**ATTACHMENT II**
**Text of Proposed Revisions to 19 TAC**

# Chapter 101. Assessment

## Subchapter A. General Provisions

**§101.1. Scope of Rules.**

(a) The State Board of Education (SBOE) shall:

(1) create and implement the statewide assessment program to ensure the program supports the goals of education as specified in the Texas Education Code (TEC); and

(2) establish goals for the statewide assessment program.

(b) When adopting rules, the SBOE shall maintain the stability of the statewide assessment program to the greatest extent possible in accordance with the TEC, Chapter 39, Subchapter B.

(c) The statewide assessment program consists of the following criterion-referenced tests:

(1) the assessments [~~assessment~~] of academic readiness [~~skills~~] in English and Spanish for the grades and subjects as specified in the TEC, Chapter 39, Subchapter B;

(2) the alternative assessments [~~assessment~~] of academic readiness [~~skills~~] for eligible students receiving special education services as specified in the TEC, Chapter 39, Subchapter B;

(3) the assessments required for graduation as specified in the TEC, Chapter 39, Subchapter B; and

(4) the reading proficiency tests in English for eligible limited English proficient students as specified in the TEC, Chapter 39, Subchapter B.

**§101.3. Policy.**

(a) The goal of the statewide assessment program is to provide all eligible Texas students an appropriate statewide assessment that measures and supports their achievement of the essential knowledge and skills of the state-mandated curriculum.

(b) To maximize its effectiveness for educators and students, the statewide assessment program shall be based on the following quality standards.

(1) Tests shall be aligned to the essential knowledge and skills of the state-mandated curriculum in all subject areas tested.

(2) Tests shall be reliable and valid measures of the essential knowledge and skills and shall be administered in a standardized manner.

(3) Test results at the student, campus, district, regional, and state levels shall be reported in a timely and accurate manner.

**§101.5. Student Testing Requirements.**

[~~(a)~~] Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced assessments, as required by the Texas Education Code (TEC), Chapter 39, Subchapter B.

[~~(b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3-11 and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individualized education program (IEP). If the student's ARD committee determines that the assessment of academic skills is an inappropriate measure of the student's academic progress in one or more subjects, the student shall take the alternate assessment of academic skills in the subject or subjects. Each testing accommodation shall be documented in the student's IEP in accordance with 34 Code of Federal Regulations (CFR).~~

~~§300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments.~~]

[~~(c) In Grades 3-12, a limited English proficient (LEP) student, as defined by the TEC, Chapter 29, Subchapter B, shall participate in the assessments as required by this section and Subchapter AA of this chapter (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). In Grades 3-5, the language proficiency assessment committee (LPAC) shall determine whether a nonexempt LEP student whose primary language is Spanish will take the assessment of academic skills in English or in Spanish. The decision as to the language of the assessment shall be based on the assessment that will provide the most appropriate measure of the student's academic progress.~~]

[~~(d) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the assessment requirement as specified in the TEC, Chapter 39, Subchapter B.~~]

**[~~§101.7. Testing Requirements for Graduation.~~]**

[~~(a) To be eligible to receive a high school diploma, a student must demonstrate satisfactory performance as determined by the commissioner of education on the assessments required for graduation as specified in the Texas Education Code (TEC), Chapter 39, Subchapter B.~~]

[~~(1) To fulfill the testing requirements for graduation, a student must be tested by either a Texas school district, Texas education service center, open-enrollment charter school, the Texas Education Agency (TEA), or other individual or organization designated by the commissioner of education.~~]

[~~(2) On the tests required for graduation, a student shall not be required to demonstrate performance at a standard higher than the one in effect when he or she was first eligible to take the test.~~]

[~~(b) Beginning with the 2003-2004 school year, students who were enrolled in Grade 8 or a lower grade on January 1, 2001, must fulfill testing requirements for graduation with the Grade 11 exit level tests, as specified in the TEC, §39.023(c), as that section existed before amendment by Senate Bill 1031, 80th Texas Legislature, 2007.~~]

[~~(c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, who successfully completes the requirements of his or her individualized education program (IEP) shall receive a high school diploma.~~]

[~~(d) According to procedures specified in the applicable test administration materials, an eligible student or out-of-school individual who has not met graduation requirements may retest on a schedule determined by the commissioner of education.~~]

**[~~§101.9. Grade Advancement Requirements.~~]**

[~~Each school district and charter school shall test eligible students in accordance with the grade advancement requirements as specified in the Texas Education Code (TEC), §28.0211(a). These requirements pertain to the reading and mathematics assessments at Grade 5 and Grade 8.~~]

[~~(1) The Texas Education Agency shall provide three opportunities for the assessments required for grade advancement as specified in the TEC, §28.0211(b). The commissioner of education shall specify the dates of these administrations in the assessment calendar.~~]

[~~(2) A school district or charter school shall provide accelerated instruction for students who fail to demonstrate satisfactory performance as specified in the TEC, §28.0211(a-1) and (c).~~]

[~~(3) The commissioner of education shall approve the assessments for local use by school districts or charter schools as provided under the TEC, §28.0211(b).~~]

**[~~§101.11. Remediation.~~]**

[~~(a) Each school district and charter school shall provide remediation for students in the third, fourth, fifth, sixth, seventh, or eighth grade who fail to demonstrate satisfactory performance on any section of the~~

~~assessments of academic skills, as required by the Texas Education Code (TEC), §28.0211(a-1) and (a-2) and §28.0213.~~]

[~~(b) As authorized under the TEC, §39.0241(c), the Texas Education Agency may develop summer remediation study guides to help parents in providing assistance to students who do not perform satisfactorily on one or more parts of the assessments of academic skills specified in the TEC, §39.023(a) and (c). Each school district and charter school shall make available any summer remediation study guides in the manner most effective for them, and shall observe the requirements for maintaining confidentiality of student assessment results.~~]

**[~~§101.13. Notice to Students and Parents.~~]**

[~~(a) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of graduation requirements:~~]

[~~(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh-grade year of the testing requirements for graduation;~~]

[~~(2) notifying each student in Grades 7-12 new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for graduation; and~~]

[~~(3) notifying each student who shall take the tests required for graduation and his or her parent or guardian, as well as out-of-school individuals, of the dates, times, and locations of testing.~~]

[~~(b) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of testing requirements for advancement at certain grades:~~]

[~~(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's first-grade year or no later than the beginning of the student's kindergarten year, for students attending kindergarten in a public school, of the testing requirements for grade advancement as specified in the Texas Education Code (TEC), §28.0211;~~]

[~~(2) notifying each student in Grades 1-8 who is new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for grade advancement; and~~]

[~~(3) notifying each student required to take the grade advancement tests of the dates, times, and locations of testing.~~]

## Subchapter B. Development and Administration of Tests

**[~~§101.21. Test Development.~~]**

[~~(a) Texas educators shall assist Texas Education Agency staff in developing test objectives, assessment guidelines, and test items. Advisory committees composed of Texas educators shall reflect the diversity of the state by region, ethnicity, gender, and type and size of school district.~~]

[~~(b) The commissioner of education shall ensure that each criterion-referenced test developed under the Texas Education Code (TEC), Chapter 39, Subchapter B, meets accepted standards for educational testing.~~]

[~~(c) Each public school and charter school shall assist with field-testing and other activities necessary to implement the requirements of the TEC, Chapter 39, Subchapter B.~~]

**§101.25. Schedule.**

(a) The commissioner of education shall specify the schedule for testing and field testing that is in compliance with the Texas Education Code (TEC), §39.023(c-3)(1) and (2), and supports reliable and valid assessments.

(b) The superintendent of each school district or chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC [~~Texas Education Code (TEC)~~] , §39.033, shall be responsible for administering tests.

(c) The commissioner of education may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children, as defined in the TEC, §39.029, and who are out of the state.

(d) Participation in University Interscholastic League area, regional, or state competitions is prohibited on any days on which testing is scheduled between Monday and Thursday of the school week in which the primary administration of assessment instruments under the TEC, §39.023(a), (c), or (l) , occurs.

**§101.27. Administrative Procedures.**

[~~(a) Test administration procedures shall be established by the Texas Education Agency (TEA) in the applicable test administration materials.~~]

[~~(b)~~] A school district, charter school, or private school administering the tests required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

[~~(c) The superintendent of each school district and chief administrative officer of each charter school or private school administering tests required by TEC, Chapter 39, Subchapter B, shall be responsible for:~~]

[~~(1) maintaining the integrity of the test administration process; and~~]

[~~(2) ensuring that every test administrator receives at least annual training in these procedures as provided by the TEA through the education service centers.~~]

**[~~§101.29. Accommodations.~~]**

[~~(a) Testing accommodations on the assessments administered under the Texas Education Code (TEC), Chapter 39, Subchapter B, are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction.~~]

[~~(b) For a student receiving special education services, the admission, review, and dismissal (ARD) committee shall determine the allowable accommodations necessary for the student to take the assessments administered under the TEC, Chapter 39, Subchapter B, and shall document them in the student's individualized education program.~~]

[~~(c) Permissible testing accommodations shall be described in the appropriate test administration materials.~~]

**§101.31. Private Schools.**

(a) A private school administering the assessments under the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials. Each private school shall maintain test security and confidentiality as delineated in the TEC, §39.030.

(b) A private school administering the assessments under the TEC, Chapter 39, Subchapter B, shall reimburse the Texas Education Agency for each assessment administered. The per-student cost may not exceed the cost of administering the same assessment to a student enrolled in a school district.

(c) A private school administering the assessments under the TEC, Chapter 39, Subchapter B, shall provide to the commissioner of education, as required by law and determined appropriate by the commissioner, academic excellence indicator information described in the TEC, §39.053(c) and §39.301(c). For indicator information defined and collected through the Public Education Information Management System (PEIMS), private schools shall follow the PEIMS Data Standards.

**§101.33. Release of Tests.**

Beginning in 2009 with the 2008-2009 school year and each subsequent third school year, the Texas Education Agency shall release all test items and answer keys only for primary administration assessment instruments administered under the Texas Education Code, §39.023(a), (b), (c), (d), and (l) , and [~~. In the nonrelease years, a set of representative~~] field test items that are at least four years old and that are no longer eligible for inclusion on a subsequent test form [~~will be released~~] .

## [~~Subchapter C. Security and Confidentiality~~]

**[~~§101.61. Security of Tests.~~]**

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

**[~~§101.63. Confidentiality.~~]**

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

**[~~§101.65. Penalties.~~]**

[~~(a) Violation of security or confidential integrity of any test required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall be prohibited.~~]

[~~(b) A person who engages in conduct prohibited by this section may be subject to sanction of credentials.~~]

[~~(c) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).~~]

[~~(d) Procedures for maintaining the security and confidential integrity of a test shall be specified in the appropriate test administration materials. Conduct that violates the security and confidential integrity of a test is defined as any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include the following acts and omissions:~~]

[~~(1) duplicating secure examination materials;~~]

[~~(2) disclosing the contents of any portion of a secure test;~~]

[~~(3) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;~~]

[~~(4) changing or altering a response or answer of an examinee to a secure test item or prompt;~~]

[~~(5) aiding or assisting an examinee with a response or answer to a secure test item or prompt;~~]

[~~(6) encouraging or assisting an individual to engage in the conduct described in paragraphs (1) (5) of this subsection; or~~]

[~~(7) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1) (6) of this subsection.~~]

[~~(e) Any person who violates, assists in the violation of, or solicits another to violate or assist in the violation of test security or confidential integrity, and any person who fails to report such a violation are subject to the following penalties:~~]

[~~(1) placement of restrictions on the issuance, renewal, or holding of a Texas teacher certificate, either indefinitely or for a set term;~~]

[~~(2) issuance of an inscribed or non-inscribed reprimand;~~]

[~~(3) suspension of a Texas teacher certificate for a set term; or~~]

[~~(4) revocation or cancellation of a Texas teacher certificate without opportunity for reapplication for a set term or permanently.~~]

[~~(f) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.~~]

[~~(g) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the Texas Education Agency in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. Failure to report can subject the person responsible to the applicable penalties specified in this section.~~]

## [~~Subchapter D. Scoring and Reporting~~]

**[~~§101.81. Scoring and Reporting.~~]**

[~~(a) The superintendent of a school district or chief administrative officer of each charter school shall accurately report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.~~]

[~~(b) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students and his or her parent or guardian of test results, observing confidentiality requirements in the TEC, §39.030.~~]

[~~(c) All test results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another school district, charter school, or private school.~~]

[~~(d) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §28.0211, within a ten-day period following the receipt of the test materials from the school district or charter school.~~]

**[~~§101.83. National Comparative Data.~~]**

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

[~~(b) The Texas Education Agency will use sampling and other techniques to minimize the disruption to schools and loss of instructional time required of school districts to obtain nationally comparative data.~~]

[~~(c) The nationally comparative data will be collected by using nationally recognized instruments for obtaining valid and reliable normative data from a sample of Texas students.~~]

## Subchapter E. Local Option

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

(a) An assessment instrument to which this section is applicable [~~required~~] under the Texas Education Code (TEC), §39.032, is defined as any district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (e.g., to the local board of trustees) in the aggregate. A test given for a special purpose [,] such as program placement or individual evaluation (e.g., a spelling test, a diagnostic test such as a reading inventory or interim benchmark assessment, or a released statewide assessment instrument) [,] is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved, norm-referenced group-administered achievement tests that test publishers certify meet the requirements of the TEC, §39.032.

(b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees.

(c) State and national averages for an assessment instrument under this section must be computed using data that are not more than eight 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. This eight-year limitation does not apply if only data older than eight years are available for an assessment instrument.

(d) To maintain the security and confidentiality of group-administered achievement tests, school districts and charter schools shall follow the applicable procedures for test security and confidentiality delineated in §101.3031 of this title (relating to Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments) [~~Subchapter C of this chapter (relating to Security and Confidentiality)~~] .