

The Texas Education Agency (TEA) adopts an amendment to §101.4002, concerning end-of-course (EOC) substitute assessments for graduation. The amendment is adopted with changes to the proposed text as published in the October 11, 2019 issue of the *Texas Register* (44 TexReg 5857) and will be republished. The adopted amendment reflects changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019. The adopted amendment modifies the rule to align Texas assessment and accountability policies with federal requirements.

REASONED JUSTIFICATION: Section 101.4002 specifies the assessments the commissioner of education recommends as substitute assessments that a student may use to meet EOC assessment graduation requirements and establishes the cut scores needed for graduation purposes. The adopted amendment updates the language to be in alignment with state and federal laws. There are no changes to the substitute assessments allowed or the required scores indicated in the figure in subsection (b).

In December 2018, the U.S. Department of Education (USDE) issued an action item following a federal monitoring visit requiring Texas to cease the use of substitute assessments for accountability purposes. In March 2019, the TEA responded to the USDE asking for additional time to determine options for continuing this policy while remaining compliant with federal law. TEA has extensively explored options and determined that our state policy on substitute assessments cannot be successfully reconciled with federal accountability statute. As a result, beginning with the 2020 accountability cycle, substitute assessments will not be included in state or federal accountability calculations. Under the Elementary and Secondary Education Act of 1965 (ESEA), a state is required to adopt and administer the same academic assessments to measure the achievement of all public-school students in the state. Furthermore, states are required to include these assessment results in the accountability system.

As proposed, the amendment would have added subsection (c)(1) to require students to take an EOC assessment at least once for federal accountability purposes prior to being eligible to use a substitute assessment to meet graduation purposes. However, based on public comment, it was determined that the addition of subsection (c)(1) was not needed as the modified language in subsection (e) would be sufficient to fulfill federal testing and accountability requirements. Therefore, proposed new subsection (c)(1) has been removed at adoption and the existing subsection numbering has been reinstated.

SB 213, 86th Texas Legislature, 2019, amended the Texas Education Code (TEC), §39.025(a-3), to extend the expiration date of the provision that allows eligible students to qualify to use the Texas Success Initiative assessment as a substitute assessment to September 1, 2023. To implement SB 213, the adopted amendment modifies subsection (d)(2)(B) by extending the expiration date to September 1, 2023.

The adopted amendment modifies the language in subsection (e) to require students to take an EOC assessment at least once for the purpose of federal accountability based on ESEA requirements. The adopted amendment also modifies the language in subsection (e) to remove the reference to "the substitute assessment bubble" as that bubble is no longer included on answer documents for EOC assessments.

The adopted amendment clarifies the names of the assessments in subsection (f) to allow a student to use qualifying scores on PSAT, PLAN, or Aspire tests if he or she has taken that test and a corresponding EOC assessment and failed both. "PSAT" replaces "PSAT-related assessment," which includes all forms of the PSAT and PSAT/NMSQT. "PLAN or Aspire" replaces "pre-ACT" to be more specific.

At proposal, the government growth assessment stated that the proposed rulemaking would decrease the overall number of individuals subject to the rule's applicability since more students would meet assessment graduation requirements with EOC assessments, which they would have had to take first under the proposed rule, instead of substitute assessments. However, since the provision requiring a student to take an EOC assessment at least once before being eligible to use a substitute assessment was removed from the rule at adoption, this government growth impact is no longer applicable.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 11, 2019, and ended November 12, 2019. A public hearing was held on December 10, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas School Alliance (TSA), Texans Advocating for Meaningful Student Assessment (TAMSA), and four individuals expressed support for retaining substitute assessments as an option to fulfill graduation requirements and the extension of the expiration date in the rule.

Response: The agency agrees.

Comment: TSA, TAMSA, and thirteen individuals commented that proposed new subsection (c)(1) is not needed as the proposed amendment to subsection (e) addresses federal accountability requirements.

Response: The agency agrees. The proposed inclusion of new subsection (c)(1) is not needed as the modified language in subsection (e) is sufficient to fulfill federal testing and accountability requirements. Therefore, the agency has modified subsection (c) at adoption to remove the proposed new paragraph (1) and reinstate the numbering for the existing paragraphs.

Comment: Mineral Wells Independent School District (ISD), TAMSA, and more than 50 individuals commented that the proposed amendment to this rule exceeds the authority of the commissioner of education and overrules the intent of the legislature in establishing the option of substitute assessments.

Response: The agency disagrees. TEC, §39.023(i), states that each assessment adopted must meet applicable federal requirements. Therefore, the change in federal requirements necessitated a change to administrative rule to align with federal requirements. TEC, §39.025(a), indicates that the commissioner must establish rules requiring a student to be administered an EOC assessment for a course in which the student is enrolled. The amendment to the rule clarifies the state and federal testing requirements for all students; however, it does not change the option of using substitute assessments to fulfill graduation requirements.

Comment: Mineral Wells ISD and sixteen individuals commented that the proposed amendment to this rule is evidence of undue influence of federal law and the agency on graduation requirements and could negatively impact the academic achievement of students.

Response: The agency disagrees. The amendment to this rule does not change state requirements for graduation and does not remove the option of using substitute assessments to fulfill graduation requirements for any students. The amendment only clarifies the state and federal testing requirements for all students.

Comment: Eleven individuals commented on their disapproval of the State of Texas Assessments of Academic Readiness (STAAR®) and the practice of standardized testing in general.

Response: The agency disagrees. STAAR® assessments are an important aspect of the state's educational accountability system as established by TEC, §39.023. STAAR® measures the extent to which a student has learned and is able to apply the knowledge and skills required to be taught.

Comment: An assessment provider commented that one of their assessment tools has been updated and that cut scores listed in the chart in subsection (b) may need to be adjusted in the near future.

Response: The agency agrees. The agency will make the necessary adjustments to the rule after the updates to the provider's assessment tool have been finalized.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.025(a), which requires the commissioner of education to adopt rules requiring students to achieve satisfactory performance on each EOC assessment listed under TEC, §39.023(c), in order to receive a Texas high school diploma; TEC, §39.025(a-1), (a-2), and (a-3), which allow for the use of specific substitute assessments to satisfy the EOC assessment graduation requirements under certain conditions; TEC, §39.025(a-3), as amended by Senate Bill 213, 86th Texas Legislature, 2019, which extends the expiration date to allow a student who has failed to perform satisfactorily on EOC assessment instruments to use the Texas Success Initiative assessment as a substitute assessment to meet graduation requirements. The expiration date

changed from September 1, 2019, to September 1, 2023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B)(i) and (vii), which requires the same academic assessments to be used to measure the achievement of all public-school students in the state and all students must participate in the assessments with few exceptions (e.g., students with significant cognitive disabilities).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §39.023; TEC, §39.025, as amended by Senate Bill 213, 86th Texas Legislature, 2019; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

<rule>

§101.4002. State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.

- (a) For purposes of this subchapter, "equivalent course" is defined as a course having sufficient content overlap with the essential knowledge and skills of a similar course in the same content area listed under §74.1(b)(1)-(4) of this title (relating to Essential Knowledge and Skills).
- (b) Effective beginning with the 2011-2012 school year, in accordance with the Texas Education Code (TEC), §39.025(a-1), (a-2), and (a-3), the commissioner of education adopts certain assessments as provided in the chart in this subsection as substitute assessments that a student may use in place of a corresponding end-of-course (EOC) assessment under the TEC, §39.023(c), to meet the student's assessment graduation requirements. A satisfactory score on an approved substitute assessment may be used in place of only one specific EOC assessment, except in those cases described by subsection (d)(1) of this section.

Figure: 19 TAC §101.4002(b) (No change.)

- (c) A student at any grade level is eligible to use a substitute assessment as provided in the chart in subsection (b) of this section if:
 - (1) a student was administered an approved substitute assessment for an equivalent course in which the student was enrolled;
 - (2) a student received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart in subsection (b) of this section; and
 - (3) a student using a Texas Success Initiative (TSI) assessment also meets the requirements of subsection (d) of this section.
- (d) Effective beginning with the 2014-2015 school year, a student must meet criteria established in paragraph (1) or (2) of this subsection in order to qualify to use TSI as a substitute assessment.
 - (1) A student must have been enrolled in a college preparatory course for English language arts (PEIMS code CP110100) or mathematics (PEIMS code CP111200) and, in accordance with the TEC, §39.025(a-1), have been administered an appropriate TSI assessment at the end of that course.
 - (A) A student under this paragraph who meets all three TSI English language arts score requirements provided in the chart in subsection (b) of this section satisfies both the English I and English II EOC assessment graduation requirements.
 - (B) A student under this paragraph may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.
 - (2) In accordance with the TEC, §39.025(a-3), a student who has not been successful on the Algebra I or English II EOC assessment after taking the assessment at least two times may use the corresponding TSI assessment in place of that EOC assessment.
 - (A) For a student under this paragraph who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in §101.3022(b) of this title

(relating to Assessment Requirements for Graduation), the separate TSI reading or writing assessment may not be used to substitute for the corresponding English II reading or writing EOC assessment.

- (B) The provisions of this paragraph expire September 1, 2023. A student may meet the assessment graduation requirements under this paragraph using TSI if the student has met the necessary score requirements as specified in subsection (b) of this section prior to September 1, 2023.
- (e) A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under the TEC, §39.023(c), at least once for federal accountability purposes. If a student sits for an EOC assessment, a school district may not void or invalidate the test in lieu of a substitute assessment.
- (f) A student who fails to perform satisfactorily on a PSAT, PLAN, or Aspire test (or any versions of these tests) as indicated in the chart in subsection (b) of this section must take the appropriate EOC assessment required under the TEC, §39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT, PLAN, or Aspire test (or any versions of these tests) is eligible to meet the requirements specified in subsection (c) of this section.