

The Texas Education Agency (TEA) adopts an amendment to §104.1001, concerning the accelerated instruction, modified teacher assignment, and accelerated learning committee. The amendment is adopted with changes to the proposed text as published in the February 16, 2024 issue of the *Texas Register* (49 TexReg 835) and will be republished. The adopted amendment implements House Bill (HB) 1416, 88th Texas Legislature, Regular Session, 2023, by providing approval criteria for instruction through products that use automated, computerized, or other augmented method; establishing school district or open-enrollment charter school waivers of accelerated instruction requirements; and clarifying supplemental instruction requirements for students repeating an entire course.

REASONED 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 products that use automated, computerized, or other augmented method for providing supplemental instruction. The adopted amendment to §104.1001 implements HB 1416 as follows.

The term "supplemental accelerated instruction" has been changed throughout the rule. Where applicable, some uses of the term "accelerated instruction" as proposed were modified to "supplemental instruction" at adoption.

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

New subsection (b)(3) is 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 subsection (b)(2).

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

New subsection (d)(1) and (2) is 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) is 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, are removed.

Based on public comment, proposed new subsection (g), related to waivers of accelerated instruction requirements, was removed to provide clarity.

New subsection (g), proposed as subsection (h), is added to allow for the provision of accelerated instruction by automated, computerized, or other augmented method. The new subsection describes this type of instruction; describes approval by TEA; lists school district and charter school responsibilities; and states that vendors seeking provider approval must follow the process established by TEA. At adoption, subsection (g) was modified to provide for the Ratio Waiver List. References to the acronym ACAM were replaced by references to products on the Ratio Waiver List. In addition, language was added to specify that products on the Ratio Waiver List do not require live, in-person or online educators to deliver primary mode of instruction.

New subsection (h) is added to clarify that accelerated instruction waivers focus only on mathematics and reading. The new subsection describes the conditions that will enable schools to qualify for the accelerated instruction waiver and explains 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). At adoption, a reference was added to TEC, §28.0211(q), which allows the commissioner to waive requirements of accelerated instruction for a school district or an open-enrollment charter school under certain circumstances.

New subsection (i) is added to 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. At adoption, the definition of credit recovery was modified to specify that, for purposes of §104.1001, credit recovery means completing assignments in the case of failure or completing seat hours in the case of excessive absences.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began February 16, 2024, and ended March 18, 2024. Following is a summary of public comments received and agency responses.

**Comment:** Amplify and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, commented in support of the changes implemented by HB 1416, 88th Texas Legislature, Regular Session, 2023.

**Response:** This comment is outside the scope of the proposed rulemaking.

**Comment:** The Texas Classroom Teachers Association (TCTA) supported separating the terms "supplemental" and "accelerated" instruction.

**Response:** The agency agrees that the separation of these terms clarifies that accelerated instruction helps students make grade-level progress and that supplemental instruction is one of two ways a school district or charter school can help accelerate students.

**Comment:** TCTA proposed that the phrase "and, if applicable, (a-4)" be removed from section (a).

**Response:** The agency disagrees. Supplemental instruction, as described by TEC, §28.0211(a-4), is included in accelerated instruction per TEC, §28.0211(a-1)(2).

**Comment:** TCTA proposed replacing accelerated instruction with supplemental instruction in subsection (d).

**Response:** The agency agrees and has amended the language in subsection (d) at adoption to reflect that the requirements in that subsection apply to supplemental instruction.

**Comment:** TCTA requested revising subsection (d) to clarify that supplemental instruction is one of two options for accelerating students.

**Response:** The agency agrees. The agency has amended language in subsection (d) at adoption to reflect that supplemental instruction is one of two options that will fulfill accelerated instruction requirements.

**Comment:** Texas Council of Administrators of Special Education (TCASE) stated that the proposed rule does not mention provisions for off-campus instructional placements nor requirements related to ARD meetings.

**Response:** The agency provides the following clarification. As mentioned in TEC, §28.0211(i), accelerated instruction participation and progress can be reviewed at the next annual review meeting for a student receiving special education services. As mentioned in TEC, §28.0211(i-1), the school district may choose to provide accelerated instruction to a student who is in a homebound or other off-campus instructional setting when the student returns to an on-campus instructional setting.

**Comment:** TPCSA requested that school districts and charter schools be allowed to select a product that uses an automated, computerized, or other augmented method for providing supplemental instruction in lieu of group instruction as long as they can demonstrate that the product results in improved student outcomes based on TEC, §28.0211(a-12).

**Response:** The agency disagrees. Statute states that a school district may use a service provider that is not on a list of service providers approved by TEA as long as the service provider provides face-to-face or virtual tutoring and

abides by the four-to-one ratio requirement when providing supplemental instruction. Statute also provides for TEA to approve products that use an automated, computerized, or other augmented method for providing supplemental instruction that may be used in lieu of individual or group instruction if evidence indicates that the product is more effective than individual or group instruction and that the products on the approved list will be the only products that will waive ratio requirements for providing supplemental instruction.

Comment: Texas Public Charter Schools Association and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, proposed clarifying the language related to the waivers for accelerated instruction by removing proposed subsection (g).

Response: The agency agrees. At adoption, subsection (g) has been removed and the language in subsection (i) has been modified.

Comment: A school district employee commented that credit recovery is more than seat hours for students who have previously failed a course and proposed removing the final statement in proposed subsection (j)(2).

Response: The agency disagrees. Credit recovery does not meet the statutory requirements for supplemental instruction since credit recovery allows a student to earn credit for a course he/she previously failed without having to retake the course in its entirety. However, the agency agrees there is a difference between credit recovery requirements after failing a course and credit recovery requirements after excessive absences, and subsection (j)(1) has been modified at adoption to reflect that the credit recovery definition in subsection (j)(1) is limited to the rule.

Comment: Amira applauded the fidelity-usage requirements for products that use an automated, computerized, or other augmented method for providing supplemental instruction.

Response: The agency agrees that student outcomes improve significantly when students use a product with fidelity.

Comment: Amira and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, requested that the rule define what qualifies as an automated, computerized, or other augmented method.

Response: The agency disagrees as statute does not require that this information be included in rule. However, the agency provides the following clarification. Subsection (g) has been modified at adoption to describe products that use an automated, computerized, or other augmented method for providing supplemental instruction as products that do not require live in-person or online educators to deliver primary mode of instruction.

Comment: Amplify, Amira, and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, requested that the rule define the approval criteria for products that use an automated, computerized, or other augmented method for providing supplemental instruction.

Response: The agency disagrees as statute does not require that this information be included in rule. However, the agency provides the following clarification. Products listed on the Ratio Waiver List described in subsection (g) must provide evidence indicating that the product is more effective than individual or group instruction. This evidence must reflect that high fidelity usage of the product yields higher student outcomes than students who did not use the product. This criterion will be provided in all communications and guidance regarding products waiving the four-to-one ratio requirement.

Comment: Texas 2036 and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas,

proposed that the agency create accelerated instruction waiver criteria that monitors discrepancies and ensures that qualifying students receive much needed support.

Response: The agency disagrees. The one-year accelerated instruction waiver requirements ensure that all students receive the support needed to be academically successful. Because school districts and charter schools must meet these requirements yearly, schools must ensure they continue to support all students even when the accelerated instruction waiver is in place.

STATUTORY AUTHORITY. The amendment is adopted 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 Modified Teacher Assignment.**

- (a) Definition of accelerated instruction. For purposes of this chapter, "accelerated instruction" means instruction required under Texas Education Code (TEC), §28.0211(a-1) and, if applicable, (a-4).
- (b) Requirements for 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
    - (B) provide the student supplemental instruction under TEC, §28.0211(a-4).
  - (2) 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 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 accelerated instruction. 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 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 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 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 accelerated instruction.
- (d) Content and delivery of supplemental instruction. Supplemental 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 instruction and under the oversight of the school district or open-enrollment charter school. Supplemental instruction shall be provided as outlined in TEC, §28.0211(a-4)(1) and (2), to a student individually or in a group of no more than four students, unless the parent or guardian of each student in the group authorizes a larger group. School districts and charter schools choosing to provide supplemental instruction to a student under subsection (b)(1)(B) of this section 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.
- (f) 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), 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) Approval of Ratio Waiver List products using automated, computerized, or other augmented method. 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. Products on the Ratio Waiver List do not require live, in-person or online educators to deliver primary mode of instruction. 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, the Ratio Waiver List consists of 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.

- (2) School districts and open-enrollment charter schools may provide accelerated instruction using a product on the Ratio Waiver List 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 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 a product on the Ratio Waiver List 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 a product on the Ratio Waiver List 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 the product is aligned with approved product usage expectations documented by the school district;
    - (D) adhere to the product usage fidelity requirements by product as approved by TEA to waive ratio requirements. A school district not fulfilling usage fidelity with a 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 Ratio Waiver List vendor approval shall follow a process required by TEA.
- (h) Accelerated instruction waivers. Under TEC, §28.0211(q), the commissioner of education may waive requirements of accelerated instruction for a school district or an open-enrollment charter school as outlined in this subsection.
- (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.
- (i) Repeating a high school course.
- (1) For the purpose of this subsection, credit recovery means completing a certain number of assignments to satisfy the course requirements after failure or a certain number of seat hours after 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.