

TEXAS EDUCATION CODE  
TITLE 2. PUBLIC EDUCATION  
SUBTITLE H. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY  
CHAPTER 39. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY  
SUBCHAPTER B. ASSESSMENT OF ACADEMIC SKILLS

**TEC, §39.023. ADOPTION AND ADMINISTRATION OF INSTRUMENTS.**

Text of subsection effective until September 01, 2021

- (a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section [39.027](#), shall be assessed in:
- (1) mathematics, annually in grades three through eight;
  - (2) reading, annually in grades three through eight;
  - (3) writing, including spelling and grammar, in grades four and seven;
  - (4) social studies, in grade eight;
  - (5) science, in grades five and eight; and
  - (6) any other subject and grade required by federal law.

Text of subsection effective on September 01, 2021

- (a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section [39.027](#), shall be assessed in:
- (1) mathematics, annually in grades three through eight;
  - (2) reading, annually in grades three through eight;
  - (3) social studies, in grade eight;
  - (4) science, in grades five and eight; and
  - (5) any other subject and grade required by federal law.
- (a-1) The agency shall develop assessment instruments required under Subsection (a) in a manner that allows, to the extent practicable:
- (1) the score a student receives to provide reliable information relating to a student's satisfactory performance for each performance standard under Section [39.0241](#); and
  - (2) an appropriate range of performances to serve as a valid indication of growth in student achievement.
- (a-2) Except as required by federal law, a student is not required to be assessed in a subject otherwise assessed at the student's grade level under Subsection (a) if the student:

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- (1) is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Subsection (a) that aligns with the curriculum for the course in which the student is enrolled; or
  - (2) is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course assessment instrument adopted under Subsection (c) for the course.
- (a-3) The agency may not adopt or develop a criterion-referenced assessment instrument under this section based on common core state standards as defined by Section [28.002](#)(b-1). This subsection does not prohibit the use of college advanced placement tests or international baccalaureate examinations as those terms are defined by Section [28.051](#).
- (a-4) For purposes of Subsection (a)(1), the State Board of Education by rule may designate sections of a mathematics assessment instrument for a grade level that:
- (1) may be completed with the aid of technology; and
  - (2) must be completed without the aid of technology.
- (a-5)-(a-10) Expired.
- (a-11) Before an assessment instrument adopted or developed under Subsection (a) may be administered under that subsection, the assessment instrument must, on the basis of empirical evidence, be determined to be valid and reliable by an entity that is independent of the agency and of any other entity that developed the assessment instrument.
- (a-12) An assessment instrument adopted or developed under Subsection (a) may not have more than three parts. A part of an assessment instrument must be designed so that:
- (1) if administered to students in grades three and four, 85 percent of students will be able to complete that part within 60 minutes; and
  - (2) if administered to students in grades five through eight, 85 percent of students will be able to complete that part within 75 minutes.
- (a-13) The amount of time allowed for administration of an assessment instrument adopted or developed under Subsection (a) may not exceed eight hours, and the administration may occur in multiple parts over more than one day.
- (a-14) Subsections (a-12) and (a-13) do not apply to the administration of assessment instruments for a grade level if, as a result of the time restriction imposed, the assessment instrument no longer:
- (1) complies with federal law; or
  - (2) is valid and reliable, based on findings and recommendations made by the advisory committees established under Section [39.02302](#).

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- (a-15) Subsections (a-12) and (a-13) do not apply to a classroom portfolio method used to assess writing performance.
- (a-16) An assessment instrument under this section may not be administered to a kindergarten student except for the purpose of determining whether the student is entitled to the benefit of the Foundation School Program as provided under this code.
- (b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program under Subchapter [A](#), Chapter [29](#), for whom an assessment instrument adopted under Subsection (a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee, including assessment instruments approved by the commissioner that measure growth. The assessment instruments developed or adopted under this subsection, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students under this subsection. The agency may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee.
- (b-1) The agency, in conjunction with appropriate interested persons, shall redevelop assessment instruments adopted or developed under Subsection (b) for administration to significantly cognitively disabled students in a manner consistent with federal law. An assessment instrument under this subsection may not require a teacher to prepare tasks or materials for a student who will be administered such an assessment instrument. A classroom portfolio method used to assess writing performance may require a teacher to prepare tasks and materials.
- (c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I end-of-course assessment instrument must be administered with the aid of technology, but may include one or more parts that prohibit the use of technology. The English I and English II end-of-course assessment instruments must each assess essential knowledge and skills in both reading and writing and must provide a single score. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection. If a student is in a special education program under Subchapter [A](#), Chapter [29](#), the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The State Board of Education shall administer the assessment instruments. An end-of-course assessment instrument may be administered in multiple parts over more than one day. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).
- (c-1) The agency shall develop any assessment instrument required under this section in a manner that allows for the measurement of annual improvement in student achievement as required by Sections [39.034](#)(c) and (d).

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- (c-2) The agency may adopt end-of-course assessment instruments for courses not listed in Subsection (c). A student's performance on an end-of-course assessment instrument adopted under this subsection is not subject to the performance requirements established under Subsection (c) or Section [39.025](#).
- (c-3) Except as provided by Subsection (c-7), in adopting a schedule for the administration of assessment instruments under this section, the State Board of Education shall ensure that assessment instruments administered under Subsection (a) or (c) are not administered on the first instructional day of a week.
- (c-4) To the extent practicable and subject to Section [39.024](#), the agency shall ensure that each end-of-course assessment instrument adopted under Subsection (c) is:
  - (1) developed in a manner that measures a student's performance under the college readiness standards established under Section [28.008](#); and
  - (2) validated by national postsecondary education experts for college readiness content and performance standards.
- (c-5) A student's performance on an end-of-course assessment instrument required under Subsection (c) must be included in the student's academic achievement record.
- (c-6) In adopting an end-of-course assessment instrument under this section, the agency shall consider the use of an existing assessment instrument that is currently available. The agency may use an existing assessment instrument that is currently available only if the assessment instrument:
  - (1) is aligned with the essential knowledge and skills of the subject being assessed; and
  - (2) allows for the measurement of annual improvement in student achievement as provided by Subsection (c-1).

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 1282 (H.B. [1244](#)), Sec. 1

- (c-7) The United States history end-of-course assessment instrument adopted under Subsection (c) must include 10 questions randomly selected by the agency from the civics test administered by the United States Citizenship and Immigration Services as part of the naturalization process under the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.). The agency shall:
  - (1) ensure that the questions included in the assessment instrument align with the essential knowledge and skills adopted for the United States history course for which the instrument is administered; and
  - (2) annually issue a report:
    - (A) providing the questions included in the assessment instrument under this subsection and the answers to those questions; and
    - (B) detailing student performance on the questions included in the assessment instrument under this subsection, both statewide and disaggregated by school

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district and campus.

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 1315 (H.B. [3906](#)), Sec. 3

- (c-7) Subsection (c-3) does not apply to a classroom portfolio method used to assess writing performance if student performance under that method is less than 50 percent of a student's overall assessed performance in writing.
- (c-8) Beginning with the 2022-2023 school year, an assessment instrument developed under Subsection (a) or (c) may not present more than 75 percent of the questions in a multiple choice format.
- (d) The commissioner may participate in multistate efforts to develop voluntary standardized end-of-course assessment instruments. The commissioner by rule may require a school district to administer an end-of-course assessment instrument developed through the multistate efforts. The admission, review, and dismissal committee of a student in a special education program under Subchapter [A](#), Chapter [29](#), shall determine whether any allowable modification is necessary in administering to the student an end-of-course assessment instrument.
- (e) Under rules adopted by the State Board of Education, every third year, the agency shall release the questions and answer keys to each assessment instrument administered under Subsection (a), (b), (c), (d), or (l), excluding any assessment instrument administered to a student for the purpose of retaking the assessment instrument, after the last time the instrument is administered for that school year. To ensure a valid bank of questions for use each year, the agency is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument. The agency shall also release, under board rule, each question that is no longer being field-tested and that was not used to compute a student's score. During the 2014-2015 and 2015-2016 school years, the agency shall release the questions and answer keys to assessment instruments as described by this subsection each year.
- (e-1) The agency may defer releasing assessment instrument questions and answer keys as required by Subsection (e) to the extent necessary to develop additional assessment instruments.
- (f) The assessment instruments shall be designed to include assessment of a student's problem-solving ability and complex-thinking skills using a method of assessing those abilities and skills that is demonstrated to be highly reliable.
- (g) The State Board of Education may adopt one appropriate, nationally recognized, norm-referenced assessment instrument in reading and mathematics to be administered to a selected sample of students in the spring. If adopted, a norm-referenced assessment instrument must be a secured test. The state may pay the costs of purchasing and scoring the adopted assessment instrument and of distributing the results of the adopted instrument to the school districts. A district that administers the norm-referenced test adopted under this subsection shall report the results to the agency in a manner prescribed by the commissioner.
- (h) The agency shall notify school districts and campuses of the results of assessment instruments administered under this section not later than the 21st day after the date the assessment instrument is administered. The school district shall disclose to each district teacher the results of assessment

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instruments administered to students taught by the teacher in the subject for the school year in which the assessment instrument is administered.

- (i) The provisions of this section, except Subsection (d), are subject to modification by rules adopted under Section [39.022](#). Each assessment instrument adopted under those rules and each assessment instrument required under Subsection (d) must be reliable and valid and must meet any applicable federal requirements for measurement of student progress.
- (j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1312, Sec. 18, eff. September 1, 2007.
- (l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through five who are of limited English proficiency, as defined by Section [29.052](#), whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section [39.027](#)(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a). The language proficiency assessment committee established under Section [29.063](#) shall determine which students are administered assessment instruments in Spanish under this subsection.
- (m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section [29.063](#) shall determine which students are exempt from the administration of the assessment instruments under Section [39.027](#)(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) at the earliest practical date.
- (n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).
- (o) The agency shall adopt or develop optional interim assessment instruments for each subject or course for each grade level subject to assessment under this section. A school district may not be required to administer interim assessment instruments adopted or developed under this subsection. An interim assessment instrument:
  - (1) must be:

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- (A) predictive of the assessment instrument for the applicable subject or course for that grade level required under this section; and
- (B) administered electronically; and
- (2) may not be used for accountability purposes.
- (p) On or before September 1 of each year, the commissioner shall make the following information available on the agency's Internet website for each assessment instrument administered under Subsection (a), (c), or (l):
  - (1) the number of questions on the assessment instrument;
  - (2) the number of questions that must be answered correctly to achieve satisfactory performance as determined by the commissioner under Section [39.0241](#)(a);
  - (3) the number of questions that must be answered correctly to achieve satisfactory performance under the college readiness performance standard as provided by Section [39.0241](#); and
  - (4) the corresponding scale scores.