

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 modify the rule to clarify testing requirements for accelerated students who have completed end-of-course (EOC) assessments before entering high school.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3011 addresses state and federal requirements relating to the implementation and administration of academic content area assessment instruments. The proposed amendment to 19 TAC §101.3011 would clarify state and federal testing requirements relating to accelerated students.

In alignment with federal testing and accountability requirements, all students are required to be tested at least once in high school. To satisfy federal requirements, students who complete their state required EOC assessments before entering high school are now required to take the ACT® or SAT®. In accordance with House Bill 3, 86th Texas Legislature, 2019, TEC, §39.0261(a)(3)(A), College Preparation Assessment, now provides for students to take a nationally norm-referenced assessment used by colleges and universities one time during high school at state cost. The scores of these tests will be used for federal accountability purposes if a student has completed EOC assessments prior to entering high school.

The proposed amendment would add new subsection (a)(2) to require students in Grades 3-8 who are accelerated and are on track to complete EOC assessment requirements prior to entering high school to take either the ACT® or SAT® at least once in high school for federal accountability purposes. District may choose to have these students test between January of Grade 11 through graduation at state cost in accordance with TEC, §39.0261(a)(3)(A). Original subsections (a)(2) and (a)(3) would be renumbered accordingly.

The proposed amendment would delete subsection (c), which references the previous statewide assessment program, the Texas Assessment of Knowledge and Skills (TAKS). With the implementation of Senate Bill (SB) 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, TAKS is no longer administered. As such, this language is no longer applicable. The subsequent subsections would be relettered accordingly.

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 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 amendment would be in effect, it would limit an existing regulation through the elimination of references to TAKS. Additionally, the proposed amendment would expand an existing regulation by requiring students in Grades 3-8 who are accelerated and are on track to complete EOC assessment requirements prior to entering high school to take either the ACT® or SAT® at least once in high school for federal accountability purposes.

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 or decrease 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: 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 ensuring that state testing requirements are aligned with federal testing and accountability requirements. 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: The 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 May 8, 2020, and ends June 22, 2020. 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 May 8, 2020. 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/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.0211(o) and (p), which provide that accelerated students in Grades 5 and 8 are not required to take their grade-level assessment and may not be denied promotion based on their performance on an advanced assessment; TEC, §39.023(a), (a-2), (b), (c), and (l), which specify the required testing for students in Grades 3-8, accelerated students, students who are significantly cognitively disabled, students enrolled in high school courses, and students whose primary language is Spanish, respectively; TEC, §39.0238, which establishes Algebra II and English III EOC assessments as measures of postsecondary readiness; TEC, §39.0261(a)(3)(A), which provides for high school students to take a nationally norm-referenced assessment one time at state cost; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(C), which allows states to exempt Grade 8 students from their grade-level mathematics assessment and instead take and use a score from the state's EOC mathematics assessment for accountability purposes as long as a more advanced assessment is taken to fulfill accountability requirements in high school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§28.0211(o) and (p); 39.023(a), (a-2), (b), (c), and (l); 39.0238; and 39.0261(a)(3)(A); and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(C).

<rule>

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

- (a) The Texas Education Agency (TEA) shall administer each assessment instrument under the Texas Education Code (TEC), §39.023(a), (b), (c), and (l), and §39.0238, in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).
 - (1) For [Except as required for] purposes of federal accountability as allowed by subsection (d) ~~(e)~~ 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 the 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 the 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) ~~(2)~~ 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 ~~receiving~~ instruction in the entire curriculum for that subject during the semester the assessment is administered .
- (4) ~~(3)~~ As specified in the 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 above the student's grade level.
- (b) The ~~As allowed by 34 Code of Federal Regulations, §200.6, the~~ TEA shall administer alternative assessment instruments under the TEC, §39.023(b), that correspond to:
- (1) the assessment instruments required under the TEC, §39.023(a); and
 - (2) the following assessment instruments required under the TEC, §39.023(c): English I, English II, Algebra I, biology, and U.S. history.
- ~~(c) The TEA shall administer each appropriate assessment under the TEC, §39.023, as that section existed before amendment by Senate Bill 1031, 80th Texas Legislature, 2007.~~
- (c) ~~(d)~~ 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 the TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.
- (d) ~~(e)~~ In accordance with ~~House Bill 411, Section 5, 78th Texas Legislature, 2003, this subsection is adopted by the commissioner of education for the implementation of~~ the TEC, §39.023(a)(6) , ~~the~~ ~~The~~ TEA shall administer to students assessments in any other subject and grade required by federal law.