

The Texas Education Agency (TEA) proposes an amendment to §104.1001, concerning the accelerated instruction, modified teacher assignment, and accelerated learning committee. The proposed amendment would implement House Bill (HB) 1416, 88th Texas Legislature, Regular Session, 2023, by providing approval criteria for instruction through automated, computerized, or other augmented method (ACAM); establishing school district or open-enrollment charter school waivers of accelerated instruction requirements; and clarifying supplemental instruction requirements for students repeating an entire course.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 104.1001 establishes the provision of accelerated instruction and related supports for students who have failed to perform satisfactorily on assessments required under Texas Education Code (TEC), §39.023. HB 1416, 88th Texas Legislature, Regular Session, 2023, changed the requirements for accelerated instruction by differentiating the required hours based on student performance, implementing the accelerated education plan, providing performance-based accelerated instruction waivers for qualifying school districts and open enrollment charter schools, and removing the ratio requirement for school districts and open enrollment charter schools using ACAM products for providing supplemental instruction. The proposed amendment to §104.1001 would implement HB 1416 as follows.

The term "supplemental accelerated instruction" would be changed to "accelerated instruction" throughout the rule.

The requirements for accelerated instruction would be modified in subsection (b)(1).

New subsection (b)(3) would be added to clarify that school districts and open-enrollment charter schools cannot excuse students from receiving the required accelerated instruction because of the provisions of renumbered subsection (b)(2).

Subsection (c) would be amended to modify the provisions related to required transportation for students attending accelerated instruction programs outside school hours.

New subsection (d)(1) and (2) would be added to specify the hours of instruction that must be provided based on a student's performance on an assessment instrument specified under TEC, §28.0211(a-1).

New subsection (e) would be added to outline provisions related to accelerated education plans and notification of the plans to a student's parent or guardian.

Requirements for accelerated learning committees, including specific provisions for admission, review, and dismissal (ARD) committees serving as accelerated learning committees, would be removed.

New subsection (g) would be added to describe new waivers of accelerated instruction requirements.

New subsection (h) would be added to allow for the provision of accelerated instruction by ACAM. The new subsection would define ACAM; describe approval by TEA of ACAM to provide accelerated instruction that is more effective than individual or group instruction and waive the 4:1 student-to-teacher ratio requirement; list school district and charter school responsibilities when implementing the use of ACAM for accelerated instruction; and state that vendors seeking provider approval will follow the process established by TEA.

New subsection (i) would clarify that accelerated instruction waivers focus only on mathematics and reading because those subject areas are tested consecutively. The new subsection would also describe the conditions that will enable schools to qualify for the accelerated instruction waiver and explain how school districts and charter schools will be notified if they are included on the waiver list and how they can apply for a waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

New subsection (j) would clarify that repeating a high school course in its entirety is the equivalent to grade retention, which would remove accelerated instruction requirements for students repeating an entire course at the high school level.

**FISCAL IMPACT:** Andrew Hodge, associate commissioner for system innovation, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding information related to instruction conducted by ACAM, introducing waivers of accelerated instruction requirements, and including provisions related to accelerated instruction plans. The proposal would limit an existing regulation by removing information related to ARD committees serving as accelerated learning committees. In addition, the new waiver provisions would decrease the number of individuals subject to the rule for the duration of the waiver, which is one school year.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Hodge has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts and open-enrollment charter schools that meet the set criteria a one-school-year waiver from accelerated instruction. Additionally, school districts and charter schools using products included on the TEA ACAM list will not have to adhere to the 4:1 student-to-teacher ratio for students who meet the set criteria. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. Regardless, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. School districts meeting the accelerated instruction waiver criteria will have to complete the Accelerated Instruction Waiver through TEAL.

**PUBLIC COMMENTS:** The public comment period on the proposal begins February 16, 2024, and ends March 18, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on February 16, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.0211, as amended by House Bill 1416, 88th Texas Legislature, Regular Session, 2023, which requires that students are provided accelerated instruction each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8 or fails to perform satisfactorily on an end-of-course assessment instrument administered under TEC, §39.023(c).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.0211, as amended by HB 1416, 88th Texas Legislature, Regular Session, 2023.

<rule>

§104.1001. Accelerated Instruction and [5] Modified Teacher Assignment [~~and Accelerated Learning Committee~~].

- (a) Definition of ~~[supplemental]~~ accelerated instruction. For purposes of this chapter, " ~~[supplemental]~~ accelerated instruction" means instruction required under Texas Education Code (TEC), §28.0211(a-1) and, if applicable, (a-4).
- (b) Requirements for ~~[supplemental]~~ accelerated instruction.
  - (1) Each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8, or on an end-of-course assessment instrument administered under TEC, §39.023(c), other than an assessment instrument developed or adopted based on alternative academic achievement standards, the school district or open-enrollment charter school the student attends shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to TEC, §28.0211(a-7) and (a-8), either :
    - (A) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area; or
    - ~~[(A) provide to the student supplemental accelerated instruction in the applicable subject area during the subsequent summer or school year; or]~~
    - (B) provide the student supplemental instruction under TEC, §28.0211(a-4).
    - ~~[(B) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area.]~~
  - ~~[(2) Each time a student fails to perform satisfactorily as determined by the commissioner under TEC, §39.0241(a), on an end of course assessment instrument, a school district or open enrollment charter school shall:]~~
    - ~~[(A) provide to the student supplemental accelerated instruction under TEC, §28.0217, in the subject assessed by the assessment instrument; or]~~
    - ~~[(B) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area.]~~
  - ~~[(3) For a student served by special education who does not perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), the student's admission, review, and dismissal (ARD) committee must determine the manner in which the student will engage in supplemental accelerated instruction. ARD committees must consider the individual needs of a student with a disability when determining the manner in which supplemental accelerated instruction is to be provided to the student. If supplemental accelerated instruction is to be provided to the student, the supplemental accelerated instruction must meet the requirements outlined in this subsection unless~~

the ARD committee specifically determines that some or all of the requirements for supplemental accelerated instruction would deny the student access to a free appropriate public education (FAPE).]

- (2) ~~(4)~~ The superintendent of each school district and chief administrative officer of each open-enrollment charter school shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate ~~[supplemental]~~ accelerated instruction as warranted on an individual student basis.
- (3) Paragraph (2) of this subsection may not be used to excuse a student from appropriate accelerated instruction required by this subsection.
- (c) Participation in ~~[supplemental]~~ accelerated instruction. Accelerated ~~[Supplemental accelerated]~~ instruction may require a student to participate before or after normal school hours and may include participation at times of the year outside normal school operations. Each school district and open-enrollment charter school shall be responsible for providing transportation to students required to attend ~~[supplemental]~~ accelerated instruction programs if the programs occur outside of regular school hours , unless the school district or charter school does not operate, contract, or agree with another entity to operate a transportation system .
- (1) In providing ~~[supplemental]~~ accelerated instruction, a school district or an open-enrollment charter school may not remove a student from recess or from the foundation or enrichment curriculum as defined in TEC, §28.002, except under circumstances for which a student enrolled in the same grade level who is not receiving ~~[supplemental]~~ accelerated instruction would be removed. The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.
- (2) In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for ~~[supplemental]~~ accelerated instruction.
- (d) Content and delivery of ~~[supplemental]~~ accelerated instruction. Accelerated ~~[Supplemental accelerated]~~ instruction shall be based on, but not limited to, targeted instruction in the essential knowledge and skills for the applicable grade levels and subject areas and be provided by a person with training in the applicable instructional materials for the ~~[supplemental]~~ accelerated instruction and under the oversight of the school district or open-enrollment charter school. Accelerated ~~[Supplemental accelerated]~~ instruction shall be provided as outlined in TEC, §28.0211(a-4)(1) and (2) ~~[\$28.0211(a-4)(2) (5) and (8)]~~ , to a student individually or in a group of no more than four ~~[three]~~ students, unless the parent or guardian of each student in the group authorizes a larger group. School districts and charter schools shall provide students who fail to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1):
- (1) no less than 15 hours of supplemental instruction; or
- (2) no less than 30 hours of supplemental instruction for students who scored Low Did Not Meet Grade Level as indicated by state-provided district-level data files or failed to perform satisfactorily on any Grade 3 assessment.
- (e) Accelerated education plans. For each student who does not perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), for two or more consecutive school years in the same subject area, the school district or open-enrollment charter school the student attends shall develop an accelerated education plan as described by TEC, §28.0211(f), and provide the student at least 30 hours of supplemental instruction. A school district or charter school shall make a good faith attempt to provide to the parent or guardian of a student to whom TEC, §28.0211(b), applies a parent-teacher conference with the student's primary teacher at the start and end of the subsequent school year. At the conference, the school district or charter school shall provide the student's parent or guardian with:
- (1) the notice required under TEC, §28.0211(a-14); and

(2) an explanation of:

(A) the accelerated instruction to which the student is entitled under this section; and

(B) the accelerated education plan that must be developed for the student under TEC, §28.0211(f), and the manner in which the parent or guardian may participate in developing the plan.

~~[(e) Accelerated learning committee. A school district or an open enrollment charter school shall establish an accelerated learning committee described by TEC, §28.0211(c), for each student who does not perform satisfactorily on a mathematics or reading assessment instrument under TEC, §39.023, in Grade 3, 5, or 8.]~~

~~[(1) The accelerated learning 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. If a student is changing campuses, the committee must include the receiving principal or designee, the sending principal or designee, the receiving content teacher or designee, and the sending content teacher or designee.]~~

~~[(2) The school district or open enrollment charter school shall notify the parent or guardian of the time and place for convening the accelerated learning committee and the purpose of the committee.]~~

~~[(3) The accelerated learning committee shall, not later than the start of the subsequent school year, develop an educational plan for the student that provides the necessary supplemental accelerated instruction to enable the student to perform at the appropriate grade level by the conclusion of the school year. The provisions of TEC, §28.0211(f 1) (f 5), (h), and (j), must be satisfied, where applicable, in connection with the development and implementation of the educational plan.]~~

~~[(f) Requirements for an ARD committee serving as an accelerated learning committee.]~~

~~[(1) The ARD committee must serve as the accelerated learning committee for a student served by special education who does not perform satisfactorily on an assessment instrument described by subsection (e) of this section.]~~

~~[(2) The ARD committee must serve as the accelerated learning committee for students who meet the criteria for participation in alternative assessment instruments under TEC, §39.023(b), who do not perform satisfactorily on a mathematics or reading assessment instrument in Grade 3, 5, or 8. The ARD committee must determine the manner in which the student will participate in supplemental accelerated instruction; however, the requirements for supplemental accelerated instruction described by subsection (b) of this section do not apply.]~~

~~[(3) In serving as the accelerated learning committee for a student served by special education, the ARD committee must meet and develop a plan in accordance with TEC, §28.0211(f), to determine the manner in which the student will participate in supplemental accelerated instruction, and this meeting must include the required members of a properly constituted ARD committee as described in §89.1050 of this title (relating to The Admission, Review, and Dismissal Committee).]~~

~~[(4) When the ARD committee for a student served by special education serves as the accelerated learning committee, efforts must be taken to ensure parental participation as specified within the requirements of §89.1050(d) of this title and 34 Code of Federal Regulations §300.322.]~~

~~[(5) The ARD committee, serving as the accelerated learning committee, must document decisions regarding supplemental accelerated instruction in writing and a copy must be provided to the student's parent or guardian in accordance with TEC, §28.0211(f 1). This documentation may either be included in ARD deliberations or as a supplemental attachment to the student's individualized education program.]~~

~~[(6) A parent or guardian of a student served by special education may use a dispute resolution mechanism specified in §89.1150 of this title (relating to General Provisions) to resolve any dispute between the parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a FAPE to a student with a disability. If a parent or~~

guardian of a student served by special education does not agree with the decision of the ARD committee serving as the accelerated learning committee regarding supplemental accelerated instruction, the parent or guardian may follow the school district grievance policy provided for under TEC, §28.0211(f-3).]

- (f) ~~(fe)~~ Request for teacher assignment. In accordance with TEC, §28.0211(a-5), the parent or guardian of a student who fails to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), [a mathematics or reading assessment in Grade 3, 5, or 8] may follow established school district or open-enrollment charter school processes to request that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year if more than one classroom teacher is available.
- (g) Waivers of accelerated instruction requirements. The commissioner of education may waive requirements of accelerated instruction for a school district or an open-enrollment charter school in which 60% of the students who received accelerated instruction during the school year immediately preceding the previous school year, including at least 60% of students whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule, performed satisfactorily in the previous school year on the assessment instrument in each subject in which the student previously failed to perform satisfactorily. The commissioner shall publish a list of school districts and open-enrollment charter schools that qualify for the waiver not later than the beginning of each school year, starting before the 2024-2025 school year. For purposes of determining whether a school district or charter school qualifies for a waiver under this subsection, the commissioner shall:
- (1) if a student received accelerated instruction in more than one subject during the applicable school year, consider the student's performance on the assessment instrument in each subject separately from the student's performance on the assessment instrument for each other subject; and
  - (2) by rule provide that a school district may not qualify for a waiver if students who are receiving special education services or are educationally disadvantaged are overrepresented among the students in the district who received accelerated instruction during the school year immediately preceding the previous school year and did not perform satisfactorily in the previous school year on the assessment instrument in each applicable subject.
- (h) Approval of automated, computerized, or other augmented method (ACAM). The Texas Education Agency (TEA) shall approve one or more products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency. TEA may approve a product under this subsection only if evidence indicates that the product is more effective than the individual or group instruction required under TEC, §28.0211(a-4)(6).
- (1) For the purposes of this subsection, ACAM means an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency.
  - (2) School districts and open-enrollment charter schools may provide accelerated instruction using an ACAM listed on the TEA website with information related to accelerated instruction. The 4:1 student-to-teacher ratio requirement in subsection (d) of this section does not apply to a school district or charter school using a listed ACAM product to provide accelerated instruction to its students.
  - (3) School districts and open-enrollment charter schools shall:
    - (A) notify the parent or guardian of the use of ACAM for providing the required accelerated instruction;
    - (B) ensure that the required hours of supplemental instruction are completed prior to the subsequent State of Texas Assessments of Academic Readiness (STAAR®) administration;

- (C) use ACAM remotely, regardless of primary mode of instruction (i.e., in-person, virtual, or hybrid) only if the school district ensures that time spent by the student engaged in ACAM is aligned with approved product usage expectations documented by the school district;
  - (D) adhere to the ACAM usage fidelity requirements by product as approved by TEA to waive ratio requirements. A school district not fulfilling usage fidelity with an ACAM product will be required to revert to the 4:1 ratio for supplemental instruction as specified in subsection (d) of this section; and
  - (E) be responsible for contracting and funding the selected vendors included on the TEA list of approved vendors.
- (4) Entities seeking ACAM accelerated instruction provider approval shall follow a process required by TEA.
- (i) Accelerated instruction waivers.
- (1) For the purposes of this subsection:
    - (A) "significantly below satisfactorily" is defined as achieving a performance level of Low Did Not Meet Grade Level on a STAAR® mathematics or reading administration;
    - (B) "satisfactorily" is defined as achieving a performance level of Approaches or better on a STAAR® mathematics or reading administration; and
    - (C) "educationally disadvantaged" is defined as being identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) as being eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. §1751 et seq.
  - (2) Only those subject areas for which two consecutive years of assessment instrument distribution can be positively identified (i.e., mathematics and reading) for all students based on their grade level shall be considered in the determination of this waiver.
  - (3) A school district or an open-enrollment charter school shall be eligible for the one-year waiver if it meets all of the following conditions when reviewing the most recent available year of STAAR® data:
    - (A) 60% of total students eligible to receive accelerated instruction in mathematics and 60% of total students eligible to receive accelerated instruction in reading score satisfactorily on the applicable subject area assessment instrument;
    - (B) 60% of students eligible to receive accelerated instruction who scored significantly below satisfactorily in the prior year score satisfactorily on the applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students receiving accelerated instruction scored significantly below satisfactorily in the prior year; and
    - (C) at least 50% of students receiving special education services or qualifying as educationally disadvantaged who received accelerated instruction in mathematics and/or reading score satisfactorily on the subsequent applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students who received accelerated instruction receive special education services or qualified as educationally disadvantaged.
  - (4) TEA shall generate a yearly report that identifies all school districts and open-enrollment charter schools that meet all applicable conditions and are consequently eligible for the one-year waiver.
  - (5) Eligible school districts and open-enrollment charter schools shall be notified via TEA communication pathways upon the publication of the annual list.

- (6) Upon distribution of the annual notification, eligible school districts and open-enrollment charter schools shall have 45 days to apply for the waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).
- (7) The one-year waiver application shall contain the following at minimum:
  - (A) the school district or open-enrollment charter school's name;
  - (B) the signature of the school district's superintendent or the chief administrative officer of an open-enrollment charter school;
  - (C) documentation of the approval of the board of trustees or governing board, as applicable; and
  - (D) an explanation of how the school district or open-enrollment charter school will evaluate the impact of the waiver on student performance.
- (j) Repeating a high school course.
  - (1) Credit recovery means completing a certain number of seat hours to satisfy the course requirements after failure or excessive absences.
  - (2) For courses taken for high school credit, a student who is required to repeat any course in which the student was enrolled in during the previous school year and who is eligible for accelerated instruction for the current school year is exempt from accelerated instruction requirements for that specific course if that course is retaken in its entirety (i.e., to earn a full credit). However, a student who is participating in credit recovery is still required to receive accelerated instruction.