

The Texas Education Agency (TEA) proposes an amendment to §101.3011, concerning the implementation and administration of academic content area assessment instruments. The proposed amendment would clarify the policies relating to the administration mode of certain required assessments.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3011 addresses state and federal requirements relating to the implementation and administration of academic content area assessments. The proposed amendment to §101.3011 would clarify state policies relating to the administration mode of certain required assessments.

Texas Education Code (TEC), §39.0234, requires that TEA administer the State of Texas Assessments of Academic Readiness (STAAR®) online beginning with the 2022-2023 school year. House Bill (HB) 1225, passed by the 88th Texas Legislature, Regular Session, 2023, now allows two exceptions to online testing for STAAR®: (1) a student who qualifies for a special paper administration of an online assessment, and (2) any student whose parent, guardian, or teacher requests a paper version of the assessment. The number of students who are provided a paper-by-request administration of STAAR® may not exceed 3% of the number of eligible students enrolled in the district who are administered each assessment. The number of students who receive a paper-by-request administration is separate and distinct from the students who are eligible for a special paper administration of STAAR®.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to local government, including school districts and open-enrollment charter schools, required to comply with the proposal. However, there will be additional costs to state government for the first five years the proposal is in effect.

HB 1225, 88th Texas Legislature, Regular Session, 2023, permits school districts to administer assessment instruments in a paper format to any student upon request by the student's parent, guardian, or teacher for up to 3% of the number of enrolled students in a district. In addition, the bill specifies that the 3% of paper-by-request students is separate from the students whose admission, review, and dismissal committees determine that the students require accommodations that must be delivered in a paper format.

To provide approximately 3% of the student population with paper test materials, TEA will incur a cost of approximately \$1,657,062 each year. Additionally, if approximately half of the students receiving special education services require accommodations that must be delivered in a paper format, the costs will be about \$2,761,770 annually. Combining these two costs, TEA will incur a cost of approximately \$4,418,832 each year for fiscal years 2024-2028.

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 permitting local education agencies to offer paper versions of assessments and increase the number of individuals subject to its applicability by allowing certain students to be administered a paper version of the assessment.

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 limit or repeal an existing regulation; would not decrease the number of individuals subject to the rule's applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux 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 allow certain students the opportunity to be administered a paper version of the assessment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would not have a new data or reporting impact. School districts and open-enrollment charter schools are currently required to register their students in the Test Information Distribution Engine (TIDE), the contractor's online test management system. With the new criteria for paper administrations, district testing personnel will be required to mark specific fields in TIDE to indicate which students will receive a paper version of the assessment.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 6, 2023, and ends November 6, 2023. 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 October 6, 2023. 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), §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students enrolled in high school courses, and emergent bilingual students whose primary language is Spanish, respectively; TEC, §39.0234, which requires that assessment instruments under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, be administered online, unless otherwise provided by commissioner rule; TEC, §39.02342(a), as added by House Bill (HB) 1225, 88th Texas Legislature, Regular Session, 2023, which permits school districts to administer assessments required under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, in a paper format to any student whose parent, guardian, or teacher in the applicable subject area requests a paper format; and TEC, §39.02342(c), added by HB 1225, 88th Texas Legislature, Regular Session, 2023, which limits the number of students who take a paper-by-request version of the assessments during each administration to 3% of the students enrolled in the district, excluding students whose admission, review, and dismissal committee determines that the student requires an accommodation that must be delivered in a paper format.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.023(a), (b), (c), and (l); 39.0234; and 39.02342(a) and (c), as added by House Bill 1225, 88th Texas Legislature, Regular Session, 2023.

<rule>

§101.3011. Implementation and Administration of Academic Content Area Assessment Instruments.

- (a) The Texas Education Agency (TEA) shall administer each assessment instrument under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

- (1) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student shall not be administered a grade-level assessment if the student:
 - (A) is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under TEC, §39.023(a), that aligns with the curriculum for that course or subject within the same content area; or
 - (B) is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an end-of-course assessment instrument developed under TEC, §39.023(c), that aligns with the curriculum for that course or subject within the same content area.
- (2) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT® or the SAT®.
- (3) A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.
- (4) A student shall be administered the assessments under TEC, §39.023(a), (c), and (l), online as required by TEC, §39.0234, except for a student:
 - (A) who requires specific accommodations that cannot be provided online as specified in the test administration materials; or
 - (B) whose parent, guardian, or teacher in the applicable subject area requests a paper administration of an assessment. Requests must be submitted to the school district or open-enrollment charter school by the dates indicated in TEC, §39.02342(b). Requests from a district or charter school may not exceed 3% of eligible students enrolled in the district or charter school who are administered each assessment.
- ~~[(4) — As specified in TEC, §28.0211(p), a Grade 5 or 8 student described by paragraph (1)(A) or (B) of this subsection may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument not required to be administered to the student.]~~
- (b) The TEA shall administer alternative assessment instruments under TEC, §39.023(b), that correspond to:
 - (1) the assessment instruments required under TEC, §39.023(a); and
 - (2) the following assessment instruments required under TEC, §39.023(c): English I, English II, Algebra I, biology, and U.S. history.
- (c) Test administration procedures shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.
- (d) In accordance with TEC, §39.023(a)(5), the TEA shall administer to students assessments in any other subject and grade required by federal law.