

AN ACT

relating to the assessment of public school students, including the development and administration of assessment instruments, and technology permitted for use by students.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 39.022, Education Code, is amended to read as follows:

Sec. 39.022. ASSESSMENT PROGRAM. (a) 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.

(b) It is the policy of this state that the statewide assessment program be designed to:

(1) provide assessment instruments that are as short as practicable; and

(2) minimize the disruption to the educational program.

SECTION 2. Effective September 1, 2021, Section 39.023(a), Education Code, is amended to read as follows:

(a) The agency shall adopt or develop appropriate

1 criterion-referenced assessment instruments designed to assess
2 essential knowledge and skills in reading~~[, writing]~~, mathematics,
3 social studies, and science. Except as provided by Subsection
4 (a-2), all students, other than students assessed under Subsection
5 (b) or (1) or exempted under Section 39.027, shall be assessed in:

6 (1) mathematics, annually in grades three through
7 ~~[seven without the aid of technology and in grade] eight [with the~~
8 ~~aid of technology on any assessment instrument that includes~~
9 ~~algebra];~~

10 (2) reading, annually in grades three through eight;

11 (3) ~~[writing, including spelling and grammar, in~~
12 ~~grades four and seven];~~

13 ~~[(4)]~~ social studies, in grade eight;

14 (4) ~~[(5)]~~ science, in grades five and eight; and

15 (5) ~~[(6)]~~ any other subject and grade required by
16 federal law.

17 SECTION 3. Section 39.023, Education Code, is amended by
18 amending Subsections (a), (a-12), (a-13), (b-1), (c), and (c-3) and
19 adding Subsections (a-4), (a-14), (a-15), (a-16), (c-7), (c-8), and
20 (o) to read as follows:

21 (a) The agency shall adopt or develop appropriate
22 criterion-referenced assessment instruments designed to assess
23 essential knowledge and skills in reading, writing, mathematics,
24 social studies, and science. Except as provided by Subsection
25 (a-2), all students, other than students assessed under Subsection
26 (b) or (1) or exempted under Section 39.027, shall be assessed in:

27 (1) mathematics, annually in grades three through

1 ~~[seven without the aid of technology and in grade]~~ eight ~~[with the~~
2 ~~aid of technology on any assessment instrument that includes~~
3 ~~algebra]~~;

4 (2) reading, annually in grades three through eight;

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

7 (4) social studies, in grade eight;

8 (5) science, in grades five and eight; and

9 (6) any other subject and grade required by federal
10 law.

11 (a-4) For purposes of Subsection (a)(1), the State Board of
12 Education by rule may designate sections of a mathematics
13 assessment instrument for a grade level that:

14 (1) may be completed with the aid of technology; and

15 (2) must be completed without the aid of technology.

16 (a-12) An assessment instrument adopted or developed under
17 Subsection (a) may not have more than three parts. A part of an
18 assessment instrument must be designed so that:

19 (1) if administered to students in grades three and
20 four ~~[through five]~~, 85 percent of students will be able to complete
21 that part ~~[the assessment instrument]~~ within 60 ~~[120]~~ minutes; and

22 (2) if administered to students in grades five ~~[six]~~
23 through eight, 85 percent of students will be able to complete that
24 part ~~[the assessment instrument]~~ within 75 ~~[180]~~ minutes.

25 (a-13) The amount of time allowed for administration of an
26 assessment instrument adopted or developed under Subsection (a) may
27 not exceed eight hours, and the administration may occur in

1 multiple parts over more than ~~[on only]~~ one day.

2 (a-14) Subsections (a-12) and (a-13) do not apply to the
3 administration of assessment instruments for a grade level if, as a
4 result of the time restriction imposed, the assessment instrument
5 no longer:

6 (1) complies with federal law; or

7 (2) is valid and reliable, based on findings and
8 recommendations made by the advisory committees established under
9 Section 39.02302.

10 (a-15) Subsections (a-12) and (a-13) do not apply to a
11 classroom portfolio method used to assess writing performance.

12 (a-16) An assessment instrument under this section may not
13 be administered to a kindergarten student except for the purpose of
14 determining whether the student is entitled to the benefit of the
15 Foundation School Program as provided under this code.

16 (b-1) The agency, in conjunction with appropriate
17 interested persons, shall redevelop assessment instruments adopted
18 or developed under Subsection (b) for administration to
19 significantly cognitively disabled students in a manner consistent
20 with federal law. An assessment instrument under this subsection
21 may not require a teacher to prepare tasks or materials for a
22 student who will be administered such an assessment instrument. A
23 classroom portfolio method used to assess writing performance may
24 require a teacher to prepare tasks and materials ~~[Assessment~~
25 ~~instruments adopted or developed under this subsection shall be~~
26 ~~administered not later than the 2014-2015 school year].~~

27 (c) The agency shall also adopt end-of-course assessment

1 instruments for secondary-level courses in Algebra I, biology,
2 English I, English II, and United States history. The Algebra I
3 end-of-course assessment instrument must be administered with the
4 aid of technology, but may include one or more parts that prohibit
5 the use of technology. The English I and English II end-of-course
6 assessment instruments must each assess essential knowledge and
7 skills in both reading and writing [~~in the same assessment~~
8 ~~instrument~~] and must provide a single score. A school district
9 shall comply with State Board of Education rules regarding
10 administration of the assessment instruments listed in this
11 subsection. If a student is in a special education program under
12 Subchapter A, Chapter 29, the student's admission, review, and
13 dismissal committee shall determine whether any allowable
14 modification is necessary in administering to the student an
15 assessment instrument required under this subsection. The State
16 Board of Education shall administer the assessment instruments. An
17 end-of-course assessment instrument may be administered in
18 multiple parts over more than one day. The State Board of Education
19 shall adopt a schedule for the administration of end-of-course
20 assessment instruments that complies with the requirements of
21 Subsection (c-3).

22 (c-3) Except as provided by Subsection (c-7), in [~~In~~]
23 adopting a schedule for the administration of assessment
24 instruments under this section, the State Board of Education shall
25 ensure that [~~require~~]

26 [~~(1)~~] assessment instruments administered under
27 Subsection (a) or (c) are not [~~to be~~] administered on the first

1 instructional day of a week [~~a schedule so that the first assessment~~
2 ~~instrument is administered at least two weeks later than the date on~~
3 ~~which the first assessment instrument was administered under~~
4 ~~Subsection (a) during the 2006-2007 school year; and~~

5 ~~(2) the spring administration of end-of-course~~
6 ~~assessment instruments under Subsection (c) to occur in each school~~
7 ~~district not earlier than the first full week in May, except that~~
8 ~~the spring administration of the end-of-course assessment~~
9 ~~instruments in English I and English II must be permitted to occur~~
10 ~~at an earlier date].~~

11 (c-7) Subsection (c-3) does not apply to a classroom
12 portfolio method used to assess writing performance if student
13 performance under that method is less than 50 percent of a student's
14 overall assessed performance in writing.

15 (c-8) Beginning with the 2022-2023 school year, an
16 assessment instrument developed under Subsection (a) or (c) may not
17 present more than 75 percent of the questions in a multiple choice
18 format.

19 (o) The agency shall adopt or develop optional interim
20 assessment instruments for each subject or course for each grade
21 level subject to assessment under this section. A school district
22 may not be required to administer interim assessment instruments
23 adopted or developed under this subsection. An interim assessment
24 instrument:

25 (1) must be:

26 (A) predictive of the assessment instrument for
27 the applicable subject or course for that grade level required

1 under this section; and

2 (B) administered electronically; and

3 (2) may not be used for accountability purposes.

4 SECTION 4. Subchapter B, Chapter 39, Education Code, is
5 amended by adding Section 39.02302 to read as follows:

6 Sec. 39.02302. ADVISORY COMMITTEES FOR ASSESSMENT
7 INSTRUMENTS. (a) The commissioner shall appoint a technical
8 advisory committee to advise the commissioner and the agency
9 regarding the development of valid and reliable assessment
10 instruments for purposes of this chapter. The members of the
11 committee must be experts on educational assessments and
12 psychometrics.

13 (b) The commissioner shall appoint an educator advisory
14 committee to advise the commissioner and the agency regarding the
15 development of academically appropriate assessment instruments for
16 purposes of this chapter. The members of the committee must include
17 experts in curriculum and instruction.

18 (c) The agency may compensate a member of the technical or
19 educator advisory committee or reimburse the member for expenses
20 incurred in the performance of duties related to the member's
21 service on the committee.

22 (d) The selection of or payment to a member of the technical
23 or educator advisory committee is not subject to Chapter 2110 or
24 2254, Government Code.

25 SECTION 5. Section 39.0234, Education Code, is amended to
26 read as follows:

27 Sec. 39.0234. ELECTRONIC ADMINISTRATION OF ASSESSMENT

1 INSTRUMENTS [~~BY COMPUTER~~]. [~~(a)~~] The agency shall ensure that
2 assessment instruments required under Section 39.023 are capable of
3 being administered electronically [~~by computer~~]. [~~The~~
4 ~~commissioner may not require a school district or open-enrollment~~
5 ~~charter school to administer an assessment instrument by computer.~~]

6 SECTION 6. Subchapter B, Chapter 39, Education Code, is
7 amended by adding Sections 39.02341, 39.0236, and 39.0237 to read
8 as follows:

9 Sec. 39.02341. TRANSITION TO ELECTRONIC ADMINISTRATION OF
10 ASSESSMENT INSTRUMENTS. (a) The agency, in consultation with the
11 State Board of Education, shall develop a transition plan to
12 administer all assessment instruments required under Section
13 39.023 electronically beginning not later than the 2022-2023 school
14 year. The plan must:

15 (1) evaluate the availability of Internet access for
16 each school district in this state;

17 (2) identify changes to state law or policy necessary
18 to improve the availability of Internet access described by
19 Subdivision (1);

20 (3) evaluate the state's experience with administering
21 online assessment instruments, including the occurrence or effects
22 of power outages or other types of disruptions of Internet service,
23 and actions taken by the state to mitigate the occurrence and effect
24 of those disruptions; and

25 (4) identify and evaluate actions taken by the state
26 to improve the administration of online assessment instruments.

27 (b) The agency shall implement the transition plan

1 beginning on September 1, 2021. In order to ensure legislative
2 approval of the transition plan, this subsection expires August 31,
3 2021.

4 (c) Not later than December 1, 2020, the agency shall submit
5 to the governor, the lieutenant governor, and the members of the
6 legislature a report on the plan developed under Subsection (a).
7 The report must include:

8 (1) information from school districts assessing the
9 needs of those districts in transitioning to electronic
10 administration;

11 (2) any recommended changes to state law to assist in
12 the transition; and

13 (3) a recommended timeline for statewide
14 implementation of electronic administration.

15 (d) This section expires September 1, 2023.

16 Sec. 39.0236. INTEGRATED FORMATIVE ASSESSMENT PILOT
17 PROGRAM. (a) The agency shall establish a pilot program in which
18 participating school districts administer to students integrated
19 formative assessment instruments for subjects or courses for a
20 grade level subject to assessment under Section [28.006](#) or [39.023](#).

21 (b) A school district may elect to participate in the pilot
22 program.

23 (c) A school district's participation in the pilot program
24 does not affect the district's obligations regarding the
25 administration of assessment instruments required under Section
26 [39.023](#).

27 (d) Not later than December 1 of each even-numbered year,

1 the agency shall submit to the governor, the lieutenant governor,
2 and the members of the legislature a report on the pilot program
3 that includes:

4 (1) an analysis of whether the administration of
5 integrated formative assessment instruments under the pilot
6 program provided any improvement in instructional support during
7 the preceding two school years; and

8 (2) a determination of the feasibility of replacing
9 the assessment instruments required under Section 39.023 with
10 integrated formative assessment instruments.

11 Sec. 39.0237. CONSIDERATION OF PREKINDERGARTEN ASSESSMENT
12 INSTRUMENTS PROHIBITED. Performance on an assessment instrument
13 administered to students in prekindergarten may not be considered
14 for any purpose under this chapter or Chapter 39A.

15 SECTION 7. Subchapter Z, Chapter 25, Education Code, is
16 amended by adding Section 25.904 to read as follows:

17 Sec. 25.904. USE OF CALCULATOR APPLICATION IN PLACE OF
18 GRAPHING CALCULATOR. (a) A school district shall permit a student
19 enrolled in a course that requires the student to use a graphing
20 calculator to use a calculator application on a computing device,
21 including a personal, laptop, or tablet computer, that provides the
22 same functionality, unless the district makes available to the
23 student a graphing calculator at no cost to the student.

24 (b) A school district may adopt policies related to student
25 use of a computing device under this section.

26 (c) To the extent this section conflicts with Section
27 37.082, this section prevails.

1 SECTION 8. The Texas Education Agency may use not more than
2 \$35 million annually of foundation school program funds
3 appropriated to the agency to implement a provision of this Act.

4 SECTION 9. The Texas Education Agency is required to
5 implement a provision of this Act only if the legislature
6 appropriates money specifically for that purpose. If the
7 legislature does not appropriate money specifically for that
8 purpose, the Texas Education Agency may, but is not required to,
9 implement a provision of this Act using other appropriations
10 available for that purpose.

11 SECTION 10. Unless this Act provides for an effective date
12 later than September 1, 2019, this Act applies beginning with the
13 2019-2020 school year.

14 SECTION 11. Except as otherwise provided by this Act:

15 (1) this Act takes effect immediately if this Act
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution;
18 and

19 (2) if this Act does not receive the vote necessary for
20 immediate effect, this Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 3906 was passed by the House on May 9, 2019, by the following vote: Yeas 139, Nays 1, 3 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3906 on May 24, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; that the House adopted the conference committee report on H.B. No. 3906 on May 26, 2019, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House adopted H.C.R. No. 191 authorizing certain corrections in H.B. No. 3906 on May 26, 2019, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 3906

I certify that H.B. No. 3906 was passed by the Senate, with amendments, on May 22, 2019, by the following vote: Yeas 29, Nays 2; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; that the Senate adopted the conference committee report on H.B. No. 3906 on May 26, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 191 authorizing certain corrections in H.B. No. 3906 on May 27, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor