

Texas Education Code §§28.0211 (as amended by HB 1416)	Considerations/Issues
<p>Sec. 28.0211. Accelerated Learning Committee; Accelerated Instruction; Modified Teacher Assignment</p>	<p>ALC meetings eliminated</p>
<p>(a) A school district shall establish an accelerated learning committee described by Subsection (c) for each student who does not perform satisfactorily on:</p> <p>(1) the third grade mathematics or reading assessment instrument under Section 39.023;</p> <p>(2) the fifth grade mathematics or reading assessment instrument under Section 39.023; or</p> <p>(3) the eighth grade mathematics or reading assessment instrument under Section 39.023.</p> <p>(a) To ensure that each student achieves at least satisfactory performance on each assessment instrument administered under Section 39.023, a school district shall ensure that the district’s curricular and instructional systems provide instruction to all students that:</p> <p>(1) is consistently aligned with the essential knowledge and skills for the applicable subject area and grade level; and</p> <p>(2) strategically and timely addresses deficiencies in the prerequisite essential knowledge and skills for the applicable subject area and grade level.</p>	<p>Eliminates ALC meetings for students who do not perform satisfactorily on 3rd, 5th or 8th grade Reading or Math STAAR, STAAR Spanish or STAAR Alt 2</p> <p>Requires that the school district’s curricular and instructional systems provide instruction that is aligned to the TEKS and strategically and timely addresses deficiencies in prerequisite TEKS for the applicable grade/subject area</p>
<p>(a-1) Each time a student fails to perform satisfactorily on an assessment instrument administered under Section 39.023(a) or (l) in the third, fourth, fifth, sixth, seventh, or eighth grade or an end-of-course assessment instrument administered under Section 39.023(c), other than an assessment instrument developed or adopted based on alternative academic achievement standards, the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to Subsections (a-7) and (a-8), either:</p> <p>(1) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under Section 21.3521 for the subsequent school year in the applicable subject area; or</p> <p>(2) provide the student supplemental instruction under Subsection (a-4).</p>	<p>Clarifies that accelerated instruction requirements apply to students who fail to perform satisfactorily on:</p> <ul style="list-style-type: none"> • Grades 3-8 STAAR – Sec. 39.023(a) • STAAR Spanish – Sec. 39.023(l) • EOCs – Sec. 39.023(c) <p>BUT accelerated instruction requirements do NOT apply to STAAR Alt 2 (an assessment developed based on alternative academic achievement standards)</p>
<p>(a-2) Accelerated instruction provided during the following school year under Subsection (a-1) may require participation of the student before or after normal school hours.</p>	
<p>(a-3) In providing accelerated instruction under Subsection (a-1), a district may not remove a student, except under circumstances for which a student enrolled in the same grade level who is not receiving accelerated instruction would be removed, from:</p> <p>(1) instruction in the foundation curriculum and enrichment curriculum adopted under Section 28.002 for the grade level in which the student is enrolled; or</p> <p>(2) recess or other physical activity that is available to other students enrolled in the same grade level.</p>	
<p>(a-4) If a district receives funding under Section 29.0881 or 48.104, the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260), or the American Rescue Plan Act of 2021 (Pub. L. No. 117-2), then supplemental instruction provided by a school district under Subsection (a-1)(2) must:</p> <p>(1) include targeted instruction in the essential knowledge and skills for the applicable grade levels and subject area;</p> <p>(2) be provided in addition to instruction normally provided to students in the grade level in which the student is enrolled;</p> <p>(3) be provided for no less than 30 total hours during the subsequent summer or school year and, unless the instruction is provided fully during summer, include instruction no less than once per week during the school year;</p> <p>(A) to each student for no less than:</p> <p style="padding-left: 20px;">(i) 15 hours; or</p> <p style="padding-left: 20px;">(ii) 30 hours for a student whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule; and</p> <p>(B) unless the instruction is provided to a student fully during summer, no less than once per week during the school year, except as otherwise provided by commissioner rule to account for school holidays or shortened school weeks;</p> <p>(4) be designed to assist the student in achieving satisfactory performance in the applicable grade level and subject area;</p> <p>(5) include effective instructional materials designed for supplemental instruction;</p> <p>(6) be provided to a student individually or in a group of no more than four three students, unless the parent or guardian of each student in the group authorizes a larger group;</p> <p>(7) be provided by a person with training in the applicable instructional materials for the supplemental instruction and under the oversight of the school district; and</p> <p>(8) to the extent possible, be provided by one person for the entirety of the student’s supplemental instruction period.</p>	<p>The addition of Sec. 48.014 means that the provisions of (a-4) apply to districts that receive compensatory education funding (without this addition, the provision of (a-4) would only apply to districts that participate in the Strong Foundations Grant program (29.0881) or receive funding under CRRSAA or ARP</p> <p>The addition of Sec. 48.014 is key – it means that HB 4545 will continue to apply to ANY district that receives comp ed funding</p> <p>Supplemental instruction means no less than:</p> <ul style="list-style-type: none"> • 15 hours or • 30 hours if the student’s performance was “significantly below satisfactory, as defined by commissioner rule” <ul style="list-style-type: none"> ○ TEA’s 06/15/2023 TAA Letter indicates this means: <ul style="list-style-type: none"> ▪ “Low Did Not Meet GL” ▪ Except for Grade 3 - which TEA intends to define as anything below Approaches GL ▪ The letter does not address what “significantly below satisfactory” means for Science or Social Studies <p>Increases 3:1 ratio to 4:1 (unless a larger group is authorized by the parent)</p>

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(a-5) Each school district shall establish a process allowing for the parent or guardian of a student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a-1) (a) to make a request for district consideration 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.	
(a-6) The commissioner shall provide guidelines to school districts on research-based best practices and effective strategies that a district may use in developing an accelerated instruction program and shall provide resources to districts to assist in the provision of an accelerated instruction program.	
(a-7) The requirements under Subsection (a-1)(1) or (2) do not apply to a student who is retained at a grade level for the school year in which those requirements would otherwise apply.	Accelerated instruction not required for a student who is retained.
(a-8) A school district may not be required to provide supplemental instruction under Subsection (a-1)(2) to a student in more than two subject areas per school year. If the district would otherwise be required to provide supplemental instruction to a student in more than two subject areas for a school year, the district shall prioritize providing supplemental instruction to the student in mathematics and reading, or Algebra I, English I, or English II, as applicable, for that school year.	School districts are not required to provide supplemental instruction in more than 2 subject areas. If a student would otherwise meet the requirements for supplemental instruction in more than 2 areas, the district shall prioritize RLA and Math.
(a-9) A parent or guardian of a student to whom supplemental instruction will be provided under Subsection (a-1)(2) and who either was administered and failed to perform satisfactorily on an assessment instrument specified under Subsection (a-1) or was administered a beginning-of-year assessment instrument aligned with the essential knowledge and skills for the applicable subject area, including a student to whom Subsection (b) applies, may elect to modify or remove a requirement for that instruction under Subsection (a-4) by submitting a written request to an administrator of the campus at which the student is enrolled. A school district may not encourage or direct a parent or guardian to make an election under this subsection that would allow the district to: <ol style="list-style-type: none"> (1) not provide supplemental instruction to the student; or (2) provide supplemental instruction in a group larger than authorized under Subsection (a-4)(6). 	A parent may elect to modify or remove a requirement for supplemental instruction; however, a district may not encourage or direct a parent to do so.
(a-10) A school district is not required to provide accelerated instruction under Subsection (a-1) to a student who, instead of being administered an assessment instrument specified under Subsection (a-1), was administered a substitute assessment instrument in accordance with other law or agency rule authorizing the use of the substitute assessment instrument for purposes of satisfying the requirements concerning the applicable assessment instrument under Subsection (a-1).	Student performance on substitute assessments (i.e., SAT, ACT, TSI) does not trigger accelerated instruction requirements.
(a-11) The agency shall approve one or more products that use an automated, computerized, or other augmented method for providing supplemental instruction under Subsection (a-1)(2) that may be used in lieu of some or all of the individual or group instruction required under Subsection (a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency. The agency 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 Subsection (a-4)(6). The commissioner shall adopt rules regarding when a product approved under this subsection may be used and the requirements under Subsection (a-4) for which the product may be substituted.	The Agency shall approve one or more products that use an automated, computerized, or other augmented method for providing supplemental instruction that may be used in lieu of some or all of the individual or group instruction required under Subsection (a-4)(6).
(a-12) For the purpose of providing accelerated instruction or supplemental instruction under this section, a school district may use a service provider that is not on a list of service providers approved by the agency if the district can demonstrate to the commissioner that use of the service provider results in measurable improvement in student outcomes.	
(a-13) A school district that is required to provide to a student accelerated instruction under Subsection (a-1) or supplemental instruction under Subsection (a-1)(2) is not required to provide additional instruction under either provision to the student based on the student's failure to perform satisfactorily on an assessment instrument administered as an optional assessment in the same subject area in which the district is required to provide the student the accelerated or supplemental instruction.	Student performance on an optional assessment does not trigger accelerated instruction requirements.
(a-14) A school district shall provide to the parent or guardian of a student who fails to perform satisfactorily on a assessment instrument specified under Subsection (a-1) notice that the student is not performing on grade level in the applicable subject area. Notwithstanding Subsection (h), the district must provide the notice at a parent-teacher conference or, if the district is unable to provide the notice at a parent-teacher conference, by another means. The agency shall develop and provide to school districts a model notice in plain language for use under this section.	The district shall provide notice of a student's failure to perform satisfactorily to the student's parent or guardian at a parent-teacher conference (or by another means if unable to provide it at a parent-teacher conference).

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<p>(b) For each student who does not perform satisfactorily on an assessment instrument specified under Subsection (a-1) for two or more consecutive school years in the same subject area, the school district the student attends shall develop an accelerated education plan as described by Subsection (f).</p>	<p>Districts shall develop an accelerated education plan for any student who fails to perform satisfactorily on an assessment for 2 or more consecutive years in the same subject area.</p>
<p>(b-1) A school district shall make a good faith attempt to provide to the parent or guardian of a student to whom Subsection (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 district shall provide the student’s parent or guardian with:</p> <ol style="list-style-type: none"> (1) the notice required under Subsection (a-14); and (2) an explanation of: <ol style="list-style-type: none"> (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 Subsection (f) and the manner in which the parent or guardian may participate in developing the plan. 	<p>For each student who fails to perform satisfactorily on an assessment in the same subject area for 2 or more consecutive years, the district shall make a good faith attempt to provide the student’s parent or guardian with a parent-teacher conference with the student’s primary teacher at the start and end of the subsequent school year.</p> <p>At the conference the district shall provide the parent with the notice required under Subsection (a-14) and an explanation of the accelerated education plan.</p>
<p>(c) After a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), an accelerated learning committee shall be established. The accelerated learning committee shall be composed of the principal or the principal’s designee, the student’s parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the accelerated learning committee and the purpose of the committee.</p>	<p>ALCs eliminated.</p>
<p>(d) Repealed by HB 4545 – 2021 Legislative Session</p>	
<p>(e) Repealed by HB 4545 – 2021 Legislative Session</p>	
<p>(f) Not An accelerated learning committee described by Subsection (c) shall, not later than the start of the subsequent school year, a school district shall develop an accelerated education educational plan for each the student to whom Subsection (b) applies that provides the necessary accelerated instruction to enable the student to perform at the appropriate grade or course level by the conclusion of the school year. The plan</p> <ol style="list-style-type: none"> (1) must: <ol style="list-style-type: none"> (A) identify the reason the student did not perform satisfactorily on the applicable assessment instrument specified under Subsection (a-1); and (B) notwithstanding Subsection (a-4)(3)(A), require the student to be provided with no less than 30 hours, or a greater number of hours if appropriate, of supplemental instruction under Subsection (a-4) for each consecutive school year in which the student does not perform satisfactorily on the assessment instrument in the applicable subject area specified under Subsection (a-1); and (2) may require that, as appropriate to ensure the student performs satisfactorily on the assessment instrument in the applicable subject area specified under Subsection (a-1) at the next administration of the assessment instrument: <ol style="list-style-type: none"> (A) the district expand the times in which supplemental instruction under Subsection (a-4) is available to the student; (B) the student be assigned for the school year to a specific teacher who is better able to provide accelerated instruction; and (C) the district provide any necessary additional resources to the student. 	<p>For each student who fails to perform satisfactorily on an assessment in the same subject area for 2 or more consecutive years, the district is required to develop an accelerated education plan (AEP).</p> <p>The AEP must identify the reason the student did not perform satisfactorily and must require that the student be provided at least 30 hours of supplemental instruction for each consecutive school year in which the student has failed to perform satisfactorily.</p> <p>The AEP may expand the times in which supplemental instruction may be provided.</p>
<p>(f-1) The accelerated education educational plan under Subsection (f) must be documented in writing, and a copy must be provided to the student’s parent or guardian.</p>	
<p>(f-2) During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the accelerated education plan developed under Subsection (f). The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.</p>	
<p>(f-3) The board of trustees of each school district shall adopt a policy consistent with the grievance procedure adopted under Section 26.011 to allow a parent to contest the content or implementation of an accelerated education educational plan developed under Subsection (f).</p>	

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<p>(f-4) If a student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) fails in the subsequent school year to perform satisfactorily on an assessment instrument in the same subject, the superintendent of the district, or the superintendent's designee, shall meet with the student's accelerated learning committee to:</p> <p>(1) identify the reason the student did not perform satisfactorily; and</p> <p>(2) determine, in order to ensure the student performs satisfactorily on the assessment instrument at the next administration of the assessment instrument, whether:</p> <p>(A) the educational plan developed for the student under Subsection (f) must be modified to provide the necessary accelerated instruction for that student; and</p> <p>(B) any additional resources are required for that student.</p>	ALCs eliminated.
<p>(f-5) The superintendent's designee under Subsection (f-4):</p> <p>(1) may be an employee of a regional education service center; and</p> <p>(2) may not be a person who served on the student's accelerated learning committee.</p>	ALCs eliminated.
<p>(g) This section does not preclude the retention at a grade level, in accordance with state law or school district policy, of a student who performs satisfactorily on an assessment instrument specified under Subsection (a-1) (a).</p>	
<p>(h) In each instance under this section in which a school district is specifically required to provide notice or a written copy to a parent or guardian of a student, the district shall make a good faith effort to ensure that such notice or copy is provided either in person or by regular mail and that the notice or copy is clear and easy to understand and is written in English or the parent or guardian's native language.</p>	
<p>(i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter A, Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a-1) shall, at the student's next annual review meeting, review the student's participation and progress in, as applicable, accelerated instruction provided under Subsection (a), supplemental instruction provided under Subsection (a-1)(2), or an accelerated education plan developed under Subsection (f). The student's parent may request, or the district may schedule, an additional committee meeting if a committee member believes that the student's individualized education program needs to be modified based on the requirements under this section. If the district refuses to convene a committee meeting requested by the student's parent under this subsection, the district shall provide the parent with written notice explaining the reason the district refuses to convene the meeting. (a) and administered under Section 29.023(a) or (b) must meet to determine the manner in which the student will participate in an accelerated instruction program under this section.</p>	For a student receiving special education services, the student's ARD committee shall review the student's participation and progress in accelerated/supplemental instruction.
<p>(i-1) If a student who attends school in a homebound or other off-campus instructional arrangement, including at a residential treatment campus or state hospital, is unable to participate in an accelerated instruction program required under this section due to the student's condition, the school district may determine that the student be provided the accelerated instruction when the student attends school in an on-campus instructional setting. If the student's condition prevents the student from attending school in an on-campus instructional setting for the school year during which the accelerated instruction is required to be provided to the student, the district is not required to provide the accelerated instruction to the student for that school year.</p>	If a student cannot be provided accelerated instruction under Sec. 28.0211 because the student attends a homebound or other off-campus instructional arrangement, the school district may determine that the student be provided the accelerated instruction when the student returns to an on-campus instructional setting.
<p>(i-2) Repealed by HB 4545 – 2021 Legislative Session</p>	
<p>(j) A school district or open-enrollment charter school shall provide students required to attend accelerated programs under this section with transportation to those programs if the programs occur outside of regular school hours, unless the district or school does not operate, or contract or agree with another entity to operate, a transportation system.</p>	
<p>(k) The commissioner may adopt rules as necessary to implement this section, including rules for required reporting necessary to support student transfers.</p>	
<p>(l) The agency shall monitor and evaluate the effectiveness of the accelerated instruction required under this section.</p>	
<p>(l-1) The commissioner may adopt rules requiring a school district that receives federal funding under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.) to use that funding to provide supplemental educational services under 20 U.S.C. Section 6316 in conjunction with the accelerated instruction provided under this section, provided that the rules may not conflict with federal law governing the use of that funding.</p>	

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(m) Repealed by HB 4545 – 2021 Legislative Session	
(m-1) Repealed by HB 4545 – 2021 Legislative Session	
<p>(n) Except as provided by Subsection (n-1), a student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and is promoted to the next grade level must be assigned in the subsequent school year in each subject in which the student failed to perform satisfactorily on an assessment instrument specified under Subsection (a) to an appropriately certified teacher who meets all state and federal qualifications to teach that subject and grade.</p> <p>(n) Except as requested under Subsection (a-5) or provided by Subsection (n-1), a student for whom an accelerated education plan must be developed under Subsection (b) must be assigned, in each school year and subject covered by the accelerated education plan to an appropriately certified teacher who meets all state and federal qualifications to teach that subject and grade.</p>	
(n-1) In a manner consistent with federal law and notwithstanding any other law, the commissioner may waive the requirement under Subsection (n) regarding the assignment of a student to an appropriately certified classroom teacher on the request of a school district.	
<p>(o) This section does not require the administration of a fifth or eighth grade assessment instrument in a subject under Section 39.023(a) to a student enrolled in the fifth or eighth grade, as applicable, if the student:</p> <p>(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 Section 39.023(a) that aligns with the curriculum for the course in which the student is enrolled; or</p> <p>(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 Section 39.023(c) for the course.</p>	
(p) Notwithstanding any other provision of this section, a student described by Subsection (o) 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 in accordance with that subsection.	
<p>(q) The commissioner may waive the requirements under this section regarding accelerated instruction for a school district for each school year in which at least 60 percent of the students who received accelerated instruction during the school year immediately preceding the previous school year, including at least 60 percent of students whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule, performed satisfactorily in the previous school year on the assessment instrument in each subject in which the student previously failed to perform satisfactorily. For purposes of determining whether a school district qualifies for a waiver under this subsection, the commissioner shall:</p> <p>(1) if a student received accelerated instruction in more than one subject during the applicable school year, consider the student's performance on the assessment instrument in each subject separately from the student's performance on the assessment instrument for each other subject; and</p> <p>(2) by rule provide that a school district may not qualify for a waiver if students who are receiving special education services or are educationally disadvantaged are overrepresented among the students in the district who received accelerated instruction during the school year immediately preceding the previous school year and did not perform satisfactorily in the previous school year on the assessment instrument in each applicable subject.</p>	<p>The Commissioner MAY waive the requirements under Sec. 28.0211 by Commissioner Rule.</p> <p>The rule must provide that to be eligible for a waiver, at least 60% of the students receiving accelerated instruction under Sec. 28.0211 performed satisfactorily (and that students receiving special education services and EcoDis students NOT be overrepresented among students who received accelerated instruction and did not perform satisfactorily).</p> <p>NOTE: Because this requires the adoption of a Commissioner Rule, it appears that this waiver could not be applied before the 2024-25 school year.</p>
(r) Not later than the beginning of each school year, the commissioner shall publish a list of school districts that qualify for a waiver under Subsection (q).	
<p>Sec. 28.0217. Accelerated Instruction for High School Students.</p> <p>(a) Each time a student fails to perform satisfactorily on an assessment instrument administered under Section 39.023(c), the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area.</p> <p>(b) Accelerated instruction provided under this section:</p> <p>(1) may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations; and</p> <p>(2) must comply with the requirements for accelerated instruction provided under Section 28.0211.</p>	Section 28.0217 no longer required due to the inclusion of EOCs in the language of Section 28.0211.

The changes in law made by this Act to Section 28.0211, Education Code, apply beginning with assessment instruments administered during the 2023 spring semester.