# Appendix 1

## Texas Education Code,
## Chapter 33, Section 33.0812
## Chapter 39, Sections 39.021–39.185
## Chapter 28, Subchapter B,
## Sections § 28.0211
## and § 28.0213

## SUBTITLE H. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

## CHAPTER 33. SERVICE PROGRAMS AND EXTRACURRICULAR ACTIVITIES

## SUBCHAPTER D. EXTRACURRICULAR ACTIVITIES

### § 33.0812. SCHEDULING EXTRACURRICULAR ACTIVITIES PROHIBITED IN CERTAIN CIRCUMSTANCES.

(a) The State Board of Education by rule shall prohibit participation in a University Interscholastic League area, regional, or state competition:

(1) on Monday through Thursday of the school week in which the primary administration of assessment instruments under Section 39.023(a), (c), or (l) occurs; or

(2) if the primary administration of the assessment instruments is completed before Thursday of the school week, beginning on Monday and ending on the last school day on which the assessment instruments are administered.

(b) The commissioner shall determine the school week during the school year in which the primary administration of assessment instruments occurs for purposes of Subsection (a).

(c) The commissioner shall adopt rules to provide the University Interscholastic League with a periodic calendar of dates reserved for testing for planning purposes under this section. The periodic calendar must be provided at least every three years on or before May 1 of the year preceding the three-year cycle of reserved testing dates.

(d) In adopting rules under this section, the commissioner shall:

(1) include a procedure for changing, in exceptional circumstances, testing dates reserved under the periodic calendar;

(2) define circumstances that constitute exceptional circumstances under Subdivision (1) as unforeseen events, including a natural disaster, severe weather, fire, explosion, or similar circumstances beyond the control of school districts or the agency; and

(3) establish criteria for determining whether a University Interscholastic League area, regional, or state competition must be canceled if that event conflicts with a changed testing date.

(e) This section does not apply to testing dates on which assessment instruments are administered only to students retaking assessment instruments.

Added by Acts 2005, 79th Leg., ch. 812, § 1, eff. June 17, 2005.

## CHAPTER 39. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

## SUBCHAPTER B. ASSESSMENT OF ACADEMIC SKILLS

### §39.021. Essential Skills and Knowledge

The State Board of Education by rule shall establish the essential skills and knowledge that all students should learn to achieve the goals provided under Section 4.002.

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

### §39.022. Assessment Program

The State Board of Education by rule shall create and implement a statewide assessment program that is knowledge- and skills-based to ensure school accountability for student achievement that achieves the goals provided under Section 4.002. After adopting rules under this section, the State Board of Education shall consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.

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

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

### §39.023. Adoption and Administration of Instruments

(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, annually in grades three through seven without the aid of technology and in grades eight through 11 with the aid of technology on any assessment instruments that include algebra;

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

(3) writing, including spelling and grammar, in grades four and seven;

(4) English language arts, in grade 10;

(5) social studies, in grades eight and 10;

(6) science, in grades five, eight, and 10; and

(7) any other subject and grade required by federal law.

(b) The agency shall develop or adopt appropriate criterion-referenced assessment instruments to be administered to each student in a

special education program under Subchapter A, Chapter 29, who receives modified instruction in the essential knowledge and skills identified under Section 28.002 for the assessed subject but for whom an assessment instrument adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee. The assessment instruments required under this subsection must assess essential knowledge and skills and growth in the subjects of reading, mathematics, and writing. A student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).

(c) The agency shall also adopt secondary exit-level assessment instruments designed to be administered to students in grade 11 to assess essential knowledge and skills in mathematics, English language arts, social studies, and science. The mathematics section must include at least Algebra I and geometry with the aid of technology. The English language arts section must include at least English III and must include the assessment of essential knowledge and skills in writing. The social studies section must include early American and United States history. The science section must include at least biology and integrated chemistry and physics. The assessment instruments must be designed to assess a student's mastery of minimum skills necessary for high school graduation and readiness to enroll in an institution of higher education. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection or whether the student should be exempted under Section 39.027(a)(2). The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of secondary exit-level assessment instruments. Each student who did not perform satisfactorily on any secondary exit-level assessment instrument when initially tested shall be given multiple opportunities to retake that assessment instrument. A student who performs at or above a level established by the Texas Higher Education Coordinating Board on the secondary exit-level assessment instruments is exempt from the requirements of Section 51.306.

(d) The commissioner may participate in multistate efforts to develop voluntary standardized end-of-course assessment instruments. The commissioner by rule may require a school district to administer an end-of-course assessment instrument developed through the multistate efforts. The admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether any allowable modification is necessary in administering to the student an end-of-course assessment instrument or whether the student should be exempted under Section 39.027(a)(2).

(e) Under rules adopted by the State Board of Education, every other year, the agency shall release the questions and answer keys to each assessment instrument administered under Subsection (a), (b), (c), (d), or (l) after the last time the instrument is administered for that school year. To ensure a valid bank of questions for use each year, the agency is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument. The agency shall also release, under board rule, each question that is no longer being field-tested and that was not used to compute a student's score.

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

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

(h) The agency shall notify school districts and campuses of the results of assessment instruments administered under this section at the earliest possible date determined by the State Board of Education but not later than the beginning of the subsequent school year.

(i) The provisions of this section, except Subsection (d), are subject to modification by rules adopted under Section 39.022. Each assessment instrument adopted under those rules and each assessment instrument required under Subsection (d) must be reliable and valid and must meet any applicable federal requirements for measurement of student progress.

(j) The commissioner shall develop a standardized end-of-course assessment instrument for Algebra I. The commissioner by rule may require a school district to administer an end-of-course assessment instrument in Algebra I. The admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether any allowable modification is necessary in administering to the student an end-of-course assessment instrument or whether the student should be exempted under Section 39.027(a)(2).

(k) Expired.

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

(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(3) and (4). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) at the earliest practical date.

(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection.

The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).

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

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

**§39.0231. Reporting of Results of Certain Assessments**

The agency shall ensure that each assessment instrument administered in accordance with Section 28.0211 is scored and that the results are returned to the appropriate school district not later than 10 days after receipt of the test materials by the agency or its test contractor.

Added by Acts 1999, 76th Leg., ch. 396, § 2.18, eff. Sept. 1, 1999.

**§ 39.0232. USE OF END-OF-COURSE ASSESSMENT INSTRUMENT AS PLACEMENT INSTRUMENT.**

To the extent practicable, the agency shall ensure that any high school end-of-course assessment instrument developed by the agency is developed in such a manner that the assessment instrument may be used to determine the appropriate placement of a student in a course of the same subject matter at an institution of higher education.

Added by Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 5.05, eff. May 26, 2006.

**§39.024. Satisfactory Performance**

(a) Except as otherwise provided by this subsection, the State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments. The admission, review, and dismissal committee of a student being assessed under Section 39.023(b) shall determine the level of performance considered to be satisfactory on the assessment instruments administered to that student in accordance with criteria established by agency rule.

(b) Repealed by Acts 2003, 78th Leg., ch. 1212, §14.

(c) The agency shall develop study guides for the assessment instruments administered under Sections 39.023(a) and (c). To assist parents in providing assistance during the period that school is recessed for summer, each school district shall distribute the study guides to parents of students who do not perform satisfactorily on one or more parts of an assessment instrument administered under this subchapter.

(d) The agency shall develop and make available teacher training materials and other teacher training resources to assist teachers in enabling students of limited English proficiency to meet state performance expectations. The teacher training resources shall be designed to support intensive, individualized, and accelerated instructional programs developed by school districts for students of limited English proficiency.

(e) The commissioner shall retain a portion of the total amount of funds allotted under Section 42.152(a) that the commissioner considers appropriate to finance activities under Subsections (c) and may retain a portion for activities under Subsection (d) and for intensive programs of instruction for students of limited English proficiency offered by school districts and shall reduce each district's allotment proportionately.

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

Amended by Acts 1997, 75th Leg., ch. 767, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 2.19, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 397, § 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, §4.006, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1212, §§ 12, 14, eff. June 20, 2003.

**§39.025. Exit-Level Performance Required**

(a) A student may not receive a high school diploma until the student has performed satisfactorily on the secondary exit-level assessment instruments for English language arts, mathematics, social studies, and science administered under Section 39.023(c). This subsection does not require a student to demonstrate readiness to enroll in an institution of higher education.

(b) Each time a secondary exit-level assessment instrument is administered, a student who has not been given a high school diploma because of a failure to perform satisfactorily on the assessment instrument for that subject area may retake the assessment instrument.

(c) A student who has been denied a high school diploma under Subsections (a) and (b) and who subsequently performs satisfactorily on each secondary exit-level assessment instrument shall be issued a high school diploma.

(d) Notwithstanding Subsection (a), the commissioner by rule shall adopt one or more alternative nationally recognized norm referenced assessment instruments under this section to administer to a student to qualify for a high school diploma if the student enrolls after January 1 of the school year in which the student is otherwise eligible to graduate:

(1) for the first time in a public school in this state; or

(2) after an absence of at least four years from any public school in this state.

(e) The commissioner shall establish a required performance level for an assessment instrument adopted under Subsection (d) that is at least as rigorous as the performance level for the secondary exit-level assessment instrument for the same subject

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

Amended by Acts 1997, 75th Leg., ch. 767, § 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 397 § 5, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 164, § 6, eff. May 27, 2005.

**§39.026. Local Option**

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

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

**§39.027. Exemption**

(a) A student may be exempted from the administration of an assessment instrument under:

(1) Section 39.023(a) or (b) if the student is eligible for a special education program under Section 29.003 and the student's individualized education program does not include instruction in the essential knowledge and skills under Section 28.002 at any grade level;

(2) Section 39.023(c) or (d) if the student is eligible for a special education program under Section 29.003 and:

(A) the student's individualized education program does not include instruction in the essential knowledge and skills under Section 28.002 at any grade level; or

(B) the assessment instrument, even with allowable modifications, would not provide an

appropriate measure of the student's achievement as determined by the student's admission, review, and dismissal committee;

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

(4) Section 39.023(a) or (l) for a period of up to two years in addition to the exemption period authorized by Subdivision (3) if the student has received an exemption under Subdivision (3) and:

(A) is a recent unschooled immigrant; or

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

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

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

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

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

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

(d) Expired.

(e) The commissioner shall develop an assessment system that shall be used for evaluating the academic progress, including reading proficiency in English, of all students of limited English proficiency, as defined by Section 29.052. A student who is exempt from the administration of an assessment instrument under Subsection (a)(3) or (4) who achieves reading proficiency in English as determined by the assessment system developed under this subsection shall be administered the assessment instruments described by Sections 39.023(a) and (c). The performance under the assessment system developed under this subsection of students to whom Subsection (a)(3) or (4) applies shall be included in the academic excellence indicator system under Section 39.051, the performance report under Section 39.053, and the comprehensive annual report under Section 39.182.

(f) In this section, "average daily attendance" is computed in the manner provided by Section 42.005.

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

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

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

**§39.028. Comparison of State Results to National Results**

The state assessment program shall obtain nationally comparative results for the subject areas and grade levels for which criterion-referenced assessment instruments are adopted under Section 39.023.

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

**§39.029. Migratory Children**

The State Board of Education by rule may provide alternate dates for the administration of the assessment instruments to a student who is a migratory child as defined by 20 U.S.C. Section 6399. The alternate dates may be chosen following a consideration of migrant work patterns, and the dates selected may afford maximum opportunity for the students to be present when the assessment instruments are administered.

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

**§39.030. Confidentiality; Performance Reports**

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

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

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

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

Amended by Acts 2001, 77th Leg., ch. 767, § 11, eff. June 13, 2001.

**§39.031. Cost**

(a) The cost of preparing, administering, or grading the assessment instruments shall be paid from the funds allotted under Section 42.152, and each district shall bear the cost in the same manner described for a reduction in allotments under Section

42.253. If a district does not receive an allotment under Section 42.152, the commissioner shall subtract the cost from the district's other foundation school fund allotments.

(b) The cost of releasing the question and answer keys under Section 39.023(e) shall be paid from amounts appropriated to the agency.

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

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

**§39.032. Assessment Instrument Standards; Civil Penalty**

(a) A company or organization may not distribute to, sell to, or grade for the same school district the same form of an assessment instrument for more than three school years. A school district may not use the same form of an assessment instrument for more than three years.

(b) A company or organization that grades an assessment instrument shall report the results to the district and to the agency by campus and district and in comparison to state and national averages, unless the agency requests a report of the results in another form.

(c) State and national norms of averages shall be computed using data that are not more than six years old at the time the assessment instrument is administered and that are representative of the group of students to whom the assessment instrument is administered. The standardization norms shall be based on a national probability sample that meets accepted standards for educational and psychological testing and shall be updated at least every six years using proven psychometric procedures approved by the State Board of Education.

(d) A company or organization that fails to comply with this section is liable to the state in an amount equal to three times the amount of actual damages. The actual damages are presumed to be at least equal to the amount charged by the company or organization to a school district for the assessment instrument, including any charge for grading the assessment instrument. The attorney general, a district attorney, or a county attorney may bring suit to collect the damages on the request of the State Board of Education or on the request of a student or a parent or guardian of a student to whom the assessment instrument was administered.

(e) The State Board of Education shall adopt rules for the implementation of this section and for the maintenance of the security of the contents of all assessment instruments.

(f) In this section, "assessment instrument" means a group-administered achievement test.

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

**§39.033. Voluntary Assessment of Private School Students**

(a) Under an agreement with the agency, a private school may administer an assessment instrument adopted under this subchapter to students at the school.

(b) An agreement under this section must require the private school to provide to the commissioner the information described by Section 39.051(b) and to maintain confidentiality in compliance with Section 39.030.

(c) A private school must reimburse the agency for the cost of administering an assessment instrument under this section. The State Board of Education shall determine the cost under this section. The per-student cost may not exceed the cost of administering the same assessment to a student enrolled in a public school district.

(d) In this section, "private school" means a school that:

(1) offers a general education to elementary or secondary students; and

(2) is not operated by a governmental entity.

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

**§ 39.034. MEASURE OF ANNUAL IMPROVEMENT IN STUDENT ACHIEVEMENT.**

(a) The commissioner shall determine a method by which the agency may measure annual improvement in student achievement from one school year to the next on an assessment instrument required under this subchapter.

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

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

(d) The agency shall determine the necessary annual improvement required each year for a student to be prepared to pass the exit-level assessment instrument required under this subchapter for graduation. The agency shall report the necessary annual improvement required to the district. Each year, the report must state whether the student fell below, met, or exceeded the necessary target for improvement.

(e) The agency shall report to each school district the comparisons made under this section. Each school district shall provide the comparisons to each teacher for all students who were:

(1) assessed on an assessment instrument; and

(2) taught by that teacher in the subject for which the assessment instrument was administered.

(f) The school a student attends shall provide a record of the comparisons made under this section and provided to the school under Subsection (e) in a written notice to the student's parents.

(g) To the extent practicable, the agency shall combine the report of the comparisons required under this section with the report of the student's performance on assessment instruments administered under Section 39.023.

Text of subsec. (h) effective until September 1, 2008

(h) The commissioner shall implement this section beginning with the 2007-2008 school year. This subsection expires September 1, 2008.

Added by Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.09, eff. May 26, 2006.

## SUBCHAPTER C. PERFORMANCE INDICATORS

**§ 39.051. ACADEMIC EXCELLENCE INDICATORS**

(a) The State Board of Education shall adopt a set of indicators of the quality of learning on a campus. The State Board of Education biennially shall review the indicators for the consideration of appropriate revisions.

(13) the measure of progress toward preparation for postsecondary success; and

(14) the measure of progress toward dual language proficiency under Section 39.034(b), for students of limited English proficiency, as defined by Section 29.052.

(b) Performance on the indicators adopted under this section shall be compared to state-established standards. The degree of change from one school year to the next in performance on each indicator adopted under this section shall also be considered. The indicators must be based on information that is disaggregated by race, ethnicity, gender, and socioeconomic status and must include:

(1) the results of assessment instruments required under Sections 39.023(a), (c), and (l), aggregated by grade level and subject area;

(2) dropout rates, including dropout rates and district completion rates for grade levels 9 through 12, computed in accordance with standards and definitions adopted by the National Center for Education Statistics of the United States Department of Education;

(3) high school graduation rates, computed in accordance with standards and definitions adopted in compliance with the federal No Child Left Behind Act of 2001 (Pub. L. No. 107-110);

(4) student attendance rates;

(5) the percentage of graduating students who attain scores on the secondary exit-level assessment

instruments required under Subchapter B that are equivalent to a passing score on the assessment instrument required under Section 51.3062;

(6) the percentage of graduating students who meet the course requirements established for the recommended high school program by State Board of Education rule;

(7) the results of the Scholastic Assessment Test (SAT), the American College Test (ACT), articulated postsecondary degree programs described by Section 61.852, and certified workforce training programs described by Chapter 311, Labor Code;

(8) the percentage of students, aggregated by grade level, provided accelerated instruction under Section 28.0211(c), the results of assessments administered under that section, the percentage of students promoted through the grade placement committee process under Section 28.0211, 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 Section 39.023;

(9) for students who have failed to perform satisfactorily on an assessment instrument required under Section 39.023(a) or (c), the numerical progress of those students on subsequent assessment instruments required under those sections, aggregated by grade level and subject area;

(10) the percentage of students exempted, by exemption category, from the assessment program generally applicable under this chapter;

(11) the percentage of students of limited English proficiency exempted from the administration of an assessment instrument under Sections 39.027(a)(3) and (4);

(12) the percentage of students in a special education program under Subchapter A, Chapter 29, assessed through assessment instruments developed or adopted under Section 39.023(b);

(13) the measure of progress toward preparation for postsecondary success; and

(14) the measure of progress toward dual language proficiency under Section 39.034(b), for students of limited English proficiency, as defined by Section 29.052.

(c) Performance on the indicator under Subsection (b)(1) shall be compared to state standards, required improvement, and comparable improvement. The state standard shall be established by the commissioner. Required improvement is defined as the progress necessary for the campus or district to meet state standards and for its students to meet exit requirements as defined by the commissioner. Comparable improvement is derived by measuring campuses and districts against a profile developed from a total state student performance database which exhibits substantial equivalence to the characteristics of students served by the campus or district, including past academic performance, socioeconomic status, ethnicity, and limited English proficiency.

(d) Annually, the commissioner shall define exemplary, recognized, and unacceptable performance for each academic excellence indicator included under Subsections (b)(1) through (6) and shall project the standards for each of those levels of performance for succeeding years. For the indicator under Subsection (b)(7), the commissioner shall define exemplary, recognized, and unacceptable performance based on student performance for the period covering both the current and preceding academic years. In defining exemplary, recognized, and unacceptable performance for the indicators under Subsections (b)(2) and (3), the commissioner may not consider as a dropout or as a student who has failed to attend school a student whose failure to attend school results from:

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

(2) as applicable:

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

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

(e) Each school district shall cooperate with the agency in determining whether a student is a dropout under this section.

(f) The indicator under Subsection (b)(1) must include the results of assessment instruments required under Section 39.023(b).

(g) The commissioner by rule shall adopt accountability measures to be used in assessing the progress of students who have failed to perform satisfactorily in the preceding school year on an assessment instrument required under Section 39.023(a), (c), or (l).

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

Amended by Acts 1997, 75th Leg., ch. 767, § 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 2.20, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 397, § 7, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1422, § 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 8, § 3, eff. April 11, 2001; Acts 2001, 77th Leg., ch. 725, § 4, 5, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 834, § 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, § 4.007, 4.008, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, § 26, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 433, § 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 805, § 1, eff. Sept. 1, 2003; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.10, 3.11, eff. May 26, 2006.

**§ 39.052. CAMPUS REPORT CARD**

(a) Each school year, the agency shall prepare and distribute to each school district a report card for each campus. The campus report cards must be based on the most current data available disaggregated by student groups. Campus performance must be compared to previous campus and district performance, current district performance, state established standards, and comparable campus group performance.

(b) The report card shall include the following information:

(1) where applicable, the academic excellence indicators adopted under Sections 39.051(b)(1) through (9);

(2) average class size by grade level and subject;

(3) the administrative and instructional costs per student, computed in a manner consistent with Section 44.0071; and

(4) the district's instructional expenditures ratio and instructional employees ratio computed under Section 44.0071, and the statewide average of those ratios, as determined by the commissioner.

(c) The commissioner shall adopt rules requiring dissemination of the information required under Subsection (b)(4) and appropriate class size and student performance portions of campus report cards annually to the parent, guardian, conservator, or other person having lawful control of each student at the campus. On written request, the school district shall provide a copy of a campus report card to any other party.

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

Amended by Acts 1999, 76th Leg., ch. 396, § 2.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1514, § 1, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 1420, § 4.009, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1269, § 2, eff. Sept. 1, 2003; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.12, eff. May 26, 2006.

**§ 39.053. PERFORMANCE REPORT**

(a) Each board of trustees shall publish an annual report describing the educational performance of the district and of each campus in the district that includes uniform student performance and descriptive information as determined under rules adopted by the commissioner. The annual report must also include:

(1) campus performance objectives established under Section 11.253 and the progress of each campus toward those objectives, which shall be available to the public;

(2) the performance rating for the district as provided under Section 39. 072(a) and the performance rating of each campus in the district as provided under Section 39.072(c);

(3) the district's current special education compliance status with the agency;

(4) a statement of the number, rate, and type of violent or criminal incidents that occurred on each district campus, to the extent permitted under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g);

(5) information concerning school violence prevention and violence intervention policies and procedures that the district is using to protect students; and

(6) the findings that result from evaluations conducted under the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. Section 7101 et seq.) and its subsequent amendments; and

(7) information received under Section 51.403(e) for each high school campus in the district, presented in a form determined by the commissioner.

(b) Supplemental information to be included in the reports shall be determined by the board of trustees. Performance information in the annual reports on the indicators established under Section 39.051 and descriptive information required by this section shall be provided by the agency.

(c) The board of trustees shall hold a hearing for public discussion of the report. The board of trustees shall give notice of the hearing to property owners in the district and parents, guardians, conservators, and other persons having lawful control of a district student. The notification must include notice to a newspaper of general circulation in the district and notice to electronic media serving the district. After the hearing the report shall be widely disseminated within the district in a manner to be determined under rules adopted by the commissioner.

(d) The report must also include a comparison provided by the agency of:

(1) the performance of each campus to its previous performance and to state-established standards;

(2) the performance of each district to its previous performance and to state-established standards; and

(3) the performance of each campus or district to comparable improvement.

(e) The report may include the following information:

(1) student information, including total enrollment, enrollment by ethnicity, socioeconomic status, and grade groupings and retention rates;

(2) financial information, including revenues and expenditures;

(3) staff information, including number and type of staff by gender, ethnicity, years of experience, and highest degree held, teacher and administrator salaries, and teacher turnover;

(4) program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and

(5) the number of students placed in a disciplinary alternative education program under Chapter 37.

(f) The State Board of Education by rule shall authorize the combination of this report with other reports and financial statements and shall restrict the number and length of reports that school districts, school district employees, and school campuses are required to prepare.

(g) The report must include a statement of the amount, if any, of the school district's unencumbered surplus fund balance as of the last day of the preceding fiscal year and the percentage of the preceding year's budget that the surplus represents.

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

Amended by Acts 1999, 76th Leg., ch. 510, § 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1417, § 2, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 725, § 6, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 834, § 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, § 4.010, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1055, § 24, eff. June 20, 2003.

**§ 39.054. USES OF PERFORMANCE REPORT**

The information required to be reported under Section 39.053 shall be:

(1) the subject of public hearings or meetings required under Sections 11.252, 11.253, and 39.053;

(2) a primary consideration in district and campus planning; and

(3) a primary consideration of:

(A) the State Board of Education in the evaluation of the performance of the commissioner;

(B) the commissioner in the evaluation of the performance of the directors of the regional education service centers;

(C) the board of trustees of a school district in the evaluation of the performance of the superintendent of the district; and

(D) the superintendent in the evaluation of the performance of the district's campus principals.

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

**§ 39.055. ANNUAL AUDIT OF DROPOUT RECORDS; REPORT**

(a) The commissioner shall develop a process for auditing school district dropout records electronically. The commissioner shall also develop a system and standards for review of the audit or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate dropout records and that, as a result, require on-site monitoring of dropout records. If the electronic audit of a district's dropout records indicates that a district is not at high risk of having inaccurate dropout records, the district may not be subject to on-site monitoring under this subsection. If the risk-based system indicates that a district is at high risk of having inaccurate dropout records, the district is entitled to an opportunity to respond to the commissioner's determination before on-site monitoring may be conducted. The district must respond not later than the 30th day after the date the commissioner notifies the district of the commissioner's determination. If the district's response does not change the commissioner's determination that the district is at high risk of having inaccurate dropout records or if the district does not respond in a timely manner, the commissioner shall order agency staff to conduct on-site monitoring of the district's dropout records.

(b) to (d) Repealed by Acts 2003, 78th Leg., ch. 201, § 61(1); Acts 2003, 78th Leg., ch. 903, § 4.

(e) The commissioner shall notify the board of trustees of a school district of any objection the commissioner has to the district's dropout data, any violation of sound accounting practices or of a law or rule revealed by the data, or any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of district dropout data.

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

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

## SUBCHAPTER D. ACCREDITATION STATUS

**§ 39.071. ACCREDITATION.**

(a) Accreditation of a school district is determined in accordance with this section. The commissioner by rule shall define the following accreditation statuses:

(1) accredited;

(2) accredited-warned; and

(3) accredited-probation.

(b) Each year, the commissioner shall determine the accreditation status of each school district. In determining accreditation status, the commissioner:

(1) shall evaluate and consider the performance of the district under:

(A) the academic accountability system under Section 39.072; and

(B) the financial accountability rating system under Subchapter I; and

(2) may consider:

(A) the district's compliance with statutory requirements and requirements imposed by rule of the commissioner or State Board of Education under specific statutory authority that relate to:

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

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

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

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

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

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

(1) assign a district an accreditation status; or

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

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

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

(f) This chapter may not be construed to invalidate a diploma awarded, course credit earned, or grade promotion granted by a school district before the commissioner revoked the district's accreditation. Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Amended by Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.13, eff. May 26, 2006.

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

**§ 39.072. ACCREDITATION STANDARDS**

(a) The State Board of Education shall adopt rules to evaluate the performance of school districts and to assign to each district a performance rating as follows:

(1) exemplary (meets or exceeds state exemplary standards);

(2) recognized (meets or exceeds required improvement and within 10 percent of state exemplary standards);

(3) academically acceptable (below the exemplary and recognized standards but exceeds the academically unacceptable standards); or

(4) academically unacceptable (below the state clearly unacceptable performance standard and does not meet required improvement).

(b) The academic excellence indicators adopted under Sections 39.051(b)(1) through (7) and the district's current special education compliance status with the agency shall be the main considerations of the agency in the rating of the district under this section. Additional criteria in the rules may include consideration of:

(1) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under specific statutory authority that relate to:

(A) reporting data through the Public Education Information Management System (PEIMS);

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

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

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

(3) the effectiveness of the district's career and technology programs.

(c) The agency shall evaluate against state standards and shall, not later than August 1 of each year, report the performance of each campus in a district and each open-enrollment charter school on the basis of the campus's performance on the indicators adopted under Sections 39.051(b)(1) through (8). Consideration of the effectiveness of district programs under Subsection (b)(2) or (3) must be based on data collected through the Public Education Information Management System for purposes of accountability under this chapter and include the results of assessments required under Section 39.023.

(d) Notwithstanding any other provision of this code, for purposes of determining the performance of a school district under this chapter, including the accreditation status of the district, a student confined by court order in a residential program or facility operated by or under contract with the Texas Youth Commission is not considered to be a student of the school district in which the program or facility is physically located. The performance of such a student on an assessment instrument or other academic excellence indicator adopted under Section 39.051

shall be determined, reported, and considered separately from the performance of students attending a school of the district in which the program or facility is physically located.

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

Amended by Acts 1999, 76th Leg., ch. 396, § 2.22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1417, § 3, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 1420, § 4.011, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 342, § 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 694, § 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1249, § 1, eff. June 20, 2003; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.14, eff. May 26, 2006.

**§ 39.0721. GOLD PERFORMANCE RATING PROGRAM**

(a) In addition to district and campus performance ratings reported under Section 39.072, the commissioner shall develop a gold performance rating program based on enhanced performance. The agency shall administer the program.

(b) Under the gold performance rating program, a district or campus rated exemplary under Section 39.072 is eligible for an exemplary gold rating, a district or campus rated recognized is eligible for a recognized gold rating, and a district or campus rated academically acceptable is eligible for an academically acceptable gold rating.

(c) The performance standards on which a gold performance rating is based should include:

(1) student proficiency on:

(A) assessment instruments administered under Sections 39.023(a), (c), and (l); and

(B) other measures of proficiency determined by the commissioner;

(2) student performance on one or more nationally recognized norm-referenced assessment instruments;

(3) improvement in student performance;

(4) in the case of middle or junior high school campuses, student proficiency in mathematics, including algebra; and

(5) in the case of high school campuses:

(A) the extent to which graduating students are academically prepared to attend institutions of higher education;

(B) the percentage of students who take advanced placement tests and student performance on those tests; and

(C) the percentage of students who take and successfully complete advanced academic courses or college-level course work offered through dual credit programs provided under agreements between high schools and institutions of higher education.

(d) The commissioner may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 834, § 13, eff. Sept. 1, 2001.

**§ 39.073. DETERMINING ACCREDITATION STATUS**

(a) The agency shall annually review the performance of each district and campus on the indicators adopted under Sections 39.051(b)(1) through (8) and determine if a change in the accreditation status of the district is warranted. The commissioner may determine how all indicators adopted under Section 39.051(b) may be used to determine accountability ratings and to select districts and campuses for acknowledgment.

(b) Each annual review shall include an analysis of the indicators under Sections 39.051(b)(1) through (8) to determine district and campus performance in relation to:

(1) standards established for each indicator;

(2) required improvement as defined under Section 39.051(c); and

(3) comparable improvement as defined by Section 39.051(c).

(c) A district's accreditation rating may be raised or lowered based on the district's performance or may be lowered based on the unacceptable performance of one or more campuses in the district.

(d) The commissioner shall notify a district that is rated academically unacceptable that the performance of the district or a campus in the district is below each standard under Subsection (b) and shall require the district to notify property owners and parents in the district of the lowered accreditation rating and its implication.

(e) In determining a district's accreditation rating, the agency shall consider:

(1) the district's current special education compliance status with the agency; and

(2) the progress of students who have failed to perform satisfactorily in the preceding school year on an assessment instrument required under Section 39.023(a), (c), or (l).

(f) In the computation of dropout rates under Section 39.051(b)(2), a student who is released from a juvenile pre-adjudication secure detention facility or juvenile post-adjudication secure correctional facility and fails to enroll in school or a student who leaves a residential treatment center after receiving treatment for fewer than 85 days and fails to enroll in school may not be considered to have dropped out from the campus or school district serving the facility or center unless that campus or district is the one to which the student is regularly assigned.

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

Amended by Acts 1999, 76th Leg., ch. 396, § 2.23, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1417, § 4, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 725, § 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1287, § 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1504, § 26, eff. Sept. 1, 2001.

**§ 39.074. ON-SITE INVESTIGATIONS**

(a) The commissioner may:

(1) direct the agency to conduct on-site investigations at any time to answer any questions concerning a program, including special education, required by federal law or for which the district receives federal funds; and

(2) raise or lower the performance rating as a result of the investigation.

(b) The commissioner shall determine the frequency of on-site investigations by the agency according to annual comprehensive analysis of student performance and equity in relation to the academic excellence indicators adopted under Section 39.051.

(c) In making an on-site accreditation investigation, the investigators shall obtain information from administrators, teachers, and parents of students enrolled in the district. The investigation may not be closed until information is obtained from each of those sources. The State Board of Education shall adopt rules for:

(1) obtaining information from parents and using that information in the investigator's report; and

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

(d) The agency shall give written notice to the superintendent and the board of trustees of any impending investigation of the district's accreditation.

(e) If an annual review indicates low performance on one or more of the indicators under Sections 39.051(b)(1) through (8) of one or more campuses in a district, the agency may conduct an on-site evaluation of those campuses only.

(f) The investigators shall report orally and in writing to the board of trustees of the district and, as appropriate, to campus administrators and shall make recommendations concerning any necessary improvements or sources of aid such as regional education service centers.

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

Amended by Acts 1999, 76th Leg., ch. 396, § 2.24, eff. Sept. 1, 1999; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.16, eff. May 26, 2006.

**§ 39.075. SPECIAL ACCREDITATION INVESTIGATIONS**

(a) The commissioner shall authorize special accreditation investigations to be conducted:

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

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

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

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

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

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

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

(8) as the commissioner otherwise determines necessary.

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

(b-1) The commissioner may authorize special accreditation investigations to be conducted in response to repeated complaints submitted to the agency concerning imposition of excessive paperwork requirements on classroom teachers.

Text of subsec. (c) as amended by Acts 1999, ch. 396, § 2.25

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

(1) take appropriate action under Subchapter G;

(2) lower the district's accreditation rating; or

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

Text of subsec. (c) as amended by Acts 1999, ch. 931, § 4

(c) Based on the results of a special accreditation investigation, the commissioner may lower the district's accreditation rating and may take appropriate action under Subchapter G. Regardless of whether the commissioner lowers the district's accreditation rating, the commissioner may take action under Sections 39.131(a)(1) through (8) if the commissioner determines that the action is necessary to improve any area of a district's performance, including the district's financial accounting practices.

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

Amended by Acts 1999, 76th Leg., ch. 396, § 2.25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 931, § 4, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1504, § 28, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 433, § 3, eff. Sept. 1, 2004 ; Acts 2005, 79th Leg., ch. 723, § 2, eff. June 17, 2005.

**§ 39.076. CONDUCT OF INVESTIGATIONS**

(a) The agency shall adopt written procedures for conducting on-site investigations under this subchapter. The agency shall make the procedures available to the complainant, the alleged violator, and the public. Agency staff must be trained in the procedures and must follow the procedures in conducting the investigation.

(b) After completing an investigation, the agency shall present preliminary findings to any person the agency finds has violated a law, rule, or policy. Before issuing a report with its final findings, the agency must provide a person the agency finds has violated a law, rule, or policy an opportunity for an informal review by the commissioner or a designated hearing examiner.

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

## SUBCHAPTER E. SUCCESSFUL SCHOOL AWARDS

**§ 39.091. CREATION OF SYSTEM**

The Texas Successful Schools Awards System is created to recognize and reward those schools and school districts that demonstrate progress or success in achieving the education goals of the state.

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

**§ 39.092. TYPES OF AWARDS**

(a) The governor may present a financial award to the schools or districts that the commissioner determines have demonstrated the highest levels of sustained success or the greatest improvement in achieving the education goals. For each student in average daily attendance, each of those schools or districts is entitled to an amount set for the award for which the school or district is selected by the commissioner, subject to any limitation set by the commissioner on the total amount that may be awarded to a school or district.

(b) The governor may present proclamations or certificates to additional schools and districts determined to have met or exceeded the education goals.

(c) The commissioner may establish additional categories of awards and award amounts for a school or district determined to be successful under Subsection (a) or (b) that are contingent on the school's or district's involvement with paired, lower-performing schools.

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

**§ 39.093. AWARDS**

(a) The criteria that the commissioner shall use to select successful schools and districts must be related to the goals in Section 4.002 and must include consideration of performance on the academic excellence indicators adopted under Section 39.051. For purposes of selecting schools and districts under Section 39.092(a), each school's performance shall be compared to state standards and to its previous performance.

(b) The commissioner shall select annually schools and districts qualified to receive successful school awards for their performance and report the selections to the governor and the State Board of Education.

(c) The agency shall notify each school district of the manner in which the district or a school in the district may qualify for a successful school award.

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

**§ 39.094. USE OF AWARDS**

(a) In determining the use of a monetary award received under this subchapter, a school or district shall give priority to academic enhancement purposes. The award may not be used for any purpose related to athletics, and it may not be used to substitute for or replace funds already in the regular budget for a school or district.

(b) The campus-level committee established under Section 11.253 shall determine the use of the funds awarded to a school under this subchapter. The professional staff of the district shall determine the use of the funds awarded to the school district under this subchapter.

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

**§ 39.095. FUNDING**

The award system may be funded by donations, grants, or legislative appropriations. The commissioner may solicit and receive grants and donations for the purpose of making awards under this subchapter. A small portion of the award funds may be used by the commissioner to pay for the costs associated with sponsoring a ceremony to recognize or present awards to schools or districts under this subchapter. The donations, grants, or legislative appropriations shall be accounted for and distributed by the agency. The awards are subject to audit requirements established by the State Board of Education.

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

**§ 39.096. CONFIDENTIALITY**

All information and reports received by the commissioner under this subchapter from schools or school districts deemed confidential under Chapter 552, Government Code, are confidential and may not be disclosed in any public or private proceeding.

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

## SUBCHAPTER F. ADDITIONAL REWARDS

**§ 39.111. RECOGNITION AND REWARDS**

The State Board of Education shall develop a plan for recognizing and rewarding school districts and campuses that are rated as exemplary or recognized and for developing a network for sharing proven successful practices statewide and regionally. The reward may be used to provide educators with summer stipends to develop curricula based on the cited successful strategies. The educators may copyright the curricula they develop.

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

**§ 39.112. EXCELLENCE EXEMPTIONS**

(a) Except as provided by Subsection (b), a school campus or district that is rated exemplary is exempt from requirements and prohibitions imposed under this code including rules adopted under this code.

(b) A school campus or district is not exempt under this section from:

(1) a prohibition on conduct that constitutes a criminal offense;

(2) requirements imposed by federal law or rule, including requirements for special education or bilingual education programs; or

(3) a requirement, restriction, or prohibition relating to:

(A) curriculum essential knowledge and skills under Section 28.002 or minimum graduation requirements under Section 28.025;

(B) public school accountability as provided by Subchapters B, C, D, and G;

(C) extracurricular activities under Section 33.081;

(D) health and safety under Chapter 38;

(E) competitive bidding under Subchapter B, Chapter 44;

(F) elementary school class size limits, except as provided by Subsection (d) or Section 25.112;

(G) removal of a disruptive student from the classroom under Subchapter A, Chapter 37;

(H) at risk programs under Subchapter C, Chapter 29;

(I) prekindergarten programs under Subchapter E, Chapter 29;

(J) rights and benefits of school employees;

(K) special education programs under Subchapter A, Chapter 29; or

(L) bilingual education programs under Subchapter B, Chapter 29.

(c) The agency shall monitor and evaluate deregulation of a school campus or district under this section and Section 7.056.

(d) The commissioner may exempt an exemplary school campus from elementary class size limits under this section if the school campus submits to the commissioner a written plan showing steps that will be taken to ensure that the exemption from the class size limits will not be harmful to the academic achievement of the students on the school campus. The commissioner shall review achievement levels annually. The exemption remains in effect until the commissioner determines that achievement levels of the campus have declined.

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

## SUBCHAPTER G. ACCREDITATION SANCTIONS

**§ 39.131. SANCTIONS FOR DISTRICTS**

(a) If a district does not satisfy the accreditation criteria under Section 39.071, the academic performance standards under Section 39.072, or any financial accountability standard as determined by commissioner rule, the commissioner shall take any of the following actions to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees of the district for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve;

(3) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the district's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(4) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees of the district and the superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;

(5) arrange an on-site investigation of the district;

(6) appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees or the superintendent;

(7) appoint a conservator to oversee the operations of the district;

(8) appoint a management team to direct the operations of the district in areas of unacceptable performance or require the district to obtain certain services under a contract with another person;

(9) if a district has a current accreditation status of accredited-warned or accredited-probation, is rated academically unacceptable, or fails to satisfy financial accountability standards as determined by commissioner rule, appoint a board of managers to exercise the powers and duties of the board of trustees;

(10) if for two consecutive school years, including the current school year, a district has received an accreditation status of accredited-warned or accredited-probation, has been rated academically unacceptable, or has failed to satisfy financial accountability standards as determined by commissioner rule, revoke the district's accreditation and:

(A) order closure of the district and annex the district to one or more adjoining districts under Section 13.054; or

(B) in the case of a home-rule school district or open-enrollment charter school, order closure of all programs operated under the district's or school's charter; or

(11) if a district has been rated academically unacceptable for a period of two consecutive years, including the current school year, due to the district's dropout rates, impose sanctions designed to improve high school completion rates, including:

(A) ordering the development of a dropout prevention plan for approval by the commissioner;

(B) restructuring the district or appropriate school campuses to improve identification of and service to students who are at risk of dropping out of school, as defined by Section 29.081;

(C) ordering lower student-to-counselor ratios on school campuses with high dropout rates; and

(D) ordering the use of any other intervention strategy effective in reducing dropout rates, including mentor programs and flexible class scheduling.

(b) This subsection applies regardless of whether a district has satisfied the accreditation criteria. If for two consecutive school years, including the current school year, a district has had a conservator or management team assigned, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees.

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

Amended by Acts 2001, 77th Leg., ch. 834, § 14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1504, § 29, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1201, § 3, eff. Sept. 1, 2003; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 3.17, eff. May 26,2006.

**§ 39.132. SANCTIONS FOR ACADEMICALLY UNACCEPTABLE AND CERTAIN OTHER CAMPUSES**

(a) If a campus performance is below any standard under Section 39.073(b), the campus is considered an academically unacceptable campus. The commissioner may permit the campus to participate in an innovative redesign of the campus to improve campus performance or may take any of the other following actions, to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees at the campus for the purpose of:

(A) notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve within a designated period of time; and

(B) soliciting public comment on the initial steps being taken to improve performance;

(3) order the preparation of a report regarding the parental involvement program at the campus and a plan describing strategies for improving parental involvement at the campus;

(4) order the preparation of a report regarding the effectiveness of the district- and campus-level planning and decision-making committees established

under Subchapter F, Chapter 11, and a plan describing strategies for improving the effectiveness of those committees;

(5) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the campus's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(6) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees, the superintendent, and the campus principal shall appear and explain the campus's low performance, lack of improvement, and plans for improvement; or

(7) appoint a campus intervention team to under Section 39.1322:

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 1365, § 2, eff. June 19, 1999; Acts 2003, 78th Leg., ch. 1212, § 13, eff. June 20, 2003. Renumbered from V.T.C.A., Education Code § 39.131(b) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, § 17.01, eff. Jan. 11, 2004.

**§ 39.133. ANNUAL REVIEW**

The commissioner shall review annually the performance of a district or campus subject to this subchapter to determine the appropriate actions to be implemented under this subchapter. The commissioner must review at least annually the performance of a district for which the accreditation rating has been lowered due to unacceptable student performance and may not raise the rating until the district has demonstrated improved student performance. If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

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

Renumbered from V.T.C.A., Education Code § 39.131(c) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003.

**§ 39.134. COSTS PAID BY DISTRICT**

The costs of providing a monitor, conservator, management team, campus intervention team, technical assistance team, managing entity under Section 39.1331 shall be paid by the district. If the district fails or refuses to pay the costs in a timely manner, the commissioner may:

(1) pay the costs using amounts withheld from any funds to which the district is otherwise entitled; or

(2) recover the amount of the costs in the manner provided for recovery of an overallocation of state funds under Section 42.258.

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

Amended by Acts 2001, 77th Leg., ch. 1504, § 29, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Education Code § 39.131(d) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003; Acts 2006, 79th Leg., 3rd C.S., ch. 5 § 3.21, eff. May 26, 2006.

**§ 39.135. CONSERVATOR OR MANAGEMENT TEAM**

(a) The commissioner shall clearly define the powers and duties of a conservator or management team appointed to oversee the operations of the district.

(b) At least every 90 days, the commissioner shall review the need for the conservator or management team and shall remove the conservator or management team unless the commissioner determines that continued appointment is necessary for effective governance of the district or delivery of instructional services.

(c) A conservator or management team, if directed by the commissioner, shall prepare a plan for the implementation of action under Section 39.131(a)(9) or (10). The conservator or management team:

(1) may direct an action to be taken by the principal of a campus, the superintendent of the district, or the board of trustees of the district;

(2) may approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board of trustees of the district;

(3) may not take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;

(4) may not change the number of or method of selecting the board of trustees;

(5) may not set a tax rate for the district; and

(6) may not adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board of trustees.

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

Renumbered from V.T.C.A., Education Code § 39.131(e) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003.

**§ 39.136. BOARD OF MANAGERS**

(a) A board of managers may exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation. This subchapter applies to a district governed by a board of managers in the same manner that this subchapter applies to any other district.

(b) If the commissioner appoints a board of managers to govern a district, the powers of the board of trustees of the district are suspended for the period of the appointment and the commissioner shall appoint a district superintendent. Notwithstanding any other provision of this code, the board of managers may amend the budget of the district.

(c) If the commissioner appoints a board of managers to govern a campus, the powers of the board of trustees of the district in relation to the campus are suspended for the period of the appointment and the commissioner shall appoint a campus principal. Notwithstanding any other provision of this code, the board of managers may submit to the commissioner for approval amendments to the budget of the district for the benefit of the campus. If the commissioner approves the amendments, the board of trustees of the district shall adopt the amendments.

(d) A conservator or a member of a management team appointed to serve on a board of managers may continue to be compensated as determined by the commissioner.

(e) At the direction of the commissioner but not later than the second anniversary of the date the board of managers of a district was appointed, the board of managers shall order an election of members of the district board of trustees. The election must be held on a uniform election date on which an election of district trustees may be held under Section 41.001, Election Code, that is at least 180 days after the date the election was ordered. On qualification of members for office, the board of trustees assumes all of the powers and duties assigned to a board of trustees by law, rule, or regulation.

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

Renumbered from V.T.C.A., Education Code § 39.131(f) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003.

**§ 39.137. SPECIAL CAMPUS INTERVENTION TEAM**

A special campus intervention team appointed under this subchapter may consist of teachers, principals, other educational professionals, and superintendents recognized for excellence in their roles and appointed by the commissioner to serve as members of a team.

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

Renumbered from V.T.C.A., Education Code § 39.131(g) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003.

**§ 39.138. IMMUNITY FROM CIVIL LIABILITY**

An employee, volunteer, or contractor acting on behalf of the commissioner under this subchapter is immune from civil liability to the same extent as a professional employee of a school district under Section 22.051.

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

Renumbered from V.T.C.A., Education Code § 39.131(h) and amended by Acts 2003, 78th Leg., ch. 342, § 5, eff. Sept. 1, 2003.

## SUBCHAPTER H. REPORTS BY TEXAS EDUCATION AGENCY

**§ 39.181. GENERAL REQUIREMENTS**

(a) Each report required by this subchapter must:

(1) unless otherwise specified, contain summary information and analysis only, with an indication that the agency will provide the data underlying the report on request;

(2) specify a person at the agency who may be contacted for additional information regarding the report and provide the person's telephone number; and

(3) identify other sources of related information, indicating the level of detail and format of information that may be obtained, including the availability of any information on the Texas Education Network.

(b) Each component of a report required by this subchapter must:

(1) identify the substantive goal underlying the information required to be reported;

(2) analyze the progress made and longitudinal trends in achieving the underlying substantive goal;

(3) offer recommendations for improved progress in achieving the underlying substantive goal; and

(4) identify the relationship of the information required to be reported to state education goals.

(c) Unless otherwise provided, each report required by this subchapter is due not later than December 1 of each even-numbered year.

(d) Subsections (a) and (b) apply to any report required by statute that the agency or the State Board of Education must prepare and deliver to the governor, lieutenant governor, speaker of the house of representatives, or legislature.

(e) Unless otherwise provided by law, any report required by statute that the agency or the State Board of Education must prepare and deliver to the governor, lieutenant governor, speaker of the house of

representatives, or legislature may be combined, at the discretion of the commissioner, with a report required by this subchapter.

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

**§ 39.182. COMPREHENSIVE ANNUAL REPORT**

(a) Not later than December 1 of each year, the agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a comprehensive report covering the preceding school year and containing:

(1) an evaluation of the achievements of the state educational program in relation to the statutory goals for the public education system under Section 4.002;

(2) an evaluation of the status of education in the state as reflected by the academic excellence indicators adopted under Section 39.051;

(3) a summary compilation of overall student performance on academic skills assessment instruments required by Section 39.023 with the number and percentage of students exempted from the administration of those instruments and the basis of the exemptions, aggregated by grade level, subject area, campus, and district, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(4) a summary compilation of overall performance of students placed in a disciplinary alternative education program established under Section 37.008 on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(5) a summary compilation of overall performance of students at risk of dropping out of school, as defined by Section 29.081(d), on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(6) an evaluation of the correlation between student grades and student performance on academic skills assessment instruments required by Section 39.023;

(7) a statement of the dropout rate of students in grade levels 7 through 12, expressed in the aggregate and by grade level, and a statement of the completion rates of students for grade levels 9 through 12;

(8) a statement of:

(A) the completion rate of students who enter grade level 9 and graduate not more than four years later;

(B) the completion rate of students who enter grade level 9 and graduate, including students who require more than four years to graduate;

(C) the completion rate of students who enter grade level 9 and not more than four years later receive a high school equivalency certificate;

(D) the completion rate of students who enter grade level 9 and receive a high school equivalency certificate, including students who require more than four years to receive a certificate; and

(E) the number and percentage of all students who have not been accounted for under Paragraph (A), (B), (C), or (D);

(9) a statement of the projected cross-sectional and longitudinal dropout rates for grade levels 9 through 12 for the next five years, assuming no state action is taken to reduce the dropout rate;

(10) a description of a systematic, measurable plan for reducing the projected cross-sectional and longitudinal dropout rates to five percent or less for the 1997-1998 school year;

(11) a summary of the information required by Section 29.083 regarding grade level retention of students and information concerning:

(A) the number and percentage of students retained; and

(B) the performance of retained students on assessment instruments required under Section 39.023(a);

(12) information, aggregated by district type and disaggregated by race, ethnicity, gender, and socioeconomic status, on:

(A) the number of students placed in a disciplinary alternative education program established under Section 37.008;

(B) the average length of a student's placement in a disciplinary alternative education program established under Section 37.008;

(C) the academic performance of students on assessment instruments required under Section 39.023(a) during the year preceding and during the year following placement in a disciplinary alternative education program; and

(D) the dropout rates of students who have been placed in a disciplinary alternative education program established under Section 37.008;

(13) a list of each school district or campus that

does not satisfy performance standards, with an explanation of the actions taken by the commissioner to improve student performance in the district or campus and an evaluation of the results of those actions;

(14) an evaluation of the status of the curriculum taught in public schools, with recommendations for legislative changes necessary to improve or modify the curriculum required by Section 28.002;

(15) a description of all funds received by and each activity and expenditure of the agency;

(16) a summary and analysis of the instructional expenditures ratios and instructional employees ratios of school districts computed under Section 44.0071;

(17) a summary of the effect of deregulation, including exemptions and waivers granted under Section 7.056 or 39.112;

(18) a statement of the total number and length of reports that school districts and school district employees must submit to the agency, identifying which reports are required by federal statute or rule, state statute, or agency rule, and a summary of the agency's efforts to reduce overall reporting requirements;

(19) a list of each school district that is not in compliance with state special education requirements, including:

(A) the period for which the district has not been in compliance;

(B) the manner in which the agency considered the district's failure to comply in determining the district's accreditation status; and

(C) an explanation of the actions taken by the commissioner to ensure compliance and an evaluation of the results of those actions;

(20) a comparison of the performance of open-enrollment charter schools and school districts on the academic excellence indicators specified in Section 39.051(b) and accountability measures adopted under Section 39.051(g), with a separately aggregated comparison of the performance of open-enrollment charter schools predominantly serving students at risk of dropping out of school, as defined by Section 29.081(d), with the performance of school districts;

(21) a summary of the information required by Section 38.0141 regarding student health and physical activity from each school district; and

(22) any additional information considered important by the commissioner or the State Board of Education.

(b) In reporting the information required by Subsection (a)(3) or (4), the agency may separately aggregate the performance data of students enrolled in a special education program under Subchapter A, Chapter 29, or a bilingual education or special language program under Subchapter B, Chapter 29.

(c) Each report must contain the most recent data available.

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

Amended by Acts 1999, 76th Leg., ch. 1417, § 5, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 725, § 8, 9, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 834, § 15, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1269, § 3, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 784, § 8, eff. June 17, 2005.

**§ 39.183. REGIONAL AND DISTRICT LEVEL REPORT.**

The agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a regional and district level report covering the preceding two school years and containing:

(1) a summary of school district compliance with the student/teacher ratios and class-size limitations prescribed by Sections 25.111 and 25.112, including: (A) the number of campuses and classes at each campus granted an exception from Section 25.112; and (B) the performance rating under Subchapter D of each campus granted an exception from Section 25.112;

(2) a summary of the exemptions and waivers granted to school districts under Section 7.056 or 39.112 and a review of the effectiveness of each campus or district following deregulation;

(3) an evaluation of the performance of the system of regional education service centers based on the indicators adopted under Section 8.101 and client satisfaction with services provided under Subchapter B, Chapter 8;

(4) an evaluation of accelerated instruction programs offered under Section 28.006, including an assessment of the quality of such programs and the performance of students enrolled in such programs; and

(5) the number of classes at each campus that are currently being taught by individuals who are not certified in the content areas of their respective classes.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 268, § 3, eff. May 26, 1997; Acts 1999, 76th Leg., ch. 396, § 2.26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 889, § 3, eff. June 14, 2001.

**§ 39.184. TECHNOLOGY REPORT.**

The agency shall prepare and deliver to the governor,

the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a technology report covering the preceding two school years and containing information on the status of the implementation of and revisions to the long-range technology plan required by Section 32.001, including the equity of the distribution and use of technology in public schools.

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

**§ 39.185. INTERIM REPORT.**
Not later than December 1 of each odd-numbered year, the agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system an interim report containing, for the previous school year, the information required by Section 39.183(2).

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 725, § 10, eff. June 13, 2001.

## TEXAS EDUCATION CODE SUBTITLE F. CURRICULUM, PROGRAMS, AND SERVICES CHAPTER 28. COURSES OF STUDY; ADVANCEMENT

## SUBCHAPTER B. ADVANCEMENT, PLACEMENT, CREDIT, AND ACADEMIC ACHIEVEMENT RECORD

**§ 28.0211. Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction**

(a) Except as provided by Subsection (b) or (e), a student may not be promoted to:

(1) the fourth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the third grade reading assessment instrument under Section 39.023;

(2) the sixth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the fifth grade mathematics and reading assessment instruments under Section 39.023; or

(3) the ninth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the eighth grade mathematics and reading assessment instruments under Section 39.023.

(b) A school district shall provide to a student who initially fails to perform satisfactorily on an assessment instrument specified under Subsection (a) at least two additional opportunities to take the assessment instrument. A school district may administer an alternate assessment instrument to a student who has failed an assessment instrument specified under Subsection (a) on the previous two opportunities. Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on an alternate assessment instrument under this subsection that is appropriate for the student's grade level and approved by the commissioner.

(c) Each time a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area, including reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument. After a student fails to perform satisfactorily on an assessment instrument a second time, a grade placement committee shall be established to prescribe the accelerated instruction the district shall provide to the student before the student is administered the assessment instrument the third time. The grade placement committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the grade placement committee and the purpose of the committee. An accelerated instruction group administered by a school district under this section may not have a ratio of more than 10 students for each teacher.

(d) In addition to providing accelerated instruction to a student under Subsection (c), the district shall notify the student's parent or guardian of:

(1) the student's failure to perform satisfactorily on the assessment instrument;

(2) the accelerated instruction program to which the student is assigned; and

(3) the possibility that the student might be retained at the same grade level for the next school year.

(e) A student who, after at least three attempts, fails to perform satisfactorily on an assessment instrument specified under Subsection (a) shall be retained at the same grade level for the next school year in accordance with Subsection (a). The student's parent or guardian may appeal the student's retention by submitting a request to the grade placement committee established under Subsection (c). The school district shall give the parent or guardian written

notice of the opportunity to appeal. The grade placement committee may decide in favor of a student's promotion only if the committee concludes, using standards adopted by the board of trustees, that if promoted and given accelerated instruction, the student is likely to perform at grade level. A student may not be promoted on the basis of the grade placement committee's decision unless that decision is unanimous. The commissioner by rule shall establish a time line for making the placement determination. This subsection does not create a property interest in promotion. The decision of the grade placement committee is final and may not be appealed.

(f) A school district shall provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) accelerated instruction during the next school year as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c). The district shall provide that accelerated instruction regardless of whether the student has been promoted or retained. The educational plan must be designed to enable the student to perform at the appropriate grade level by the conclusion of the school year. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the plan. The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.

(g) This section does not preclude the retention at a grade level, in accordance with state law or school district policy, of a student who performs satisfactorily on an assessment instrument specified under Subsection (a).

(h) In each instance under this section in which a school district is specifically required to provide notice to a parent or guardian of a student, the district shall make a good faith effort to ensure that such notice is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English or the parent or guardian's native language.

(i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) shall determine:

(1) the manner in which the student will participate in an accelerated instruction program under this section; and

(2) whether the student will be promoted or retained under this section.

(j) A school district or open-enrollment charter school shall provide students required to attend accelerated programs under this section with transportation to those programs if the programs occur outside of regular school hours.

(k) The commissioner shall adopt rules as necessary to implement this section, including rules concerning when school districts shall administer assessment instruments required under this section and which administration of the assessment instruments will be used for purposes of Section 39.051.

(l) The commissioner shall issue a report to the legislature not later than December 1, 2000, that reviews the enrollment of students in accelerated instruction and the quality and availability of accelerated instruction programs, including accelerated instruction-related teacher professional development programs.

(m) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation School Program funds. This section may be implemented only if the commissioner certifies that sufficient funds have been appropriated during a school year for administering the accelerated instruction programs specified under this section.

Text of subsection (n) effective until January 1, 2008

(n) This section applies to the assessment instrument administered to students in:

(1) the third grade beginning with the 2002–2003 school year;

(2) the fifth grade beginning with the 2004–2005 school year; and

(3) the eighth grade beginning with the 2007–2008 school year.

Text of subsection (o) effective until January 1, 2008

(o) Subsection (n) and this subsection expire January 1, 2008. Added by Acts 1999, 76th Leg., ch. 396, § 2.12, eff. Sept. 1, 1999.

**§ 28.0213. INTENSIVE PROGRAM OF INSTRUCTION.**

(a) A school district shall offer an intensive program of instruction to a student who does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39.

(b) A school district shall design the intensive program of instruction described by Subsection (a) to:

(1) enable the student to:

(A) to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or

(B) attain a standard of annual growth specified by the school district and reported by the district to the agency; and

(2) if applicable, carry out the purposes of Section 28.0211.

(c) A school district shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements. The commissioner shall distribute funds to districts that implement a program under this section based on the number of students identified by the district who:

(1) do not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or

(2) are not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district.

(d) A school district's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.

(e) For a student in a special education program under Subchapter A, Chapter 29, who does not perform satisfactorily on an assessment instrument administered under Section 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:

(1) enable the student to attain a standard of annual growth on the basis of the student's individualized education program; and

(2) if applicable, carry out the purposes of Section 28.0211.

Added by Acts 2003, 78th Leg., ch. 1212, § 7, eff. June 20, 2003.