

ATTACHMENT I

Statutory Citations Relating to Revisions to 19 TAC Chapter 101, Assessment, Subchapter BB, Commissioner's Rules Concerning the Student Success Initiative

Texas Education Code, Chapter 28, Courses of Study; Advancement, Subchapter B, Essential Knowledge of Skills; Curriculum

§28.021, Student Advancement, as amended by House Bill 3, Section 28, 81st Texas Legislature, 2009.

- (a) A student may be promoted only on the basis of academic achievement or demonstrated proficiency of the subject matter of the course or grade level.
- (b) In measuring the academic achievement or proficiency of a student who is dyslexic, the student's potential for achievement or proficiency in the area must be considered.
- (c) In determining promotion under Subsection (a), a school district shall consider:
 - (1) the recommendation of the student's teacher;
 - (2) the student's grade in each subject or course;
 - (3) the student's score on an assessment instrument administered under Section 39.023(a), (b), or (1); and
 - (4) any other necessary academic information, as determined by the district.
- (d) By the start of the school year, a district shall make public the requirements for student advancement under this section.
- (e) The commissioner shall provide guidelines to districts based on best practices that a district may use when considering factors for promotion.

§28.0211, Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction, as amended by House Bill 3, Section 29, 81st Texas Legislature, 2009.

- (a) Except as provided by Subsection (b) or (e), a student may not be promoted to:
 - (1) ~~[the fourth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the third grade reading assessment instrument under Section 39.023;~~
 - ~~[(2)]~~ the sixth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the fifth grade mathematics and reading assessment instruments under Section 39.023; or
 - (2) ~~[(3)]~~ the ninth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the eighth grade mathematics and reading assessment instruments under Section 39.023.
- (a-1) Each time a student fails to perform satisfactorily on an assessment instrument administered under Section 39.023(a) in the third, fourth, fifth, sixth, seventh, or eighth grade, the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations.

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

promotion. The decision of the grade placement committee is final and may not be appealed.

- (f) A school district shall provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) accelerated instruction during the next school year as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c). The district shall provide that accelerated instruction regardless of whether the student has been promoted or retained. The educational plan must be designed to enable the student to perform at the appropriate grade level by the conclusion of the school year. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the plan. The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.
- (g) This section does not preclude the retention at a grade level, in accordance with state law or school district policy, of a student who performs satisfactorily on an assessment instrument specified under Subsection (a).
- (h) In each instance under this section in which a school district is specifically required to provide notice to a parent or guardian of a student, the district shall make a good faith effort to ensure that such notice is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English or the parent or guardian's native language.
- (i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) shall determine:
 - (1) the manner in which the student will participate in an accelerated instruction program under this section; and
 - (2) whether the student will be promoted or retained under this section.
- (j) A school district or open-enrollment charter school shall provide students required to attend accelerated programs under this section with transportation to those programs if the programs occur outside of regular school hours.
- (k) The commissioner shall adopt rules as necessary to implement this section, including rules concerning when school districts shall administer assessment instruments required under this section and which administration of the assessment instruments will be used for purposes of Section 39.051.
- (l) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1058, Sec. 17, eff. June 15, 2007.
- (l-1) The commissioner may adopt rules requiring a school district that receives federal funding under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.) to use that funding to provide supplemental educational services under 20 U.S.C. Section 6316 in conjunction with the accelerated instruction provided under this section, provided that the rules may not conflict with federal law governing the use of that funding.
- (m) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation

School Program funds. This section may be implemented only if the commissioner certifies that sufficient funds have been appropriated during a school year for administering the accelerated instruction programs specified under this section, including teacher training for that purpose.

- (n) A student who is promoted by a grade placement committee under this section must be assigned in each subject in which the student failed to perform satisfactorily on an assessment instrument specified under Subsection (a) to a teacher who meets all state and federal qualifications to teach that subject and grade.

§28.0213, Intensive Program of Instruction.

- (a) A school district shall offer an intensive program of instruction to a student who does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39.
- (b) A school district shall design the intensive program of instruction described by Subsection (a) to:
- (1) enable the student to:
 - (A) to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or
 - (B) attain a standard of annual growth specified by the school district and reported by the district to the agency; and
 - (2) if applicable, carry out the purposes of Section 28.0211.
- (c) A school district shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements. The commissioner shall distribute funds to districts that implement a program under this section based on the number of students identified by the district who:
- (1) do not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or
 - (2) are not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district.
- (d) A school district's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.
- (e) For a student in a special education program under Subchapter A, Chapter 29, who does not perform satisfactorily on an assessment instrument administered under Section 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:
- (1) enable the student to attain a standard of annual growth on the basis of the student's individualized education program; and
 - (2) if applicable, carry out the purposes of Section 28.0211.