

## ATTACHMENT I

### **Statutory Citations Relating to Amendments to 19 TAC Chapter 101, Assessment, Subchapter AA, Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments**

#### **Texas Education Code, §39.023, Adoption and Administration of Instruments, as amended by Senate Bill 1031, 80th Texas Legislature, 2007 (excerpts):**

- (a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (1) or exempted under Section 39.027, shall be assessed in:
  - (1) mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;
  - (2) reading, annually in grades three through eight;
  - (3) writing, including spelling and grammar, in grades four and seven;
  - (4) social studies, in grade eight;
  - (5) science, in grades five and eight; and
  - (6) any other subject and grade required by federal law.
- (b) The agency shall develop or adopt appropriate criterion-referenced assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, who receives modified instruction in the essential knowledge and skills identified under Section 28.002 for the assessed subject but for whom an assessment instrument adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee. The assessment instruments required under this subsection must assess essential knowledge and skills and growth in the subjects of reading, mathematics, and writing. A 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 assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).
- (c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, Algebra II, geometry, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. The Algebra I, Algebra II, and geometry end-of-course assessment instruments must be administered with the aid of technology. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection and shall adopt a policy that requires a student's performance on an end-of-course assessment instrument for a course listed in this subsection in which the student is enrolled to account for 15 percent of the student's final grade for the course. If a student retakes an end-of-course assessment instrument for a course listed in this subsection, as provided by Section 39.025, a school district is not required to use the student's performance on the subsequent administration or administrations of the assessment instrument to determine the student's final grade for the course. 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 or whether the student should be exempted under Section 39.027(a)(2). The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).

- (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 or whether the student should be exempted under Section 39.027(a)(2).
- (l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through six who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(3) or (4). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.
- (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)(3) and (4). 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.

**Texas Education Code, §39.027, Exemption, as amended by Senate Bill 1871, 80th Texas Legislature, 2007:**

- (a) A student may be exempted from the administration of an assessment instrument under:
  - (1) Section 39.023(a) or (b) if the student is eligible for a special education program under Section 29.003 and the student's individualized education program does not include instruction in the essential knowledge and skills under Section 28.002 at any grade level;
  - (2) Section 39.023(c) or (d) if the student is eligible for a special education program under Section 29.003 and:
    - (A) the student's individualized education program does not include instruction in the essential knowledge and skills under Section 28.002 at any grade level; or

- (B) the assessment instrument, even with allowable modifications, would not provide an appropriate measure of the student's achievement as determined by the student's admission, review, and dismissal committee;
  - (3) Section 39.023(a) or (l) for a period of up to one year after initial enrollment in a school in the United States if the student is of limited English proficiency, as defined by Section 29.052, and has not demonstrated proficiency in English as determined by the assessment system under Subsection (e); or
  - (4) Section 39.023(a) or (l) for a period of up to two years in addition to the exemption period authorized by Subdivision (3) if the student has received an exemption under Subdivision (3) 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.
- (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 students of limited English proficiency, as defined by Section 29.052. A student who is exempt from the administration of an assessment instrument under Subsection (a)(3) or (4) 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)(3) or (4) applies shall be included in the academic excellence indicator system under Section 39.051, the performance report under Section 39.053, and the comprehensive annual report under Section 39.182. 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 42.005.
- (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 (l) 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).