students in accordance with the grade advancement requirements for the grades and subjects specified in the Texas Education Code (TEC), §28.0211(a). These requirements apply to the following assessment instruments under the TEC, §39.023(a), (b), and (l):

(1) the reading and mathematics assessments at Grade 5; and

(2) the reading and mathematics assessments at Grade 8.

(b) An eligible student is subject to all of the grade advancement requirements under the TEC, §28.0211, including automatic retention, if the student is enrolled in a local school district or charter school on any day between January 1 and the date of the first administration of the grade advancement assessments.

(c) An eligible student who does not meet the criteria specified in subsection (b) of this section but enrolls in a local school district or charter school at any time after the date of the first administration of the grade advancement assessments is not subject to the grade advancement requirements. In accordance with §101.2001(b) of this title (relating to Policy), a school district or charter school must provide this student with the opportunity to test and access to required accelerated instruction.

(d) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grade 5 or Grade 8 who is receiving instruction in the essential knowledge and skills in a subject specified under subsection (a) of this section is eligible under this section as outlined in the official Grade Placement Committee (GPC) manual published annually by the Texas Education Agency (TEA). In accordance with §101.5(b) of this title (relating to Student Testing Requirements) and the TEC, §28.0211(i), the student's admission, review, and dismissal (ARD) committee shall determine appropriate assessment and accelerated instruction for each eligible student. Assessment decisions must be made on an individual basis and in accordance with procedures established by the TEA. These decisions shall be documented in the student's individualized education program.

(e) A limited English proficient (LEP) student, as defined by the TEC, Chapter 29, Subchapter B, who is administered an assessment in English or Spanish for a grade and subject specified in subsection (a) of this section, except as provided by §101.1011 of this title (relating to Student Success Initiative Grade Advancement Requirements), is eligible under this section. In accordance with §101.1003 of this title (relating to Role of the Language Proficiency Assessment Committee), the student's language proficiency assessment committee (LPAC) shall determine the appropriate assessment and accelerated instruction for each eligible student. The GPC, as specified in §101.2007 of this title (relating to Role of Grade Placement Committee), shall make its decisions in consultation with a member of the student's LPAC. Assessment decisions must be made on an individual basis and in accordance with procedures established by the TEA.

(f) As specified in §101.1009 of this title (relating to Limited English Proficient Students Who Receive Special Education Services), decisions regarding assessments for LEP students who receive special education services shall be made by the ARD committee in conjunction with the LPAC.

(g) In accordance with the TEC, §28.021(b), decisions regarding a student who is dyslexic and eligible under this section shall consider the student's potential for achievement or proficiency in the assessed subject.

Source: The provisions of this §101.2003 adopted to be effective May 26, 2002, 27 TexReg 4337; amended to be effective February 24, 2005, 30 TexReg 842; amended to be effective April 19, 2010, 35 TexReg 3030.

§101.2005. Test Administration and Schedule.

(a) The Texas Education Agency (TEA) shall establish the test administration procedures in the applicable test administration materials. The superintendent of each school district and chief administrative officer of each charter school shall be responsible for following these procedures and maintaining the integrity of the test administration and the security and confidentiality requirements, as specified in Chapter 101, Subchapter C, of this title (relating to Security and Confidentiality).

(b) The TEA shall provide three opportunities per year for the tests required for grade advancement as specified in the Texas Education Code, §28.0211(a). The commissioner of education shall specify the dates of these administrations in the assessment calendar. Additional test opportunities will not be provided.

(c) The superintendent of each school district and chief administrative officer of each charter school shall establish procedures to ensure:

(1) that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate accelerated instruction as warranted on an individual student basis; and

(2) that each eligible student who is absent or does not receive a test score for all three test opportunities and is consequently retained shall receive other appropriate means of evaluation, including the administration of an alternate assessment, as provided under §101.2011(a) of this

title (relating to Alternate Assessment), so that the Grade Placement Committee has sufficient evidence for its review upon appeal by a parent or guardian.

(d) A campus or district must accommodate the request of an out-of-district student to participate in the third administration of a test required for grade advancement if that campus or district is testing one or more local students on the applicable test and if the out-of-district student has registered to take the test by a date determined by the TEA.

Source: The provisions of this §101.2005 adopted to be effective May 26, 2002, 27 TexReg 4337; amended to be effective February 24, 2005, 30 TexReg 842.

§101.2006. Accelerated Instruction.

(a) Each time a student in Grades 3-8 fails to perform satisfactorily on an assessment instrument administered under the Texas Education Code (TEC), §39.023(a), the school district or charter school shall provide the student with accelerated instruction in the applicable subject.

(b) Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations. Each school district and each charter school shall be responsible for providing transportation to students required to attend accelerated instruction programs if these programs occur outside of regular school hours.

(c) A school district must accommodate the request of an out-of-district student to participate in any established, on-campus summer accelerated instruction program, provided the student is living away from his or her home district and the program matches the accelerated instruction prescribed by the student's Grade Placement Committee (GPC).

(d) Accelerated instruction shall be based on, but not limited to, guidelines on research-based best practices and effective strategies as outlined in the GPC manual, published annually by the TEA, which districts may use for developing accelerated instruction.

(e) In addition, for students required to take state assessments specified under the TEC, §28.0211(a):

(1) a student who fails to perform satisfactorily on an assessment instrument specified under the TEC, §28.0211(a), shall be provided accelerated instruction before the next administration of the applicable assessment as specified by the TEC, §28.0211. A student shall be assigned to an accelerated instruction group that does not have a ratio larger than ten students for each teacher; and

(2) a student who fails to perform satisfactorily on an assessment instrument specified under the TEC, §28.0211(a), after the first, second, and third testing opportunities and who is promoted to the next grade level must complete, in accordance with state and local school board policy, all the accelerated instruction required under this section before placement in the next grade level. A student who fails to complete all the required accelerated instruction may not be promoted.

Source: The provisions of this §101.2006 adopted to be effective April 19, 2010, 35 TexReg 3030.

§101.2007. Role of Grade Placement Committee.

(a) In accordance with the Texas Education Code (TEC), §28.0211, the superintendent of each school district and chief administrative officer of each charter school shall establish procedures for convening a Grade Placement Committee (GPC) for each eligible student who fails to demonstrate proficiency on the second administration of the assessment required for grade advancement. In accordance with §101.2006(d) of this title (relating to Accelerated Instruction), decisions by the GPC shall be made on an individual student basis, address required participation of the student in accelerated instruction, and ensure the most effective instruction to support the student's academic achievement on grade level.

(b) The GPC shall be composed of the principal or principal's designee, the student's parent or guardian, and the student's teacher(s) of the subject of the grade advancement assessment(s) on which the student has failed to demonstrate proficiency. If this teacher is unavailable, the principal shall designate to serve on the GPC a teacher certified in the subject of the assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area. If more than one parent or

guardian has the authority to make educational decisions regarding the student, a good faith effort must be made to notify both parents, but participation of any one parent or guardian is sufficient. Either parent or only one guardian may initiate an appeal. If both parents or guardians serve on the GPC but do not agree, either may agree to promote the student if the remaining members of the GPC also agree to the promotion. The district may accept a parent's or guardian's written designation of another individual to serve on the GPC for all purposes. The district may accept a parent's or guardian's written and signed waiver of participation in the GPC and designation of the remaining members of the GPC as the decision-making entity for all purposes.

(1) If a parent or guardian or designee is unable to attend a meeting, the district may use other methods to ensure parent participation, including individual and conference telephone calls. The district may designate an individual to act on behalf of the student in place of a parent, guardian, or designee if no such person can be located. A surrogate parent named to act on behalf of a student with a disability shall be considered a parent for purposes of the TEC, §28.0211.

(2) The district shall make a good faith effort to notify a parent or guardian to attend the GPC. If a parent or guardian is unavailable, the remaining members of the GPC must convene as required by this section and take all necessary actions, except that the GPC may not agree to promote a student under the TEC, §28.0211(e), unless a parent, guardian, or designee has appealed. A district may allow an appeal to be filed in writing in lieu of attending the GPC.

(c) Within five working days of receipt of student assessment results for the second administration of the assessment required for grade advancement, the district shall notify the campus principal of student assessment results for each eligible student who fails to demonstrate proficiency. Upon receipt of this notice, the principal shall notify the teacher and parent or guardian of the assessment results. This notice shall include a description of the purpose and responsibilities of the GPC and the time and place for the GPC to hold its first meeting.

(d) In accordance with §101.2006(d) of this title, the GPC is responsible for prescribing the accelerated instruction the student is to receive before the third testing opportunity. The GPC shall also decide at this time whether the student shall take the assessment specified in §101.2003 of this title (relating to Grade Advancement Testing Requirements) or the alternate assessment, as authorized by §101.2011 of this title (relating to Alternate Assessment). In the absence of unanimous agreement, the student shall take the assessment specified in §101.2003 of this title.

(e) The GPC must convene again if a student fails to demonstrate proficiency on the third administration of an assessment required for grade advancement and is thereby automatically retained at the same grade level. Within five working days of receipt of student assessment results for this administration, the district shall notify the principal or principal's designee of student assessment results for each eligible student who fails to demonstrate proficiency. Upon receipt of this notice from the district, the principal shall inform the teacher and parent or guardian of the time and place for the GPC to hold a meeting. This notice shall inform the parent or guardian of the opportunity to appeal the automatic retention of the student. The district shall establish a procedure to ensure a good faith effort is made toward securing the parent's or guardian's receipt of the retention notification. The parent or guardian may appeal the retention by submitting a request to the GPC within five working days of receipt of this retention notification.

(f) If an appeal has been initiated by the parent or guardian, the GPC may decide in favor of promotion only if the GPC concludes, upon review of all facts and circumstances and in accordance with standards adopted by the local school board, that the student is likely to perform on grade level given additional accelerated instruction during the next school year. A student may be promoted only if the GPC's decision is unanimous and the student has completed all required accelerated instruction specified in §101.2006 of this title. The review and final decision of the GPC must be appropriately documented as meeting the standards adopted by the local school board and made in conformance with procedures specified in the GPC manual and as required by §101.2001(b) of this title (relating to Policy). These standards must include consideration of the following:

(1) the recommendation of the student's teacher;

(2) the student's grades;

(3) the student's assessment scores; and

(4) any other necessary academic information as determined by the district.

(g) In accordance with the TEC, §28.0211(e), the placement decision by the GPC shall be made before the start of the next school year or, if applicable, upon reenrollment of a student after this date.

(h) A student who has been promoted upon completion of a school year in a school other than a Texas public school may be enrolled in that grade without regard to whether the student has successfully completed an assessment required under the TEC, §28.0211. This subsection does not limit the authority of a district to appropriately place a student under the TEC, Chapter 25, Subchapter B.

(i) In addition to the placement decision, the GPC shall develop an accelerated instruction plan for each student who does not pass after three testing opportunities, regardless of whether the student has been promoted or retained. This plan shall include the accelerated instruction that the district must provide during the next school year. The plan must be designed to enable the student to perform at the appropriate grade level by the end of the next school year. The district shall establish a policy for monitoring the student during the school year to ensure that the student is progressing in accordance with the plan. The accelerated instruction plan must provide for interim progress reports to the student's parent or guardian and the opportunity for consultation with the teacher and/or principal as needed.

Source: The provisions of this §101.2007 adopted to be effective May 26, 2002, 27 TexReg 4337; amended to be effective February 24, 2005, 30 TexReg 842; amended to be effective April 19, 2010, 35 TexReg 3030.

§101.2009. Notice to Parents or Guardians.

(a) As specified in §101.9 of this title (relating to Grade Advancement Requirements), the superintendent of each school district or chief administrative officer of each charter school shall notify parents or guardians of the grade advancement requirements at the beginning of the school year.

(b) The district shall provide early notice to parents or guardians of students identified in a preceding grade to be at risk of failure on the first administration of the assessment required for grade advancement the next year. The superintendent must establish the instruments/procedures to be used to make this determination. This notice shall include accelerated instruction participation requirements as stipulated by §101.2006 of this title (relating to Accelerated Instruction) and be provided before the end of the school year preceding the grade advancement requirements.

(c) The district shall establish procedures to notify the parent or guardian of a student who has failed to demonstrate proficiency on the first administration of a grade advancement assessment. This notification should be made within five working days of district receipt of student assessment results from this administration. This notice shall include the student's assessment results, a description of the grade advancement policy, the required accelerated instruction to which the student has been assigned under §101.2006 of this title, and the possibility that the student might be retained at the same grade level for the next school year. In addition, the notice shall encourage parents or guardians to meet immediately with the student's teacher to outline mutual responsibilities to support the student during accelerated instruction.

(d) Whenever the district is required to notify a parent or guardian about the requirements related to promotion and accelerated instruction under §101.2006 of this title for students at risk of retention, including the notification requirements for the Grade Placement Committee under §101.2007 of this title (relating to Role of Grade Placement Committee), the district shall make a good faith effort to ensure that the notice is provided either in person or by regular mail, is clear and easy to understand, and is written in English or in the parent's or guardian's native language.

Source: The provisions of this §101.2009 adopted to be effective May 26, 2002, 27 TexReg 4337; amended to be effective April 19, 2010, 35 TexReg 3030.

§101.2011. Alternate Assessment.

(a) On the third testing opportunity, each school district and charter school may establish by local board policy a district-wide procedure to use a state-approved alternate assessment instead of the statewide assessment instrument specified in §101.2003(a) of this title (relating to Grade Advancement Testing Requirements).

The commissioner of education shall provide annually, to school districts and charter schools, a list of state-approved group-administered achievement tests certified by test publishers as meeting the requirements of Texas Education Code, §28.0211. This list shall include nationally recognized instruments for obtaining valid and reliable data, which demonstrate student competencies in the applicable subject at the appropriate grade level range. The district shall select only one test for each applicable grade and subject to be used under this section.

(b) The alternate assessment must be given during the period established in the assessment calendar by the commissioner of education to coincide with the date of the third administration of the statewide assessment.

(c) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification within ten working days following receipt of the test materials from the school district and shall send a copy of those results to the Texas Education Agency (TEA) in a format specified by and on a schedule established by the TEA.

(d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the procedures for test security and confidentiality delineated in Chapter 101, Subchapter C, of this title (relating to Security and Confidentiality).

Source: The provisions of this §101.2011 adopted to be effective May 26, 2002, 27 TexReg 4337; amended to be effective February 24, 2005, 30 TexReg 842.

§101.2015. Parental Waiver.

The superintendent of each school district and chief administrative officer of each charter school shall establish a waiver process by which a parent or guardian may request that a student not participate in the third test opportunity due to potential harm to the student. The waiver must provide documentation of potential harm, student need, and other appropriate information. If a parental waiver is granted, the student must still participate in all required acceleration and is subject to retention based on the failure on the second test administration.

Source: The provisions of this §101.2015 adopted to be effective May 26, 2002, 27 TexReg 4337.

§101.2017. Scoring and Reporting.

(a) In accordance with §101.81 of this title (relating to Scoring and Reporting), the scoring contractor will provide school districts with the results of the assessments required by the Texas Education Code, §28.0211, or, if applicable, the results of the alternate assessment specified in §101.2011 of this title (relating to Alternate Assessment), within ten working days following the receipt of the test materials from the school district or charter school.

(b) As specified by Texas Education Code (TEC), §39.051(b)(7), the superintendent of each school district and chief administrative officer of each charter school shall report the following information to the Texas Education Agency:

(1) the percentage of students, aggregated by grade level, provided accelerated instruction under TEC, §28.0211(c);

(2) the results of assessments administered under TEC, §28.0211(c);

(3) the percentage of students promoted through the grade placement committee process under TEC, §28.0211; and

(4) the subject of the assessment instrument on which each student failed to perform satisfactorily, and the performance of those students in the school year following that promotion on the assessment instruments required under TEC, §39.023.

Source: The provisions of this §101.2017 adopted to be effective May 26, 2002, 27 TexReg 4337.

§101.2019. Credit for High School Graduation.

(a) Students who have been retained in Grade 8 in accordance with the grade advancement testing requirements may earn course credit for high school graduation during the next school year in subject areas other than the required courses in the subject area which caused the student to be retained.

(b) The school board of each district and each charter school may establish a policy that provides for the placement of retained students in an age-appropriate learning environment. In accordance with local grade configurations for elementary, middle, and high school campuses, this policy may specify the age by which a retained student should be placed on the next level campus even though not yet promoted to the grade of that campus.

Source: The provisions of this §101.2019 adopted to be effective May 26, 2002, 27 TexReg 4337.