

- SUBJECT:** Revised exemption from academic assessments for LEP students
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 9 ayes — Sadler, Dutton, Dunnam, Grusendorf, Hardcastle, Hochberg, Oliveira, Olivo, Smith
- 0 nays
- WITNESSES:** For — Sandi Borden, Texas Elementary Principals and Supervisors Association; Jesus Chavez, South Texas Association of Schools and Harlingen CSD; Ron Hughes, Richardson ISD and Texas Association of School Boards; Lisandro Ramón, South Texas Association of Schools and Lyford CISD; Roberto Zamora, La Joya ISD; Rita Haecker
- Against — None
- On — Rene Lara, Texas Federation of Teachers; Kathleen Leos, Dallas School Board; Mario Mata, Texas Association for Bilingual Educators; Anna Alicia Romero, Intercultural Development and Research Association; Dr. Angela Valenzuela; Kevin O’Hanlon
- BACKGROUND:** Education Code, sec. 39.027(a)(3) allows a limited English proficiency (LEP) student with a primary language other than Spanish or a recent unschooled immigrant to be exempted from exams that assess academic skills (primarily TAAS) if the student has been enrolled for less than one year.
- Education Code, sec. 29.052 defines an LEP student as “a student whose primary language is other than English and whose English skills are such that the student has difficulty performing ordinary classwork in English.”
- 19 Texas Administrative Code, sec. 101.3(h) defines “recent immigrant” as an immigrant entering the United States no more than 12 months before the administration of the test from which the postponement is sought. An unschooled immigrant is defined as a student who lacks the necessary foundation in the essential knowledge and skills of the state-mandated

curriculum as a result of inadequate schooling outside the United States as determined by the language proficiency assessment committee (LPAC).

Education Code, sec. 29.063 establishes LPACs in each district required to offer bilingual or special language programs. The LPAC, which must include a professional bilingual educator, a professional transitional language educator, a parent of an LEP student, and a campus administrator, reviews each LEP student's personal situation and academic progress on at least an annual basis. The LPAC makes recommendations regarding the most appropriate academic placement for each LEP student.

The 76th Legislature amended Education Code, chapter 39 in 1999 (SB 103 by Bivins) to require the commissioner of education to conduct a study to determine the need to include the assessment in grades seven and eight of students whose primary language is Spanish and other LEP students. No Spanish translation of TAAS is currently available above the grade six level.

DIGEST:

CSHB 1374 would amend Education Code, sec. 39.027(a)(3) to allow an exemption from assessment for LEP students for up to one year after the date of their enrollment in a U.S. school if they had not demonstrated English proficiency via the assessment system developed by the commissioner.

CSHB 1374 also would add Education Code, sec. 39.027(a)(4), allowing an additional exemption of up to two years for an LEP student who had received an exemption under sec. 39.027(a)(3), who was a recent immigrant as defined by rule by the commissioner, or who was in a grade that did not have an assessment instrument available in the student's primary language.

CSHB 1374 would amend Education Code, sec. 39.023(1) to allow Spanish-speaking LEP students in grades three through six to be assessed for up to three years using an assessment instrument in Spanish.

The bill would add Education Code, sec. 39.023(m), directing the commissioner to develop procedures for LPACs to use in determining which LEP students should be exempt from academic skills assessments, with further direction to administer assessments at the "earliest practicable date."

CSHB 1374 would reenact and amend Education Code, sec. 39.051(b) to include the percentage of LEP students exempt from academic skills assessments as a campus performance measure.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house, in which case it would apply to the administration of the 2000-2001 school year TAAS test scheduled for April 16, 2001. Otherwise, it would take effect September 1, 2001 and apply beginning with the 2001-2002 school year.

**SUPPORTERS
SAY:**

CSHB 1374 would ensure that LEP students are given enough time to learn English before being tested and would take away incentives for schools to avoid including them in assessment exams. In 1999, legislators limited exemptions for LEP students in response to a concern that some schools were merely “warehousing” LEP students instead of providing them with academic instruction. Warehousing includes such practices as sending LEP students to the auditorium to watch videos then counting them absent on the days of assessment exams, in order to avoid including their scores on district accountability reports.

Accountability is important to the education system. The bill’s reporting requirement, which would make the percentage of exempt students a performance measure, would help promote accountability by enabling detection and review of large scale exceptions. Some schools have used the short time frame for exemptions as an excuse to “clock out” LEP students after 11 months of enrollment, then re-enroll them a week later to start the one-year exemption clock ticking again. Giving LEP students up to three years of exemptions before testing would motivate schools to participate fully in the accountability system and would discourage them from such practices as warehousing or “clocking out” LEP students.

The only population targeted for the extended exemption from academic skills assessment exams through this bill would be LEP students who are “recent unschooled immigrants.” The bill would provide a narrow, limited exemption for this student population. Under no circumstances would the exemption be longer than three years. A limited exemption will force schools to allocate more resources to educating LEP students.

While schools should be required to test LEP students as early as possible, CSHB 1374 would take into account each individual student's needs. A "one size fits all" rule would do a disservice to students who are not yet ready to take academic skills assessment exams in English, as well as those who may be ready to take the exam well before their peers. The LPAC committee knows each individual student better than state lawmakers and can make the most appropriate decision as to when a student is ready to take academic skills assessment exams in English. Academic assessments should promote the respect and self-esteem of LEP students and recent immigrants, not cause psychological trauma.

Texas should give LEP children time to learn English to discourage them from dropping out of school. Some schools have student populations who speak more than 70 different native languages. Instruction is not available in many of those languages, and it takes those students longer to learn English. With limited English and academic skills, some frustrated older students drop out of school rather than face the TAAS. The dropout rate for Spanish-speaking LEP students, for example, already is quite high.

Many LEP students come to Texas public schools with limited or no mastery of English. It is common for recent immigrants to have no schooling at all. These students lack sufficient literacy skills to take an academic skills assessment—even one written in their primary language—after just one year of public education in Texas. It takes more than a year to learn a new language well enough to succeed on an academic assessment. Some academic research shows it takes three to five years to learn a language socially, and up to seven to fully function academically in a new language.

OPPONENTS
SAY:

The bill would not go far enough in protecting LEP students. A three-year maximum exemption would be insufficient for some LEP students; a five to seven year exemption limit would be more equitable. Students learn at different rates and may take five to seven years to acquire an academic mastery of English. The state should allow the student's teachers and LPAC to determine when that student is ready to take the assessment exams in English.

This bill would not remedy other flaws in the Texas testing system that are detrimental to LEP students. For example, translated academic-skills

assessments are not a valid way to assess LEP students, because assessments composed in English are designed for an English-speaking population. Also, there is no uniform system in place for assessing a student's readiness to take the TAAS. Not all school districts use the same language-assessment instrument, and some tests may not be accurate indicators of whether a child is ready to take the test or not.

The bill does not provide for oversight or accountability of the LPAC. There are no audits, for example. There is no way for the Texas Education Agency, or anyone else, to determine whether students exempted by the LPAC are really LEP students or recent immigrants. School principals often are the only ones in charge of appointing the committee, so committee members may be chosen merely because they will support administrative policies that dodge accountability, such as warehousing or "clocking out" students.

The commissioner's definition of an "unschooled immigrant" is too broad. Changes in policy should be carefully structured to limit the exemption only to verified unschooled recent immigrants. The bill should specify the criteria for determining who is an unschooled immigrant and only leave procedural issues up to the commissioner. Also, districts should be required to document the process used to determine unschooled immigrant status and provide for a state auditor review when reported exemptions exceed state averages.

OTHER
OPPONENTS
SAY:

Because the TAAS test is scheduled in April, having the bill take immediate effect would cause undue confusion for school administrators responsible for implementing the new rules under an unreasonably tight deadline.

NOTES:

The committee substitute differs from the bill as filed by requiring a LEP student who has been administered the Spanish language version of the assessment instrument in the past, and who now demonstrates proficiency in English to take the standard assessment instrument in English.

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The companion bill, SB 676 by Zaffirini, et al., passed in the Senate on March 12 by 29-0-1 and was reported favorably, without amendment, by the House Public Education Committee on March 27, making it eligible to be considered in lieu of HB 1374.