

## **APPENDIX 2**

### **TEXAS ADMINISTRATIVE CODE, CHAPTER 101, SUBCHAPTERS A–E, AA, BB, AND CC**



# TEXAS ADMINISTRATIVE CODE

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## Table of Contents

### Subchapter A. General Provisions

- §101.1. Scope of Rules.
- §101.3. Policy.
- §101.5. Student Testing Requirements.
- §101.7. Testing Requirements for Graduation.
- §101.9. Grade Advancement Requirements.
- §101.11. Remediation.
- §101.13. Notice to Students and Parents.

### Subchapter B. Development and Administration of Tests

- §101.21. Test Development.
- §101.23. Performance Standards.
- §101.25. Schedule.
- §101.27. Administrative Procedures.
- §101.29. Accommodations.
- §101.31. Private Schools.
- §101.33. Release of Tests.

### Subchapter C. Security and Confidentiality

- §101.61. Security of Tests.
- §101.63. Confidentiality.
- §101.65. Penalties.

### Subchapter D. Scoring and Reporting

- §101.81. Scoring and Reporting.
- §101.83. National Comparative Data.

### Subchapter E. Local Option

- §101.101. Group-Administered Tests.

### Subchapter AA. Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments

- §101.1001. English Language Proficiency Assessments.
- §101.1003. Role of the Language Proficiency Assessment Committee.
- §101.1005. Limited English Proficient Students at the Exit Level.
- §101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.
- §101.1009. Limited English Proficient Students Who Receive Special Education Services.

**Subchapter BB. Commissioner's Rules Concerning the Student Success Initiative**

- §101.2001. Policy.
- §101.2003. Grade Advancement Testing Requirements.
- §101.2005. Test Administration and Schedule.
- §101.2007. Role of Grade Placement Committee.
- §101.2009. Notice to Parents or Guardians.
- §101.2011. Alternate Assessment.
- §101.2013. Accelerated Instruction.
- §101.2015. Parental Waiver.
- §101.2017. Scoring and Reporting.
- §101.2019. Credit for High School Graduation.

**Subchapter CC. Commissioner's Rules Concerning Implementation of Testing Program**

- §101.3001. Implementation of New Assessment Instruments.
- §101.3003. Graduation Requirements.

# 19 TAC Chapter 101, Assessment

## Subchapter A. General Provisions

### §101.1. Scope of Rules.

- (a) The State Board of Education (SBOE) shall:
  - (1) create and implement the statewide assessment program to ensure the program supports the goals of education as specified in the Texas Education Code (TEC); and
  - (2) establish goals for the statewide assessment program.
- (b) When adopting rules, the SBOE shall maintain the stability of the statewide assessment program to the greatest extent possible in accordance with the TEC, Chapter 39, Subchapter B.
- (c) The statewide assessment program consists of the following criterion-referenced tests:
  - (1) the assessment of academic skills in English and Spanish for the grades and subjects as specified in the TEC, Chapter 39, Subchapter B;
  - (2) the alternative assessment of academic skills for eligible students receiving special education services as specified in the TEC, Chapter 39, Subchapter B;
  - (3) the assessments required for graduation as specified in the TEC, Chapter 39, Subchapter B; and
  - (4) the reading proficiency tests in English for eligible limited English proficient students as specified in the TEC, Chapter 39, Subchapter B.

*Source: The provisions of this §101.1 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### §101.3. Policy.

- (a) The goal of the statewide assessment program is to provide all eligible Texas students an appropriate statewide assessment that measures and supports their achievement of the essential knowledge and skills of the state-mandated curriculum.
- (b) To maximize its effectiveness for educators and students, the statewide assessment program shall be based on the following quality standards.
  - (1) Tests shall be aligned to the essential knowledge and skills of the state-mandated curriculum in all subject areas tested.
  - (2) Tests shall be reliable and valid measures of the essential knowledge and skills and shall be administered in a standardized manner.
  - (3) Test results at the student, campus, district, regional, and state levels shall be reported in a timely and accurate manner.

*Source: The provisions of this §101.3 adopted to be effective August 15, 2002, 27 TexReg 7106.*

## §101.5. Student Testing Requirements.

- (a) Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced tests, as required by the Texas Education Code (TEC), §39.023(a), (b), (c), (l) and §39.027(e).
- (b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3–10 and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student’s admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student’s academic progress as outlined in the student’s individualized education program (IEP). If the student’s ARD committee determines that the assessment of academic skills is an inappropriate measure of the student’s academic progress in whole or part, the student shall take the alternative assessment of academic skills in whole or part. Each testing accommodation shall be documented in the student’s IEP in accordance with 34 Code of Federal Regulations (CFR) §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments.
- (c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3–10, according to the grade implementation schedule in subsection (b) of this section, and who is not receiving any instruction in the essential knowledge and skills, shall be considered exempt in accordance with the TEC, §39.027. Each exemption shall be documented in the student’s IEP in accordance with 34 CFR §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments. Each exempted student receiving special education services shall take an appropriate locally selected assessment, as determined by the student’s ARD committee, in accordance with procedures developed by the Texas Education Agency (TEA). Student performance results on these alternate assessments must be reported to the TEA.
- (d) In Grades 3–12, a limited English proficient (LEP) student, as defined by the TEC, Chapter 29, Subchapter B, shall participate in the assessments as required by this section and Subchapter AA of this chapter (relating to Commissioner’s Rules Concerning the Participation of Limited English Proficient Students in State Assessments). In Grades 3–6, the language proficiency assessment committee (LPAC) shall determine whether a nonexempt LEP student whose primary language is Spanish will take the assessment of academic skills in English or in Spanish. The decision as to the language of the assessment shall be based on the assessment that will provide the most appropriate measure of the student’s academic progress.
- (e) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the testing requirement as specified in the TEC, Chapter 39, Subchapter B.

*Source: The provisions of this §101.5 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg1632.*

## §101.7. Testing Requirements for Graduation.

- (a) To be eligible to receive a high school diploma, a student must demonstrate satisfactory performance as determined by the State Board of Education (SBOE) on the assessments required for graduation as specified in the Texas Education Code (TEC), Chapter 39, Subchapter B.
  - (1) To fulfill the testing requirements for graduation, a student must be tested by either a Texas school district, Texas education service center, open-enrollment charter school, the Texas Education Agency (TEA), or other individual or organization designated by the commissioner of education.
  - (2) On the tests required for graduation, a student shall not be required to demonstrate performance at a standard higher than the one in effect when he or she was first eligible to take the test.
- (b) Beginning with the 2003–2004 school year, students who were enrolled in Grade 8 or a lower grade on January 1, 2001, must fulfill testing requirements for graduation with the Grade 11 exit level tests, as specified in the TEC, §39.023(c).
- (c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, who successfully completes the requirements of his or her individualized education program (IEP) shall receive a high school diploma.
- (d) According to procedures specified in the applicable test administration materials, an eligible student or out-of-school individual who has not met graduation requirements may retest on a schedule determined by the commissioner of education.

*Source: The provisions of this §101.7 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg 1632.*

## §101.9. Grade Advancement Requirements.

Each school district and charter school shall test eligible students in accordance to the grade advancement requirements as specified in the Texas Education Code (TEC), §28.0211(a). These requirements pertain to the reading test at Grade 3, beginning in the 2002–2003 school year; the reading and mathematics tests at Grade 5, beginning in the 2004–2005 school year; and the reading and mathematics tests at Grade 8, beginning in the 2007–2008 school year.

- (1) The Texas Education Agency (TEA) shall provide three opportunities for the tests required for grade advancement as specified in the TEC, §28.0211(b). The commissioner of education shall specify the dates of these administrations in the assessment calendar.
- (2) A school district or charter school shall provide accelerated instruction for students who fail to demonstrate satisfactory performance as specified in the TEC, §28.0211(c).
- (3) The commissioner of education shall approve the assessments for local use by school districts or charter schools as provided under the TEC, §28.0211(b).

*Source: The provisions of this §101.9 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg 1632.*

## **§101.11. Remediation.**

- (a) Each school district and charter school shall provide remediation for students who fail to demonstrate satisfactory performance on any section of the assessments of academic skills, as required by the Texas Education Code (TEC), §28.0213.
- (b) In compliance with the TEC, §39.024(c), the Texas Education Agency (TEA) shall develop summer remediation study guides to help parents in providing assistance to students who do not perform satisfactorily on one or more parts of the assessments of academic skills specified in the TEC, §39.023(a) and (c). The TEA shall distribute these study guides as required to school districts and charter schools. Each school district and charter school shall distribute the summer remediation study guides in the manner most effective for them, and shall observe the requirements for maintaining confidentiality of student testing results. Each student who does not perform satisfactorily on one or more subject-area tests shall receive a remediation study guide.

*Source: The provisions of this §101.11 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg 1632.*

## **§101.13. Notice to Students and Parents.**

- (a) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of graduation requirements:
  - (1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh-grade year of the testing requirements for graduation;
  - (2) notifying each student in Grades 7–12 new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for graduation; and
  - (3) notifying each student who shall take the tests required for graduation and his or her parent or guardian, as well as out-of-school individuals, of the dates, times, and locations of testing.
- (b) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of testing requirements for advancement at certain grades:
  - (1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's first-grade year or no later than the beginning of the student's kindergarten year, for students attending kindergarten in a public school, of the testing requirements for grade advancement as specified in the Texas Education Code (TEC), §28.0211;
  - (2) notifying each student in Grades 1–8 who is new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for grade advancement; and
  - (3) notifying each student required to take the grade advancement tests of the dates, times, and locations of testing.

*Source: The provisions of this §101.13 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## Subchapter B. Development and Administration of Tests

### §101.21. Test Development.

- (a) Texas educators shall assist Texas Education Agency staff in developing test objectives, assessment guidelines, and test items. Advisory committees composed of Texas educators shall reflect the diversity of the state by region, ethnicity, gender, and type and size of school district.
- (b) The commissioner of education shall ensure that each criterion-referenced test developed under the Texas Education Code (TEC), Chapter 39, Subchapter B, meets accepted standards for educational testing.
- (c) Each public school and charter school shall assist with field-testing and other activities necessary to implement the requirements of the TEC, Chapter 39, Subchapter B.

*Source: The provisions of this §101.21 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### §101.23. Performance Standards.

- (a) Except as otherwise provided by the Texas Education Code (TEC), Chapter 39, Subchapter B, the State Board of Education (SBOE) shall determine the level of performance considered to be satisfactory on the assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the Texas Assessment of Knowledge and Skills (TAKS). The “commended” and “met” standards are based on spring 2003 operational test forms. Future forms will be equated by the Texas Education Agency to the 2003 assessments in order to ensure that equivalent standards are maintained. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student’s high school career. For example, a student in Grade 12 during the 2004–2005 school year will be allowed to graduate under the TAKS exit-level standard that was in place at the time the student entered Grade 10 in the 2002–2003 school year.

Figure: 19 TAC §101.23(a)

- (b) As established in subsection (a) of this section, the SBOE shall determine the level of performance considered satisfactory on assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the TAKS Grade 8 science assessment. The “commended” and “met” standards are based on the spring 2006 operational test form. Future forms of the test will be equated by the Texas Education Agency to the 2006 assessment in order to ensure that equivalent standards are maintained.

Figure: 19 TAC §101.23(b)

- (c) The alternative assessment of academic skills will measure annual growth based on appropriate expectations for each student receiving special education services, as determined by the student’s admission, review, and dismissal (ARD) committee in accordance with criteria established by the commissioner of education as required by the TEC, §39.024(a).

*Source: The provisions of this §101.23 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective September 1, 2004, 28 TexReg 8606.*

## **§101.25. Schedule.**

- (a) The commissioner of education shall specify the schedule for testing and field testing that supports reliable and valid assessments.
- (b) The superintendent of each school district or chief administrative officer of each charter school and any private school administering the tests as allowed under the Texas Education Code (TEC), §39.033, shall be responsible for administering tests.
- (c) The commissioner of education may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children, as defined in the TEC, §39.029, and who are out of the state.

*Source: The provisions of this §101.25 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **§101.27. Administrative Procedures.**

- (a) Test administration procedures shall be established by the Texas Education Agency (TEA) in the applicable test administration materials.
- (b) A school district, charter school, or private school administering the tests required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.
- (c) The superintendent of each school district and chief administrative officer of each charter school or private school administering tests required by TEC, Chapter 39, Subchapter B, shall be responsible for:
  - (1) maintaining the integrity of the test administration process; and
  - (2) ensuring that every test administrator receives at least annual training in these procedures as provided by the TEA through the education service centers.

*Source: The provisions of this §101.27 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **§101.29. Accommodations.**

- (a) Testing accommodations on the assessments administered under the Texas Education Code (TEC), Chapter 39, Subchapter B, are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction.
- (b) For a student receiving special education services, the admission, review, and dismissal (ARD) committee shall determine the allowable accommodations necessary for the student to take the assessments administered under the TEC, Chapter 39, Subchapter B, and shall document them in the student's individualized education program.
- (c) Permissible testing accommodations shall be described in the appropriate test administration materials.

*Source: The provisions of this §101.29 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.31. Private Schools.**

- (a) A private school administering the tests under the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials. Each private school shall maintain test security and confidentiality as delineated in the TEC, §39.030.
- (b) A private school administering the tests under the TEC, Chapter 39, Subchapter B, shall reimburse the Texas Education Agency for each test administered. The per-student cost may not exceed the cost of administering the same test to a student enrolled in a school district.
- (c) A private school administering the tests under the TEC, Chapter 39, Subchapter B, shall provide to the commissioner of education, as required by law, academic excellence indicator information described in the TEC, §39.051(b). For indicator information defined and collected through the Public Education Information Management System (PEIMS), private schools shall follow the PEIMS Data Standards.

*Source: The provisions of this §101.31 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.33. Release of Tests.**

Beginning in 2004 with the 2003–2004 school year and subsequent even-numbered years, the Texas Education Agency (TEA) shall release all test items and answer keys for the Texas Assessment of Knowledge and Skills (TAKS), the State-Developed Alternative Assessment (SDAA), and the Reading Proficiency Tests in English (RPTE). After a period of five years, each test item that has been field-tested but not used on a test will be released.

*Source: The provisions of this §101.33 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective October 12, 2003, 28 TexReg 8607; amended to be effective June 6, 2004, 29 TexReg 5343.*

## **Subchapter C. Security and Confidentiality**

### **§101.61. Security of Tests.**

The statewide assessment program as defined by the Texas Education Code (TEC), Chapter 39, Subchapter B, is a secure testing program. Procedures for maintaining security shall be specified in the appropriate test administration materials. Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

*Source: The provisions of this §101.61 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.63. Confidentiality.**

The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the Texas Education Code (TEC), §39.030(b).

*Source: The provisions of this §101.63 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.65. Penalties.**

- (a) Violation of security or confidential integrity of any test required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall be prohibited.
- (b) A person who engages in conduct prohibited by this section may be subject to sanction of credentials.
- (c) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).
- (d) Procedures for maintaining the security and confidential integrity of a test shall be specified in the appropriate test administration materials. Conduct that violates the security and confidential integrity of a test is defined as any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include the following acts and omissions:
  - (1) duplicating secure examination materials;
  - (2) disclosing the contents of any portion of a secure test;
  - (3) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
  - (4) changing or altering a response or answer of an examinee to a secure test item or prompt;
  - (5) aiding or assisting an examinee with a response or answer to a secure test item or prompt;
  - (6) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)–(5) of this subsection; or
  - (7) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)–(6) of this subsection.
- (e) Any person who violates, assists in the violation of, or solicits another to violate or assist in the violation of test security or confidential integrity, and any person who fails to report such a violation are subject to the following penalties:
  - (1) placement of restrictions on the issuance, renewal, or holding of a Texas teacher certificate, either indefinitely or for a set term;
  - (2) issuance of an inscribed or non-inscribed reprimand;

- (3) suspension of a Texas teacher certificate for a set term; or
- (4) revocation or cancellation of a Texas teacher certificate without opportunity for reapplication for a set term or permanently.
- (f) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.
- (g) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the Texas Education Agency in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. Failure to report can subject the person responsible to the applicable penalties specified in this section.

*Source: The provisions of this §101.65 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **Subchapter D. Scoring and Reporting**

### **§101.81. Scoring and Reporting.**

- (a) The superintendent of a school district or chief administrative officer of each charter school shall accurately report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.
- (b) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students and his or her parent or guardian of test results, observing confidentiality requirements in the TEC, §39.030.
- (c) All test results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another school district, charter school, or private school.
- (d) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §28.0211, within a ten-day period following the receipt of the test materials from the school district or charter school.

*Source: The provisions of this §101.81 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.83. National Comparative Data.**

- (a) In accordance with the Texas Education Code (TEC), §39.028, the commissioner of education shall develop a schedule to obtain nationally comparative results for the grades and subject areas for which assessments of academic skills are adopted under TEC, §39.023.

- (b) The Texas Education Agency will use sampling and other techniques to minimize the disruption to schools and loss of instructional time required of school districts to obtain nationally comparative data.
- (c) The nationally comparative data will be collected by using nationally recognized instruments for obtaining valid and reliable normative data from a sample of Texas students.

*Source: The provisions of this §101.83 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **Subchapter E. Local Option**

### **§101.101. Group-Administered Tests.**

- (a) An assessment instrument required under the Texas Education Code (TEC), §39.032, is defined as any district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (e.g., to the local board of trustees) in the aggregate. A test given for a special purpose, such as program placement or individual evaluation (e.g., a spelling test, a diagnostic test such as a reading inventory or interim benchmark assessment, or a released statewide assessment instrument), is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved, norm-referenced group-administered achievement tests that test publishers certify meet the requirements of TEC, §39.032.
- (b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees. The company or organization shall provide results in electronic form in the same form that such information is provided to the school district to the Texas Education Agency (TEA) annually and data shall include as applicable the name, level, and form of the test; the year in which the test was normed; and the mean normal curve equivalent aggregated for each subject area by grade, campus, and district. State norms shall be provided if available.
- (c) A company or organization that reports results using national norms or state standards that do not comply with the TEC, §39.032, is liable for damages as stated in the TEC, §39.032(d).
- (d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the applicable procedures for test security and confidentiality delineated in Subchapter C of this chapter (relating to Security and Confidentiality). A school district may not use the same form of any test defined in subsection (a) of this section for more than three years.
- (e) Any school district that develops its own summative test that meets the definition of subsection (a) of this section is also obligated to report those results in electronic form to the TEA in the manner prescribed by the TEA.

*Source: The provisions of this §101.101 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective December 7, 2003, 28 TexReg 10940.*

## **Subchapter AA. Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments**

### **§101.1001. English Language Proficiency Assessments.**

In kindergarten through Grade 12, limited English proficient students, as defined by the Texas Education Code, Chapter 29, Subchapter B, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the Texas Education Code, Chapter 39, Subchapter B, and federal requirements under the No Child Left Behind Act of 2001.

*Source: The provisions of this §101.1001 adopted to be effective September 20, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

### **§101.1003. Role of the Language Proficiency Assessment Committee.**

In accordance with the Texas Education Code, §39.023(a), (l), and (m), the language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each limited English proficient student as outlined in §101.1005 of this title (relating to Limited English Proficient Students at the Exit Level) and §101.1007 of this title (relating to the Limited English Proficient Students at Grades Other Than the Exit Level). Assessment decisions must be made on an individual student basis and in accordance with administrative procedure established by the Texas Education Agency. The LPAC must document in the student's permanent record file the reason for the postponement authorized in §101.1005 or for the exemption authorized in §101.1007. A school district shall make a reasonable effort to determine a student's previous testing history.

*Source: The provisions of this §101.1003 adopted to be effective September 30, 2001, 26 TexReg 7270.*

### **§101.1005. Limited English Proficient Students at the Exit Level.**

Limited English proficient (LEP) students are not eligible for an exemption from the exit level assessment of academic skills on the basis of limited English proficiency. However, LEP students who are recent immigrants may postpone one time the initial administration of the exit level test. The term "recent immigrant" in this section is defined as an immigrant who first enrolls in U.S. schools no more than 12 months before the administration of the test from which the postponement is sought.

*Source: The provisions of this §101.1005 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

## §101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.

- (a) In Grades 3–6, the language proficiency assessment committee (LPAC) shall determine whether a limited English proficient (LEP) student is administered the assessment of academic skills in English or in Spanish. A LEP student may be administered a Spanish version of the assessment of academic skills for a maximum of three years. If the LEP student is an immigrant, the number of LEP exemptions and administrations of the assessment in Spanish must not exceed three.
- (b) In accordance with paragraphs (1)–(4) of this subsection, certain immigrant LEP students who have had inadequate schooling outside the U.S. may be eligible for an exemption from the assessment of academic skills during a period not to exceed their first three school years of enrollment in U.S. schools. The term “immigrant” in this subchapter is defined as a student who has resided outside the 50 U.S. states for at least two consecutive years.
  - (1) An immigrant LEP student who achieves a rating of advanced high on the state-administered reading proficiency tests in English during the student’s first school year of enrollment in U.S. schools is not eligible for an exemption in the second or third school year of enrollment in U.S. schools. An immigrant LEP student who achieves a rating of advanced or advanced high on this assessment during the student’s second school year of enrollment in U.S. schools is not eligible for an exemption in the third school year of enrollment in U.S. schools.
  - (2) During the first school year of enrollment in U.S. schools, the immigrant student may be granted a LEP exemption if the LPAC determines that the student has not had the schooling outside the U.S. necessary to provide the foundation of learning that Texas schools require and measure on the assessment, whether the foundation be in knowledge of the English language or specific academic skills and concepts in the subjects assessed.
  - (3) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the U.S. was inadequate and for whom a primary language assessment is not available may be granted a LEP exemption if the LPAC determines that the student lacks the academic language proficiency in English necessary for an assessment of academic skills in English to measure the student’s academic progress in a valid, reliable manner.
  - (4) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the U.S. was inadequate and for whom a Spanish-version assessment is available is not eligible for a LEP exemption and must take the assessment in either English or Spanish unless:
    - (A) the student is in an English as a second language (ESL) program, which does not call for instruction in Spanish, and the LPAC determines that the student lacks the language proficiency in English and the academic instruction in Spanish and/or literacy in Spanish for the assessment in either English or Spanish to measure the student’s academic progress in a valid, reliable manner; or

- (B) the student is in a bilingual education program and the LPAC has documentation, including signed verification by the parent or guardian whenever possible, that there was an extensive period of time outside the U.S. in which the student did not attend school and that this absence of schooling resulted in such limited academic achievement and/or literacy that assessment in either English or Spanish is inappropriate as a measure for school accountability. The term “extensive period of time outside the U.S.,” as used in this subparagraph, shall be defined in the test administration materials.
- (c) Students exempted under subsection (b) of this section shall be administered assessments in subjects and grades required by federal law and regulations as delineated in the test administration materials. Exempt students assessed only for federal accountability purposes shall not be subject to the grade advancement requirements under the Student Success Initiative.
- (d) A LEP student whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption under subsection (b) of this section. The student shall take the assessments of academic skills in English and the English language proficiency assessments required by §101.1001 of this title (relating to English Language Proficiency Assessments).
- (e) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a two-way bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student’s academic progress. However, the student may not be administered the Spanish-version assessment for longer than three years.

*Source: The provisions of this §101.1007 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

### **§101.1009. Limited English Proficient Students Who Receive Special Education Services.**

- (a) The provisions of this subchapter apply to limited English proficient (LEP) students who receive special education services except as otherwise specified in this section.
- (b) Decisions regarding the selection of assessments for LEP students who receive special education services shall be made by the admission, review, and dismissal (ARD) committee, which includes a language proficiency assessment committee (LPAC) member to ensure that issues related to the student’s language proficiency are duly considered.
- (c) A LEP student who receives special education services may be exempted from the English language proficiency assessments required by §101.1001 of this title (relating to English Language Proficiency Assessments) only if the ARD committee determines that these assessments cannot provide a meaningful measure of the student’s annual growth in English language proficiency for reasons associated with the student’s disability.
- (d) The provisions of §101.1007(b) and (c) of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level) apply to the assessment of academic skills and the state-developed alternative assessment of academic skills.

- (e) A LEP student who receives special education services and whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption on the basis of limited English proficiency.

*Source: The provisions of this §101.1009 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

## **Subchapter BB. Commissioner's Rules Concerning the Student Success Initiative**

### **§101.2001. Policy.**

- (a) The policy of the Texas Education Agency relating to the grade advancement testing requirements, as specified in the Texas Education Code (TEC), § 28.0211(a), is to support student academic achievement of the essential knowledge and skills at each grade level to enable a student to succeed at the next grade level.
- (b) In addition to local policy relating to grade advancement, students in Grades 3, 5, and 8 shall demonstrate proficiency in the subjects required by 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 only advance to the next grade if the student's Grade Placement Committee, 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.
- (c) The purpose of these rules is to ensure the effective implementation of the grade advancement testing requirements as part of an overall system of support for student academic achievement. This system includes but is not limited to the following:
  - (1) informal and formal assessment of student needs at preceding grades and corresponding early intervention activities that address those needs;
  - (2) continuous and ongoing evaluation by a variety of means;
  - (3) research-based instructional programs;
  - (4) targeted accelerated instruction informed by multiple testing opportunities and other means of evaluation;
  - (5) a grade placement committee which decides on an individual student basis the most effective way to support a student's academic achievement on grade level; and
  - (6) accelerated education plans for every student who does not pass the required grade advancement assessments after three opportunities, whether he or she is retained or promoted by his or her grade promotion committee.

*Source: The provisions of this §101.2001 adopted to be effective May 26, 2002, 27 TexReg 4337.*

### §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 pertain to the following assessment instruments under TEC, §39.023(a), (b), and (l):
  - (1) the reading test at Grade 3, beginning in the 2002–2003 school year;
  - (2) the reading and mathematics tests at Grade 5, beginning in the 2004–2005 school year; and
  - (3) the reading and mathematics tests at Grade 8, beginning in the 2007–2008 school year.
- (b) An eligible student is subject to all of the grade advancement requirements under TEC, §28.0211, including the automatic retention component, if the following two criteria are met:
  - (1) the student is enrolled in a local school district or charter school on any day between January 1 and April 15 of the school year during which the grade advancement test is administered; and
  - (2) the student is eligible for enrollment in a Texas public school (as defined by legal residence in the state) during the week of the first general grade advancement test administration as established in the assessment calendar by the commissioner of education.
- (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 week of the first general grade advancement test administration is subject to all of the grade advancement requirements except for the automatic retention component and therefore will not be automatically retained under TEC, §28.0211, if the student does not demonstrate proficiency on any of the grade advancement tests. In accordance with §101.2001(c) of this title (relating to Policy), a school district or charter school must provide this student with the other required services that are set forth in policy as part of an overall system of support for student academic achievement. These required services include the opportunity to test, access to accelerated instruction, and the formation of a Grade Placement Committee (GPC) on a student's behalf.
- (d) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3, 5, or 8 and 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. In accordance with §101.5(b) of this title (relating to Student Testing Requirements) and TEC, §28.0211(i), the student's admission, review, and dismissal (ARD) committee shall determine appropriate assessment and acceleration options for each eligible student. Assessment decisions must be made on an individual basis and in accordance with administrative procedure established by the Texas Education Agency (TEA). These decisions shall be documented in the student's individualized education program (IEP).

- (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 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 appropriate assessment and acceleration options 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 administrative procedure 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, which includes a member of the LPAC to ensure that issues related to the student's language proficiency are duly considered.
- (g) In accordance with 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 tested subject.
- (h) A school district or charter school must determine a student's previous testing history and, if applicable, the accelerated instructional program he or she has received.

*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.*

### **§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.*

### **§101.2007. 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 student who fails to demonstrate proficiency on the second administration of the test required for grade advancement. Decisions by the GPC shall be made on an individual student basis to ensure the most effective way 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 test(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 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 any actions required, except that the GPC may not agree to promote a student under 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 test results for the second administration of the test required for grade advancement, the district shall notify (for each student who fails to demonstrate proficiency) the campus principal of student test results. Upon receipt of this notice, the principal shall notify the teacher and parent or guardian of the test 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) 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 a test required for grade advancement and is thereby automatically retained at the same grade level. Within five working days of receipt of student test results for this administration, the district shall notify (for each student who fails to demonstrate proficiency) the principal or principal's designee of student test results. 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. The review and final decision of the GPC must be appropriately documented as meeting the standards adopted by the local school board. These standards may include but are not limited to the following:
  - (1) evidence of satisfactory student performance, including grades, portfolios, work samples, local assessments, previous state assessments, and individual reading and mathematics diagnostic tests or inventories;
  - (2) improvement in student test performance over the three testing opportunities;
  - (3) extenuating circumstances that may have adversely affected the student's participation in instruction, the student's participation in the required assessments, or the student's participation in accelerated instruction; and
  - (4) consideration of whether a student was not enrolled in a Texas public school for part of the school year.

- (g) In accordance with 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 TEC, §28.0211. This subsection does not limit the authority of a district to appropriately place a student under TEC, Chapter 25, Subchapter B.
- (i) In addition to the placement decision, the GPC shall develop an accelerated educational 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 education 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.*

### **§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.
- (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 test required for grade advancement the next year. The superintendent must establish the instruments/procedures to be used to make this determination. In the case of second grade students, it must include the results of the reading inventory required under Texas Education Code, §28.006. This notice shall 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 test. This notification should be made within five working days of receipt of student test results from this administration. This notice shall include the student's test results, description of the grade advancement policy, the accelerated instruction to which the student has been assigned, 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 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 the 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.*

### **§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.*

### **§101.2013. Accelerated Instruction.**

- (a) Each time a student fails to demonstrate proficiency on an assessment required for grade advancement, the school district or charter school shall provide the student with accelerated instruction in the applicable subject. Accelerated instruction should be consistent with previous diagnostic testing and intervention activities, if any, the student has received. Accelerated instruction for students who have failed an assessment may not have a ratio of more than ten students to each teacher per class.
- (b) Accelerated instruction required after the first and second testing opportunities should be designed to address student needs to the greatest extent possible before the next respective testing opportunity.

- (c) Each school district and each charter school shall be responsible for providing transportation to students required to attend acceleration programs if these programs occur outside of regular school hours.
- (d) 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.
- (e) Accelerated instruction shall be based on but not limited to the following:
  - (1) assessment of specific student needs, which may include as appropriate the following: teacher observations and evaluations; academic progress reports; previous identification of student needs and corresponding interventions; and performance on previous assessment instruments in the applicable subject.
  - (2) best instructional practices identified through research that the district may obtain and implement through technical assistance from the Texas Education Agency and education service centers.

*Source: The provisions of this §101.2013 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.*

## **Subchapter CC. Commissioner's Rules Concerning Implementation of Testing Program**

### **§101.3001. Implementation of New Assessment Instruments.**

- (a) In accordance with Senate Bill 103, Section 9, 76th Texas Legislature, 1999, this subsection is adopted by the commissioner of education for the implementation of the Texas Education Code (TEC), §39.023. In this subsection, the Act means Acts of the 76th Texas Legislature, 1999, Chapter 397.
  - (1) The State Board of Education (SBOE) shall administer each assessment instrument added by the Act not later than the 2002–2003 school year, in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).
  - (2) The Texas Education Agency (TEA), not later than the 2004–2005 school year, shall include the results of student performance on each assessment instrument added by the Act in evaluating the performance of school districts, campuses, and open enrollment charter schools under the TEC, Chapter 39, Subchapter D.
  - (3) The SBOE, not later than the 2004–2005 school year, shall administer assessment instruments under the TEC, §39.023(b), that correspond to the following assessment instruments required under the TEC, §39.023(a), as amended by the Act:
    - (A) the mathematics assessment instrument administered in Grades 9 and 10;
    - (B) the reading assessment instrument administered in Grade 9; and

- (C) the English language arts assessment instrument administered in Grade 10.
- (4) The TEA, not later than the 2006–2007 school year, shall include the results of student performance on each assessment instrument described by paragraph (3) of this subsection in evaluating the performance of school districts, campuses, and open-enrollment charter schools under the TEC, Chapter 39, Subchapter D.
- (5) Pending the introduction of any assessment instrument added by the Act:
  - (A) the SBOE shall administer each appropriate assessment under the TEC, §39.023, as that section existed before amendment by the Act;
  - (B) a student who performed satisfactorily on the end-of-course assessment instruments specified by the TEC, §39.025, as that section existed before amendment by the Act, is entitled to receive a high school diploma if the student completes all other requirements for high school graduation; and
  - (C) the former law as specified in the TEC, Chapter 39, Subchapter B, is continued in effect for the purposes provided by this paragraph.
- (b) In accordance with House Bill 411, Section 5, 78th Texas Legislature, 2003, this subsection is adopted by the commissioner of education for the implementation of the TEC, §39.023(a)(6) and (7). In this subsection, the Act means Acts of the 78th Texas Legislature, 2003, Chapter 1212.
  - (1) The SBOE, not later than the 2006–2007 school year, shall administer a science assessment instrument to students in Grade 8, as amended by this Act.
  - (2) The TEA, not later than the 2008–2009 school year, shall include the results of student performance on the Grade 8 science assessment instrument in evaluating the performance of school districts, campuses, and open-enrollment charter schools under the TEC, Chapter 39, Subchapter B, as amended by this Act.
  - (3) The TEA, shall administer to students assessments in any other subject and grade required by federal law.

*Source: The provisions of this §101.3001 adopted to be effective February 16, 2003, 28 TexReg 1175; amended to be effective February 17, 2005, 30 TexReg 711.*

### **§101.3003. Graduation Requirements.**

- (a) Notwithstanding §101.7 of this title (relating to Testing Requirements for Graduation), students who were enrolled in Grade 8 or lower on January 1, 2001, and who did not complete all coursework required to graduate by September 1, 2004, must fulfill testing requirements for graduation with the exit level Texas Assessment of Knowledge and Skills (TAKS) tests, as specified in Texas Education Code, §39.023(c). For purposes of this section, coursework necessary to graduate means all of the coursework required under the student's graduation plan.

# TEXAS ADMINISTRATIVE CODE

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## Table of Contents

### Subchapter A. General Provisions

- §101.1. Scope of Rules.
- §101.3. Policy.
- §101.5. Student Testing Requirements.
- §101.7. Testing Requirements for Graduation.
- §101.9. Grade Advancement Requirements.
- §101.11. Remediation.
- §101.13. Notice to Students and Parents.

### Subchapter B. Development and Administration of Tests

- §101.21. Test Development.
- §101.23. Performance Standards.
- §101.25. Schedule.
- §101.27. Administrative Procedures.
- §101.29. Accommodations.
- §101.31. Private Schools.
- §101.33. Release of Tests.

### Subchapter C. Security and Confidentiality

- §101.61. Security of Tests.
- §101.63. Confidentiality.
- §101.65. Penalties.

### Subchapter D. Scoring and Reporting

- §101.81. Scoring and Reporting.
- §101.83. National Comparative Data.

### Subchapter E. Local Option

- §101.101. Group-Administered Tests.

### Subchapter AA. Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments

- §101.1001. English Language Proficiency Assessments.
- §101.1003. Role of the Language Proficiency Assessment Committee.
- §101.1005. Limited English Proficient Students at the Exit Level.
- §101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.
- §101.1009. Limited English Proficient Students Who Receive Special Education Services.

**Subchapter BB. Commissioner's Rules Concerning the Student Success Initiative**

- §101.2001. Policy.
- §101.2003. Grade Advancement Testing Requirements.
- §101.2005. Test Administration and Schedule.
- §101.2007. Role of Grade Placement Committee.
- §101.2009. Notice to Parents or Guardians.
- §101.2011. Alternate Assessment.
- §101.2013. Accelerated Instruction.
- §101.2015. Parental Waiver.
- §101.2017. Scoring and Reporting.
- §101.2019. Credit for High School Graduation.

**Subchapter CC. Commissioner's Rules Concerning Implementation of Testing Program**

- §101.3001. Implementation of New Assessment Instruments.
- §101.3003. Graduation Requirements.

# 19 TAC Chapter 101, Assessment

## Subchapter A. General Provisions

### §101.1. Scope of Rules.

- (a) The State Board of Education (SBOE) shall:
  - (1) create and implement the statewide assessment program to ensure the program supports the goals of education as specified in the Texas Education Code (TEC); and
  - (2) establish goals for the statewide assessment program.
- (b) When adopting rules, the SBOE shall maintain the stability of the statewide assessment program to the greatest extent possible in accordance with the TEC, Chapter 39, Subchapter B.
- (c) The statewide assessment program consists of the following criterion-referenced tests:
  - (1) the assessment of academic skills in English and Spanish for the grades and subjects as specified in the TEC, Chapter 39, Subchapter B;
  - (2) the alternative assessment of academic skills for eligible students receiving special education services as specified in the TEC, Chapter 39, Subchapter B;
  - (3) the assessments required for graduation as specified in the TEC, Chapter 39, Subchapter B; and
  - (4) the reading proficiency tests in English for eligible limited English proficient students as specified in the TEC, Chapter 39, Subchapter B.

*Source: The provisions of this §101.1 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### §101.3. Policy.

- (a) The goal of the statewide assessment program is to provide all eligible Texas students an appropriate statewide assessment that measures and supports their achievement of the essential knowledge and skills of the state-mandated curriculum.
- (b) To maximize its effectiveness for educators and students, the statewide assessment program shall be based on the following quality standards.
  - (1) Tests shall be aligned to the essential knowledge and skills of the state-mandated curriculum in all subject areas tested.
  - (2) Tests shall be reliable and valid measures of the essential knowledge and skills and shall be administered in a standardized manner.
  - (3) Test results at the student, campus, district, regional, and state levels shall be reported in a timely and accurate manner.

*Source: The provisions of this §101.3 adopted to be effective August 15, 2002, 27 TexReg 7106.*

## §101.5. Student Testing Requirements.

- (a) Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced tests, as required by the Texas Education Code (TEC), §39.023(a), (b), (c), (l) and §39.027(e).
- (b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3–10 and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individualized education program (IEP). If the student's ARD committee determines that the assessment of academic skills is an inappropriate measure of the student's academic progress in whole or part, the student shall take the alternative assessment of academic skills in whole or part. Each testing accommodation shall be documented in the student's IEP in accordance with 34 Code of Federal Regulations (CFR) §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments.
- (c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3–10, according to the grade implementation schedule in subsection (b) of this section, and who is not receiving any instruction in the essential knowledge and skills, shall be considered exempt in accordance with the TEC, §39.027. Each exemption shall be documented in the student's IEP in accordance with 34 CFR §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments. Each exempted student receiving special education services shall take an appropriate locally selected assessment, as determined by the student's ARD committee, in accordance with procedures developed by the Texas Education Agency (TEA). Student performance results on these alternate assessments must be reported to the TEA.
- (d) In Grades 3–12, a limited English proficient (LEP) student, as defined by the TEC, Chapter 29, Subchapter B, shall participate in the assessments as required by this section and Subchapter AA of this chapter (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). In Grades 3–6, the language proficiency assessment committee (LPAC) shall determine whether a nonexempt LEP student whose primary language is Spanish will take the assessment of academic skills in English or in Spanish. The decision as to the language of the assessment shall be based on the assessment that will provide the most appropriate measure of the student's academic progress.
- (e) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the testing requirement as specified in the TEC, Chapter 39, Subchapter B.

*Source: The provisions of this §101.5 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg1632.*

## §101.7. Testing Requirements for Graduation.

- (a) To be eligible to receive a high school diploma, a student must demonstrate satisfactory performance as determined by the State Board of Education (SBOE) on the assessments required for graduation as specified in the Texas Education Code (TEC), Chapter 39, Subchapter B.
  - (1) To fulfill the testing requirements for graduation, a student must be tested by either a Texas school district, Texas education service center, open-enrollment charter school, the Texas Education Agency (TEA), or other individual or organization designated by the commissioner of education.
  - (2) On the tests required for graduation, a student shall not be required to demonstrate performance at a standard higher than the one in effect when he or she was first eligible to take the test.
- (b) Beginning with the 2003–2004 school year, students who were enrolled in Grade 8 or a lower grade on January 1, 2001, must fulfill testing requirements for graduation with the Grade 11 exit level tests, as specified in the TEC, §39.023(c).
- (c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, who successfully completes the requirements of his or her individualized education program (IEP) shall receive a high school diploma.
- (d) According to procedures specified in the applicable test administration materials, an eligible student or out-of-school individual who has not met graduation requirements may retest on a schedule determined by the commissioner of education.

*Source: The provisions of this §101.7 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg 1632.*

## §101.9. Grade Advancement Requirements.

Each school district and charter school shall test eligible students in accordance to the grade advancement requirements as specified in the Texas Education Code (TEC), §28.0211(a). These requirements pertain to the reading test at Grade 3, beginning in the 2002–2003 school year; the reading and mathematics tests at Grade 5, beginning in the 2004–2005 school year; and the reading and mathematics tests at Grade 8, beginning in the 2007–2008 school year.

- (1) The Texas Education Agency (TEA) shall provide three opportunities for the tests required for grade advancement as specified in the TEC, §28.0211(b). The commissioner of education shall specify the dates of these administrations in the assessment calendar.
- (2) A school district or charter school shall provide accelerated instruction for students who fail to demonstrate satisfactory performance as specified in the TEC, §28.0211(c).
- (3) The commissioner of education shall approve the assessments for local use by school districts or charter schools as provided under the TEC, §28.0211(b).

*Source: The provisions of this §101.9 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg 1632.*

## **§101.11. Remediation.**

- (a) Each school district and charter school shall provide remediation for students who fail to demonstrate satisfactory performance on any section of the assessments of academic skills, as required by the Texas Education Code (TEC), §28.0213.
- (b) In compliance with the TEC, §39.024(c), the Texas Education Agency (TEA) shall develop summer remediation study guides to help parents in providing assistance to students who do not perform satisfactorily on one or more parts of the assessments of academic skills specified in the TEC, §39.023(a) and (c). The TEA shall distribute these study guides as required to school districts and charter schools. Each school district and charter school shall distribute the summer remediation study guides in the manner most effective for them, and shall observe the requirements for maintaining confidentiality of student testing results. Each student who does not perform satisfactorily on one or more subject-area tests shall receive a remediation study guide.

*Source: The provisions of this §101.11 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective March 23, 2005, 30 TexReg 1632.*

## **§101.13. Notice to Students and Parents.**

- (a) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of graduation requirements:
  - (1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh-grade year of the testing requirements for graduation;
  - (2) notifying each student in Grades 7–12 new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for graduation; and
  - (3) notifying each student who shall take the tests required for graduation and his or her parent or guardian, as well as out-of-school individuals, of the dates, times, and locations of testing.
- (b) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of testing requirements for advancement at certain grades:
  - (1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's first-grade year or no later than the beginning of the student's kindergarten year, for students attending kindergarten in a public school, of the testing requirements for grade advancement as specified in the Texas Education Code (TEC), §28.0211;
  - (2) notifying each student in Grades 1–8 who is new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for grade advancement; and
  - (3) notifying each student required to take the grade advancement tests of the dates, times, and locations of testing.

*Source: The provisions of this §101.13 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## Subchapter B. Development and Administration of Tests

### §101.21. Test Development.

- (a) Texas educators shall assist Texas Education Agency staff in developing test objectives, assessment guidelines, and test items. Advisory committees composed of Texas educators shall reflect the diversity of the state by region, ethnicity, gender, and type and size of school district.
- (b) The commissioner of education shall ensure that each criterion-referenced test developed under the Texas Education Code (TEC), Chapter 39, Subchapter B, meets accepted standards for educational testing.
- (c) Each public school and charter school shall assist with field-testing and other activities necessary to implement the requirements of the TEC, Chapter 39, Subchapter B.

*Source: The provisions of this §101.21 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### §101.23. Performance Standards.

- (a) Except as otherwise provided by the Texas Education Code (TEC), Chapter 39, Subchapter B, the State Board of Education (SBOE) shall determine the level of performance considered to be satisfactory on the assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the Texas Assessment of Knowledge and Skills (TAKS). The “commended” and “met” standards are based on spring 2003 operational test forms. Future forms will be equated by the Texas Education Agency to the 2003 assessments in order to ensure that equivalent standards are maintained. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student’s high school career. For example, a student in Grade 12 during the 2004–2005 school year will be allowed to graduate under the TAKS exit-level standard that was in place at the time the student entered Grade 10 in the 2002–2003 school year.

Figure: 19 TAC §101.23(a)

- (b) As established in subsection (a) of this section, the SBOE shall determine the level of performance considered satisfactory on assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the TAKS Grade 8 science assessment. The “commended” and “met” standards are based on the spring 2006 operational test form. Future forms of the test will be equated by the Texas Education Agency to the 2006 assessment in order to ensure that equivalent standards are maintained.

Figure: 19 TAC §101.23(b)

- (c) The alternative assessment of academic skills will measure annual growth based on appropriate expectations for each student receiving special education services, as determined by the student’s admission, review, and dismissal (ARD) committee in accordance with criteria established by the commissioner of education as required by the TEC, §39.024(a).

*Source: The provisions of this §101.23 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective September 1, 2004, 28 TexReg 8606.*

## **§101.25. Schedule.**

- (a) The commissioner of education shall specify the schedule for testing and field testing that supports reliable and valid assessments.
- (b) The superintendent of each school district or chief administrative officer of each charter school and any private school administering the tests as allowed under the Texas Education Code (TEC), §39.033, shall be responsible for administering tests.
- (c) The commissioner of education may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children, as defined in the TEC, §39.029, and who are out of the state.

*Source: The provisions of this §101.25 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **§101.27. Administrative Procedures.**

- (a) Test administration procedures shall be established by the Texas Education Agency (TEA) in the applicable test administration materials.
- (b) A school district, charter school, or private school administering the tests required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.
- (c) The superintendent of each school district and chief administrative officer of each charter school or private school administering tests required by TEC, Chapter 39, Subchapter B, shall be responsible for:
  - (1) maintaining the integrity of the test administration process; and
  - (2) ensuring that every test administrator receives at least annual training in these procedures as provided by the TEA through the education service centers.

*Source: The provisions of this §101.27 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **§101.29. Accommodations.**

- (a) Testing accommodations on the assessments administered under the Texas Education Code (TEC), Chapter 39, Subchapter B, are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction.
- (b) For a student receiving special education services, the admission, review, and dismissal (ARD) committee shall determine the allowable accommodations necessary for the student to take the assessments administered under the TEC, Chapter 39, Subchapter B, and shall document them in the student's individualized education program.
- (c) Permissible testing accommodations shall be described in the appropriate test administration materials.

*Source: The provisions of this §101.29 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.31. Private Schools.**

- (a) A private school administering the tests under the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials. Each private school shall maintain test security and confidentiality as delineated in the TEC, §39.030.
- (b) A private school administering the tests under the TEC, Chapter 39, Subchapter B, shall reimburse the Texas Education Agency for each test administered. The per-student cost may not exceed the cost of administering the same test to a student enrolled in a school district.
- (c) A private school administering the tests under the TEC, Chapter 39, Subchapter B, shall provide to the commissioner of education, as required by law, academic excellence indicator information described in the TEC, §39.051(b). For indicator information defined and collected through the Public Education Information Management System (PEIMS), private schools shall follow the PEIMS Data Standards.

*Source: The provisions of this §101.31 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.33. Release of Tests.**

Beginning in 2004 with the 2003–2004 school year and subsequent even-numbered years, the Texas Education Agency (TEA) shall release all test items and answer keys for the Texas Assessment of Knowledge and Skills (TAKS), the State-Developed Alternative Assessment (SDAA), and the Reading Proficiency Tests in English (RPTE). After a period of five years, each test item that has been field-tested but not used on a test will be released.

*Source: The provisions of this §101.33 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective October 12, 2003, 28 TexReg 8607; amended to be effective June 6, 2004, 29 TexReg 5343.*

## **Subchapter C. Security and Confidentiality**

### **§101.61. Security of Tests.**

The statewide assessment program as defined by the Texas Education Code (TEC), Chapter 39, Subchapter B, is a secure testing program. Procedures for maintaining security shall be specified in the appropriate test administration materials. Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

*Source: The provisions of this §101.61 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.63. Confidentiality.**

The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the Texas Education Code (TEC), §39.030(b).

*Source: The provisions of this §101.63 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.65. Penalties.**

- (a) Violation of security or confidential integrity of any test required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall be prohibited.
- (b) A person who engages in conduct prohibited by this section may be subject to sanction of credentials.
- (c) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).
- (d) Procedures for maintaining the security and confidential integrity of a test shall be specified in the appropriate test administration materials. Conduct that violates the security and confidential integrity of a test is defined as any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include the following acts and omissions:
  - (1) duplicating secure examination materials;
  - (2) disclosing the contents of any portion of a secure test;
  - (3) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
  - (4) changing or altering a response or answer of an examinee to a secure test item or prompt;
  - (5) aiding or assisting an examinee with a response or answer to a secure test item or prompt;
  - (6) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)–(5) of this subsection; or
  - (7) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)–(6) of this subsection.
- (e) Any person who violates, assists in the violation of, or solicits another to violate or assist in the violation of test security or confidential integrity, and any person who fails to report such a violation are subject to the following penalties:
  - (1) placement of restrictions on the issuance, renewal, or holding of a Texas teacher certificate, either indefinitely or for a set term;
  - (2) issuance of an inscribed or non-inscribed reprimand;

- (3) suspension of a Texas teacher certificate for a set term; or
- (4) revocation or cancellation of a Texas teacher certificate without opportunity for reapplication for a set term or permanently.
- (f) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.
- (g) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the Texas Education Agency in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. Failure to report can subject the person responsible to the applicable penalties specified in this section.

*Source: The provisions of this §101.65 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **Subchapter D. Scoring and Reporting**

### **§101.81. Scoring and Reporting.**

- (a) The superintendent of a school district or chief administrative officer of each charter school shall accurately report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.
- (b) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students and his or her parent or guardian of test results, observing confidentiality requirements in the TEC, §39.030.
- (c) All test results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another school district, charter school, or private school.
- (d) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §28.0211, within a ten-day period following the receipt of the test materials from the school district or charter school.

*Source: The provisions of this §101.81 adopted to be effective November 15, 2001, 26 TexReg 9091.*

### **§101.83. National Comparative Data.**

- (a) In accordance with the Texas Education Code (TEC), §39.028, the commissioner of education shall develop a schedule to obtain nationally comparative results for the grades and subject areas for which assessments of academic skills are adopted under TEC, §39.023.

- (b) The Texas Education Agency will use sampling and other techniques to minimize the disruption to schools and loss of instructional time required of school districts to obtain nationally comparative data.
- (c) The nationally comparative data will be collected by using nationally recognized instruments for obtaining valid and reliable normative data from a sample of Texas students.

*Source: The provisions of this §101.83 adopted to be effective November 15, 2001, 26 TexReg 9091.*

## **Subchapter E. Local Option**

### **§101.101. Group-Administered Tests.**

- (a) An assessment instrument required under the Texas Education Code (TEC), §39.032, is defined as any district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (e.g., to the local board of trustees) in the aggregate. A test given for a special purpose, such as program placement or individual evaluation (e.g., a spelling test, a diagnostic test such as a reading inventory or interim benchmark assessment, or a released statewide assessment instrument), is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved, norm-referenced group-administered achievement tests that test publishers certify meet the requirements of TEC, §39.032.
- (b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees. The company or organization shall provide results in electronic form in the same form that such information is provided to the school district to the Texas Education Agency (TEA) annually and data shall include as applicable the name, level, and form of the test; the year in which the test was normed; and the mean normal curve equivalent aggregated for each subject area by grade, campus, and district. State norms shall be provided if available.
- (c) A company or organization that reports results using national norms or state standards that do not comply with the TEC, §39.032, is liable for damages as stated in the TEC, §39.032(d).
- (d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the applicable procedures for test security and confidentiality delineated in Subchapter C of this chapter (relating to Security and Confidentiality). A school district may not use the same form of any test defined in subsection (a) of this section for more than three years.
- (e) Any school district that develops its own summative test that meets the definition of subsection (a) of this section is also obligated to report those results in electronic form to the TEA in the manner prescribed by the TEA.

*Source: The provisions of this §101.101 adopted to be effective November 15, 2001, 26 TexReg 9091; amended to be effective December 7, 2003, 28 TexReg 10940.*

## **Subchapter AA. Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments**

### **§101.1001. English Language Proficiency Assessments.**

In kindergarten through Grade 12, limited English proficient students, as defined by the Texas Education Code, Chapter 29, Subchapter B, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the Texas Education Code, Chapter 39, Subchapter B, and federal requirements under the No Child Left Behind Act of 2001.

*Source: The provisions of this §101.1001 adopted to be effective September 20, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

### **§101.1003. Role of the Language Proficiency Assessment Committee.**

In accordance with the Texas Education Code, §39.023(a), (l), and (m), the language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each limited English proficient student as outlined in §101.1005 of this title (relating to Limited English Proficient Students at the Exit Level) and §101.1007 of this title (relating to the Limited English Proficient Students at Grades Other Than the Exit Level). Assessment decisions must be made on an individual student basis and in accordance with administrative procedure established by the Texas Education Agency. The LPAC must document in the student's permanent record file the reason for the postponement authorized in §101.1005 or for the exemption authorized in §101.1007. A school district shall make a reasonable effort to determine a student's previous testing history.

*Source: The provisions of this §101.1003 adopted to be effective September 30, 2001, 26 TexReg 7270.*

### **§101.1005. Limited English Proficient Students at the Exit Level.**

Limited English proficient (LEP) students are not eligible for an exemption from the exit level assessment of academic skills on the basis of limited English proficiency. However, LEP students who are recent immigrants may postpone one time the initial administration of the exit level test. The term "recent immigrant" in this section is defined as an immigrant who first enrolls in U.S. schools no more than 12 months before the administration of the test from which the postponement is sought.

*Source: The provisions of this §101.1005 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

## §101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.

- (a) In Grades 3–6, the language proficiency assessment committee (LPAC) shall determine whether a limited English proficient (LEP) student is administered the assessment of academic skills in English or in Spanish. A LEP student may be administered a Spanish version of the assessment of academic skills for a maximum of three years. If the LEP student is an immigrant, the number of LEP exemptions and administrations of the assessment in Spanish must not exceed three.
- (b) In accordance with paragraphs (1)–(4) of this subsection, certain immigrant LEP students who have had inadequate schooling outside the U.S. may be eligible for an exemption from the assessment of academic skills during a period not to exceed their first three school years of enrollment in U.S. schools. The term “immigrant” in this subchapter is defined as a student who has resided outside the 50 U.S. states for at least two consecutive years.
  - (1) An immigrant LEP student who achieves a rating of advanced high on the state-administered reading proficiency tests in English during the student’s first school year of enrollment in U.S. schools is not eligible for an exemption in the second or third school year of enrollment in U.S. schools. An immigrant LEP student who achieves a rating of advanced or advanced high on this assessment during the student’s second school year of enrollment in U.S. schools is not eligible for an exemption in the third school year of enrollment in U.S. schools.
  - (2) During the first school year of enrollment in U.S. schools, the immigrant student may be granted a LEP exemption if the LPAC determines that the student has not had the schooling outside the U.S. necessary to provide the foundation of learning that Texas schools require and measure on the assessment, whether the foundation be in knowledge of the English language or specific academic skills and concepts in the subjects assessed.
  - (3) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the U.S. was inadequate and for whom a primary language assessment is not available may be granted a LEP exemption if the LPAC determines that the student lacks the academic language proficiency in English necessary for an assessment of academic skills in English to measure the student’s academic progress in a valid, reliable manner.
  - (4) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the U.S. was inadequate and for whom a Spanish-version assessment is available is not eligible for a LEP exemption and must take the assessment in either English or Spanish unless:
    - (A) the student is in an English as a second language (ESL) program, which does not call for instruction in Spanish, and the LPAC determines that the student lacks the language proficiency in English and the academic instruction in Spanish and/or literacy in Spanish for the assessment in either English or Spanish to measure the student’s academic progress in a valid, reliable manner; or

- (B) the student is in a bilingual education program and the LPAC has documentation, including signed verification by the parent or guardian whenever possible, that there was an extensive period of time outside the U.S. in which the student did not attend school and that this absence of schooling resulted in such limited academic achievement and/or literacy that assessment in either English or Spanish is inappropriate as a measure for school accountability. The term “extensive period of time outside the U.S.,” as used in this subparagraph, shall be defined in the test administration materials.
- (c) Students exempted under subsection (b) of this section shall be administered assessments in subjects and grades required by federal law and regulations as delineated in the test administration materials. Exempt students assessed only for federal accountability purposes shall not be subject to the grade advancement requirements under the Student Success Initiative.
- (d) A LEP student whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption under subsection (b) of this section. The student shall take the assessments of academic skills in English and the English language proficiency assessments required by §101.1001 of this title (relating to English Language Proficiency Assessments).
- (e) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a two-way bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student’s academic progress. However, the student may not be administered the Spanish-version assessment for longer than three years.

*Source: The provisions of this §101.1007 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

### **§101.1009. Limited English Proficient Students Who Receive Special Education Services.**

- (a) The provisions of this subchapter apply to limited English proficient (LEP) students who receive special education services except as otherwise specified in this section.
- (b) Decisions regarding the selection of assessments for LEP students who receive special education services shall be made by the admission, review, and dismissal (ARD) committee, which includes a language proficiency assessment committee (LPAC) member to ensure that issues related to the student’s language proficiency are duly considered.
- (c) A LEP student who receives special education services may be exempted from the English language proficiency assessments required by §101.1001 of this title (relating to English Language Proficiency Assessments) only if the ARD committee determines that these assessments cannot provide a meaningful measure of the student’s annual growth in English language proficiency for reasons associated with the student’s disability.
- (d) The provisions of §101.1007(b) and (c) of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level) apply to the assessment of academic skills and the state-developed alternative assessment of academic skills.

- (e) A LEP student who receives special education services and whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption on the basis of limited English proficiency.

*Source: The provisions of this §101.1009 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.*

## **Subchapter BB. Commissioner's Rules Concerning the Student Success Initiative**

### **§101.2001. Policy.**

- (a) The policy of the Texas Education Agency relating to the grade advancement testing requirements, as specified in the Texas Education Code (TEC), § 28.0211(a), is to support student academic achievement of the essential knowledge and skills at each grade level to enable a student to succeed at the next grade level.
- (b) In addition to local policy relating to grade advancement, students in Grades 3, 5, and 8 shall demonstrate proficiency in the subjects required by 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 only advance to the next grade if the student's Grade Placement Committee, 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.
- (c) The purpose of these rules is to ensure the effective implementation of the grade advancement testing requirements as part of an overall system of support for student academic achievement. This system includes but is not limited to the following:
  - (1) informal and formal assessment of student needs at preceding grades and corresponding early intervention activities that address those needs;
  - (2) continuous and ongoing evaluation by a variety of means;
  - (3) research-based instructional programs;
  - (4) targeted accelerated instruction informed by multiple testing opportunities and other means of evaluation;
  - (5) a grade placement committee which decides on an individual student basis the most effective way to support a student's academic achievement on grade level; and
  - (6) accelerated education plans for every student who does not pass the required grade advancement assessments after three opportunities, whether he or she is retained or promoted by his or her grade promotion committee.

*Source: The provisions of this §101.2001 adopted to be effective May 26, 2002, 27 TexReg 4337.*

### §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 pertain to the following assessment instruments under TEC, §39.023(a), (b), and (l):
  - (1) the reading test at Grade 3, beginning in the 2002–2003 school year;
  - (2) the reading and mathematics tests at Grade 5, beginning in the 2004–2005 school year; and
  - (3) the reading and mathematics tests at Grade 8, beginning in the 2007–2008 school year.
- (b) An eligible student is subject to all of the grade advancement requirements under TEC, §28.0211, including the automatic retention component, if the following two criteria are met:
  - (1) the student is enrolled in a local school district or charter school on any day between January 1 and April 15 of the school year during which the grade advancement test is administered; and
  - (2) the student is eligible for enrollment in a Texas public school (as defined by legal residence in the state) during the week of the first general grade advancement test administration as established in the assessment calendar by the commissioner of education.
- (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 week of the first general grade advancement test administration is subject to all of the grade advancement requirements except for the automatic retention component and therefore will not be automatically retained under TEC, §28.0211, if the student does not demonstrate proficiency on any of the grade advancement tests. In accordance with §101.2001(c) of this title (relating to Policy), a school district or charter school must provide this student with the other required services that are set forth in policy as part of an overall system of support for student academic achievement. These required services include the opportunity to test, access to accelerated instruction, and the formation of a Grade Placement Committee (GPC) on a student's behalf.
- (d) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3, 5, or 8 and 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. In accordance with §101.5(b) of this title (relating to Student Testing Requirements) and TEC, §28.0211(i), the student's admission, review, and dismissal (ARD) committee shall determine appropriate assessment and acceleration options for each eligible student. Assessment decisions must be made on an individual basis and in accordance with administrative procedure established by the Texas Education Agency (TEA). These decisions shall be documented in the student's individualized education program (IEP).

- (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 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 appropriate assessment and acceleration options 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 administrative procedure 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, which includes a member of the LPAC to ensure that issues related to the student's language proficiency are duly considered.
- (g) In accordance with 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 tested subject.
- (h) A school district or charter school must determine a student's previous testing history and, if applicable, the accelerated instructional program he or she has received.

*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.*

### **§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.*

### **§101.2007. 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 student who fails to demonstrate proficiency on the second administration of the test required for grade advancement. Decisions by the GPC shall be made on an individual student basis to ensure the most effective way 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 test(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 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 any actions required, except that the GPC may not agree to promote a student under 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 test results for the second administration of the test required for grade advancement, the district shall notify (for each student who fails to demonstrate proficiency) the campus principal of student test results. Upon receipt of this notice, the principal shall notify the teacher and parent or guardian of the test 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) 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 a test required for grade advancement and is thereby automatically retained at the same grade level. Within five working days of receipt of student test results for this administration, the district shall notify (for each student who fails to demonstrate proficiency) the principal or principal's designee of student test results. 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. The review and final decision of the GPC must be appropriately documented as meeting the standards adopted by the local school board. These standards may include but are not limited to the following:
  - (1) evidence of satisfactory student performance, including grades, portfolios, work samples, local assessments, previous state assessments, and individual reading and mathematics diagnostic tests or inventories;
  - (2) improvement in student test performance over the three testing opportunities;
  - (3) extenuating circumstances that may have adversely affected the student's participation in instruction, the student's participation in the required assessments, or the student's participation in accelerated instruction; and
  - (4) consideration of whether a student was not enrolled in a Texas public school for part of the school year.

- (g) In accordance with 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 TEC, §28.0211. This subsection does not limit the authority of a district to appropriately place a student under TEC, Chapter 25, Subchapter B.
- (i) In addition to the placement decision, the GPC shall develop an accelerated educational 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 education 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.*

### **§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.
- (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 test required for grade advancement the next year. The superintendent must establish the instruments/procedures to be used to make this determination. In the case of second grade students, it must include the results of the reading inventory required under Texas Education Code, §28.006. This notice shall 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 test. This notification should be made within five working days of receipt of student test results from this administration. This notice shall include the student's test results, description of the grade advancement policy, the accelerated instruction to which the student has been assigned, 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 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 the 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.*

### **§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.*

### **§101.2013. Accelerated Instruction.**

- (a) Each time a student fails to demonstrate proficiency on an assessment required for grade advancement, the school district or charter school shall provide the student with accelerated instruction in the applicable subject. Accelerated instruction should be consistent with previous diagnostic testing and intervention activities, if any, the student has received. Accelerated instruction for students who have failed an assessment may not have a ratio of more than ten students to each teacher per class.
- (b) Accelerated instruction required after the first and second testing opportunities should be designed to address student needs to the greatest extent possible before the next respective testing opportunity.

- (c) Each school district and each charter school shall be responsible for providing transportation to students required to attend acceleration programs if these programs occur outside of regular school hours.
- (d) 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.
- (e) Accelerated instruction shall be based on but not limited to the following:
  - (1) assessment of specific student needs, which may include as appropriate the following: teacher observations and evaluations; academic progress reports; previous identification of student needs and corresponding interventions; and performance on previous assessment instruments in the applicable subject.
  - (2) best instructional practices identified through research that the district may obtain and implement through technical assistance from the Texas Education Agency and education service centers.

*Source: The provisions of this §101.2013 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.*

## **Subchapter CC. Commissioner's Rules Concerning Implementation of Testing Program**

### **§101.3001. Implementation of New Assessment Instruments.**

- (a) In accordance with Senate Bill 103, Section 9, 76th Texas Legislature, 1999, this subsection is adopted by the commissioner of education for the implementation of the Texas Education Code (TEC), §39.023. In this subsection, the Act means Acts of the 76th Texas Legislature, 1999, Chapter 397.
  - (1) The State Board of Education (SBOE) shall administer each assessment instrument added by the Act not later than the 2002–2003 school year, in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).
  - (2) The Texas Education Agency (TEA), not later than the 2004–2005 school year, shall include the results of student performance on each assessment instrument added by the Act in evaluating the performance of school districts, campuses, and open enrollment charter schools under the TEC, Chapter 39, Subchapter D.
  - (3) The SBOE, not later than the 2004–2005 school year, shall administer assessment instruments under the TEC, §39.023(b), that correspond to the following assessment instruments required under the TEC, §39.023(a), as amended by the Act:
    - (A) the mathematics assessment instrument administered in Grades 9 and 10;
    - (B) the reading assessment instrument administered in Grade 9; and

- (C) the English language arts assessment instrument administered in Grade 10.
- (4) The TEA, not later than the 2006–2007 school year, shall include the results of student performance on each assessment instrument described by paragraph (3) of this subsection in evaluating the performance of school districts, campuses, and open-enrollment charter schools under the TEC, Chapter 39, Subchapter D.
- (5) Pending the introduction of any assessment instrument added by the Act:
  - (A) the SBOE shall administer each appropriate assessment under the TEC, §39.023, as that section existed before amendment by the Act;
  - (B) a student who performed satisfactorily on the end-of-course assessment instruments specified by the TEC, §39.025, as that section existed before amendment by the Act, is entitled to receive a high school diploma if the student completes all other requirements for high school graduation; and
  - (C) the former law as specified in the TEC, Chapter 39, Subchapter B, is continued in effect for the purposes provided by this paragraph.
- (b) In accordance with House Bill 411, Section 5, 78th Texas Legislature, 2003, this subsection is adopted by the commissioner of education for the implementation of the TEC, §39.023(a)(6) and (7). In this subsection, the Act means Acts of the 78th Texas Legislature, 2003, Chapter 1212.
  - (1) The SBOE, not later than the 2006–2007 school year, shall administer a science assessment instrument to students in Grade 8, as amended by this Act.
  - (2) The TEA, not later than the 2008–2009 school year, shall include the results of student performance on the Grade 8 science assessment instrument in evaluating the performance of school districts, campuses, and open-enrollment charter schools under the TEC, Chapter 39, Subchapter B, as amended by this Act.
  - (3) The TEA, shall administer to students assessments in any other subject and grade required by federal law.

*Source: The provisions of this §101.3001 adopted to be effective February 16, 2003, 28 TexReg 1175; amended to be effective February 17, 2005, 30 TexReg 711.*

### **§101.3003. Graduation Requirements.**

- (a) Notwithstanding §101.7 of this title (relating to Testing Requirements for Graduation), students who were enrolled in Grade 8 or lower on January 1, 2001, and who did not complete all coursework required to graduate by September 1, 2004, must fulfill testing requirements for graduation with the exit level Texas Assessment of Knowledge and Skills (TAKS) tests, as specified in Texas Education Code, §39.023(c). For purposes of this section, coursework necessary to graduate means all of the coursework required under the student's graduation plan.

- (b) Students who were enrolled as follows shall fulfill testing requirements for graduation with the exit level Texas Assessment of Academic Skills (TAAS):
  - (1) in Grade 9 or higher on January 1, 2001, regardless of when they are scheduled to graduate; or
  - (2) in Grade 8 or lower on January 1, 2001, if they were on an accelerated track and fulfilled all coursework necessary to graduate by September 1, 2004.
- (c) Notwithstanding any of these subsections, students who pass all of the required exit level TAKS tests have fulfilled their testing requirements for graduation.
- (d) Students who passed the Algebra I, English II, and either Biology or U.S. History end-of-course exams by spring 2002 have fulfilled their testing requirements for graduation, regardless of their enrolled grade level on January 1, 2001.

*Source: The provisions of this §101.3003 adopted to be effective February 17, 2005, 30 TexReg 711.*

### **§101.33. Release of Tests.**

- (a) Beginning in 2004 with the 2003–2004 school year and subsequent even-numbered years, the Texas Education Agency (TEA) shall release all test items and answer keys for the Texas Assessment of Knowledge and Skills (TAKS), the State-Developed Alternative Assessment (SDAA), and the Reading Proficiency Tests in English (RPTE). After a period of five years, each test item that has been field-tested but not used on a test will be released.

*Source: The provisions of this §101.33 adopted to be effective November 15, 2001, 26 TexReg 9091; Amended to be effective October 12, 2003, 28 TexReg 8607; Amended to be effective June 6, 2004, 29 TexReg 5343.*