

BILL ANALYSIS

Senate Research Center
87R10731 TSS-F

S.B. 2094
By: Taylor
Education
5/3/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2094 seeks to address learning loss in Texas students, particularly in the wake of the COVID-19 pandemic, by establishing accelerated learning committees for students in third, fifth, and eighth grades who do not perform successfully on assessments required for grade advancement. The bill gives schools options to provide accelerated instruction to these students in a subsequent summer or school year, or to assign the student to a master, exemplary, or recognized teacher in the appropriate subject matter for which the student needs accelerated instruction.

S.B. 2094, as filed, also codifies in statute duties involving state assessment and transitions those duties from the State Board of Education to the commissioner of education.

As proposed, S.B. 2094 amends current law relating to the commissioner of education's authority regarding the assessment of public school students and providing accelerated instruction for students who fail to achieve satisfactory performance on certain assessment instruments.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 3 (Section 28.0211, Education Code) of this bill.

Rulemaking authority previously granted to the State Board of Education is transferred to the commissioner of education in SECTION 5 (Section 33.0812, Education Code), SECTION 6 (Section 39.022, Education Code), SECTION 7 (Section 39.023, Education Code), SECTION 11 (Section 39.027, Education Code), SECTION 12 (Section 39.029, Education Code), and SECTION 14 (Section 39.032, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is rescinded in SECTION 19 (Section 28.0211, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Section 12.104(b), Education Code, as amended by Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, and amends it, as follows:

(b) Provides that an open-enrollment charter school is subject to certain prohibitions, restrictions, and requirements relating to certain criteria, including accelerated learning committees, accelerated instruction, and modified teacher assignments under Section 28.0211, rather than accelerated instruction under Section 28.0211. Makes nonsubstantive changes.

SECTION 2. Amends the heading to Section 28.0211, Education Code, to read as follows:

Sec. 28.0211. ACCELERATED LEARNING COMMITTEE; ACCELERATED INSTRUCTION; MODIFIED TEACHER ASSIGNMENT.

SECTION 3. Amends Section 28.0211, Education Code, by amending Subsections (a), (a-1), (a-2), (a-3), (c), (f), (i), (k), and (n) and adding Subsections (a-4), (a-5), (f-1), (f-2), (f-3), (f-4), and (f-5), as follows:

(a) Requires a school district to establish an accelerated learning committee described by Subsection (c) for each student who does not perform satisfactorily on:

(1) the third grade mathematics or reading assessment instrument under Section 39.023 (Adoption and Administration of Instruments);

(2) the fifth grade mathematics or reading assessment instrument, rather than the fifth grade mathematics and reading assessment instruments, under Section 39.023; or

(3) the eighth grade mathematics or reading assessment instrument, rather than the eighth grade mathematics and reading assessment instruments under Section 39.023.

Deletes existing text prohibiting a student, except as provided by Subsection (b) (relating to requiring a school district to provide to a student who initially fails to perform satisfactorily on a certain assessment instrument at least two additional opportunities to take the assessment instrument) or (e) (relating to requiring a student who, after at least three attempts, fails to perform satisfactorily on a certain assessment instrument to be retained at the same grade level for the next school year), from being promoted to the sixth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the fifth grade mathematics and reading assessment instruments under Section 39.023 or the ninth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the eighth grade mathematics and reading assessment instruments under Section 39.023.

(a-1) Requires the school district in which the student attends school, each time a student fails to perform satisfactorily on an assessment instrument administered under Section 39.023(a) in the third, fourth, fifth, sixth, seventh, or eighth grade, to either:

(1) provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year; or

(2) assign the student a classroom teacher who has been certified as a master, exemplary, or recognized teacher under Section 21.3521 (Local Optional Teacher Designation System) for the subsequent school year in the applicable subject area.

(a-2) Creates this subsection from existing text. Authorizes accelerated instruction provided during the following school year under Subsection (a-1)(1) to require participation of the student before or after normal school hours. Deletes existing text authorizing accelerated instruction to include participation at times of the year outside normal school operations.

(a-3) Requires that accelerated instruction provided by a district under Subsection (a-1)(1):

(1) include instruction in all of the essential knowledge and skills for the foundation school curriculum adopted under Section 28.002 (Required Curriculum) for the grade level in which the student is enrolled and targeted instruction in the essential knowledge and skills needed for previous grade levels;

(2) be provided in addition to instruction normally provided to students in the grade level in which the student is enrolled;

(3) be provided for no less than 30 total hours during the following summer and school year and include instruction no less than once per week, unless the instruction is provided fully during summer or school holidays;

(4) be designed to assist the student in achieving satisfactory performance on the subsequent assessment instrument administered under Section 39.023(a) in the applicable subject area;

(5) be provided to a student individually or in a group of no more than three students, unless the parent or guardian of each student in the group authorizes a larger group;

(6) be provided by a classroom teacher with training and experience in the applicable subject area and in assisting students in achieving satisfactory performance on the applicable assessment instrument administered under Section 39.023(a); and

(7) to the extent possible, be provided by one classroom teacher.

Deletes existing text requiring a student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and who is promoted to the next grade level to complete accelerated instruction required under Subsection (a-1) before placement in the next grade level. Deletes existing text prohibiting a student who fails to complete required accelerated instruction from being promoted.

(a-4) Authorizes a student's parent or guardian, if there is more than one classroom teacher available to provide the student accelerated instruction under Subsection (a-1)(1) or to whom the student could be assigned under a modified teacher assignment under Subsection (a-1)(2), to choose the teacher who will provide the applicable instruction to the student.

(a-5) Creates this subsection from existing text. Provides that the commissioner of education (commissioner) is required to provide guidelines to school districts, rather than to districts, on researched-based best practices and effective strategies that a district is authorized to use in developing an accelerated instruction program and is authorized to provide resources to districts to assist in the provision of an accelerated instruction program.

(c) Requires that an accelerated learning committee, after a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), be established. Deletes existing text requiring the school district in which the student attends school, each time a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), to provide to the student accelerated instruction in the applicable subject area, including reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument. Deletes existing text requiring that a grade placement committee, after a student fails to perform satisfactorily on an assessment instrument a second time, be established to prescribe the accelerated instruction the district is required to provide to the student before the student is administered the assessment instrument the third time. Deletes existing text prohibiting an accelerated instruction group administered by a school district under this section from having a ratio of more than 10 students for each teacher. Makes conforming changes.

(f) Requires an accelerated learning committee described by Subsection (c), as soon as possible after the student fails to perform satisfactorily on an assessment instrument specified under Subsection (a) but not later than the start of the subsequent school year, to develop an educational plan for the student that provides the necessary accelerated instruction to enable the student to perform at the appropriate grade level by the conclusion of the school year. Deletes existing text requiring a school district to provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) accelerated instruction during the

next school year as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c). Deletes existing text requiring the district to provide that accelerated instruction regardless of whether the student has been promoted or retained.

(f-1) Requires that the educational plan under Subsection (f) be documented in writing, and that a copy be provided to the student's parent or guardian.

(f-2) Creates this subsection from existing text. Requires that the student, during the school year, be monitored to ensure that the student is progressing in accordance with the plan developed under Subsection (f).

(f-3) Requires the board of trustees of each school district to adopt a policy consistent with the grievance procedure adopted under Section 26.011 (Complaints) to allow a parent to contest the content or implementation of an educational plan developed under Subsection (f).

(f-4) Requires the superintendent of the district, or the superintendent's designee, 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, to meet with the student's accelerated learning committee to:

(1) identify the reason the student did not perform satisfactorily; and

(2) determine, in order to ensure the student performs satisfactorily on the assessment instrument at the next administration of the assessment instrument, whether the educational plan developed for the student under Subsection (f) is required to be modified to provide the necessary accelerated instruction for that student and whether any additional resources are required for that student.

(f-5) Provides that the superintendent's designee under Subsection (f-4) is authorized to be an employee of a regional education service center and is prohibited from being a person who served on the student's accelerated learning committee.

(i) Requires the admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter A (Special Education Program), Chapter 29 (Educational Programs), and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) (relating to the development of certain assessment instruments) to meet to determine the manner in which the student will participate in an accelerated instruction program under Section 28.0211. Deletes existing text requiring the admission, review, and dismissal committee of a certain student to meet before the student is administered the assessment instrument for the second time. Deletes existing text requiring the committee to determine whether the student will be promoted in accordance with Subsection (i-1) (relating to the student being promoted based on certain progress criteria) or retained under Section 28.0211.

(k) Authorizes the commissioner to adopt rules as necessary to implement Section 28.0211. Deletes existing text requiring the commissioner to adopt rules as necessary to implement Section 28.0211, including rules concerning when school districts are required to administer assessment instruments required under Section 28.0211 and which administration of the assessment instruments will be used for purposes of Section 39.054 (Methods and Standards for Evaluating Performance).

(n) Requires a student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and is promoted to the next grade level, rather than a student who is promoted by a grade placement committee under Section 28.0211, to 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 a teacher who meets all state and federal qualifications to teach that subject and grade.

SECTION 4. Amends Section 28.0217, Education Code, as follows:

Sec. 28.0217. ACCELERATED INSTRUCTION FOR HIGH SCHOOL STUDENTS. (a) Creates this subsection from existing text. Deletes existing text requiring the school district in which a student who fails to perform satisfactorily on a certain assessment attends school to use funds appropriated for accelerated instruction under Section 28.0211 to provide a student instrument accelerated instruction in the applicable subject area.

(b) Creates this subsection from existing text. Provides that accelerated instruction provided under Section 28.0217:

(1) creates this subdivision from existing text and makes no further changes; and

(2) is required to comply with the requirements for accelerated instruction provided under Section 28.0211.

SECTION 5. Amends Section 33.0812(a), Education Code, as follows:

(a) Requires the commissioner, rather than the State Board of Education (SBOE), by rule to prohibit participation in a University Interscholastic League area, regional, or state competition under certain circumstances.

SECTION 6. Amends Section 39.022(a), Education Code, as follows:

(a) Requires the commissioner, rather than SBOE, by rule to create and implement a statewide assessment program that is knowledge- and skills-based to ensure school accountability for student achievement that achieves the goals provided under Section 4.002 (Public Education Academic Goals). Requires the commissioner, rather than SBOE, after adopting rules under Section 39.022 (Assessment Program), to consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.

SECTION 7. Amends Sections 39.023(a-4), (c), (c-3), (e), (g), and (l), Education Code, as follows:

(a-4) Requires the commissioner, rather than SBOE, by rule, for purposes of Subsection (a)(1) (relating to annual student assessments in mathematics in grades three through eight), to require the mathematics assessment instrument for a grade level to align with the technology expectations included in the essential knowledge and skills for that grade level and authorizes the commissioner designate sections of a mathematics assessment instrument for a certain grade level.

(c) Requires the commissioner, rather than SBOE, to administer the assessment instruments. Requires the commissioner, in consultation with school districts, rather than SBOE, to adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3). Makes a conforming change.

(c-3) Requires the commissioner, rather than SBOE, except as provided by Subsection (c-7), as added by Chapter 1315 (H.B. 3906), Acts of the 86th Legislature, Regular Session, 2019 (relating to required contents of the United States history end-of-course assessment instrument), in adopting a schedule for the administration of assessment instruments under this section, to ensure that assessment instruments administered under Subsection (a) or (c) are not administered on the first instructional day of a week unless the superintendent of a school district applies to the commissioner for a waiver of the

requirement under this subsection due to local conditions which have significantly affected the district's ability to comply with the requirement of this subsection.

(e) Deletes existing text requiring the Texas Education Agency (TEA), during the 2014-2015 and 2015-2016 school years, to release the questions and answer keys to assessment instruments as described by this subsection each year. Makes conforming changes.

(g) Authorizes the commissioner, rather than SBOE, to 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.

(l) Requires the commissioner, rather than SBOE, to adopt rules for the administration of certain assessment instruments.

SECTION 8. Amends Section 39.02341(a), Education Code, to require TEA, rather than TEA in consultation with SBOE, to develop a transition plan to administer all assessment instruments required under Section 39.023 electronically beginning not later than the 2022-2023 school year.

SECTION 9. Amends Section 39.025(b-1), Education Code, to require a school district to provide each student who fails to perform satisfactorily as determined by the commissioner under Section 39.0241(a) (relating to the requirement that the commissioner determine satisfactory standards on the assessment instruments) on an end-of-course assessment instrument with accelerated instruction under Section 28.0217 in the subject assessed by the assessment instrument.

SECTION 10. Amends Section 39.026, Education Code, to make conforming changes.

SECTION 11. Amends Section 39.027(b), Education Code, to require the commissioner, rather than SBOE, to adopt rules under which a dyslexic student who is not exempt under Subsection (a) (relating to accommodations or alternative assessments under certain circumstances) is authorized to use certain procedures.

SECTION 12. Amends Section 39.029, Education Code, as follows:

Sec. 39.029. MIGRATORY CHILDREN. Authorizes the commissioner, rather than SBOE, by rule to provide alternate dates for the administration of the assessment instruments to a student who is a migratory child as defined by 20 U.S.C. Section 6399.

SECTION 13. Amends Section 39.030(a), Education Code, as follows:

(a) Requires the commissioner or a school district, rather than SBOE or a school district, in adopting academic skills assessment instruments under Subchapter B (Assessment of Academic Skills), to ensure the security of the instruments and tests in their preparation, administration, and grading. Provides that meetings or portions of meetings held by the commissioner or a school district, rather than by SBOE or a school district, at which individual assessment instruments or assessment instrument items are discussed or adopted are not open to the public under Chapter 551 (Open Meetings), Government Code, and the assessment instruments or assessment instrument items are confidential.

SECTION 14. Amends Sections 39.032(c-1) and (e), Education Code, as follows:

(c-1) Requires that the standardization norms computed under Subsection (c) (relating to data used for computation of state and national norms of averages) meet certain criteria, including being updated at least every eight years using proven psychometric procedures approved by the commissioner, rather than approved by SBOE.

(e) Requires the commissioner, rather than SBOE, to adopt rules for the implementation of Section 39.032 (Assessment Instrument Standards; Civil Penalty) and for the maintenance of the security of the contents of all assessment instruments.

SECTION 15. Amends Section 39.033(c), Education Code, to require the commissioner, rather than SBOE, to determine the cost under Section 39.033 (Voluntary Assessment of Private School Students).

SECTION 16. Amends Section 39.039(b), Education Code, to delete existing text providing that a person who is an agent of an entity that has been contracted to develop or implement assessment instruments required under Section 39.023 commits an offense if the person serves as a member of a formal or informal advisory committee established by certain entities, including SBOE, to advise certain entities, including SBOE, regarding policies or implementation of the requirements of Subchapter B.

SECTION 17. Amends Section 39.301(c), Education Code, as follows:

(c) Requires that indicators for reporting purposes include certain information, including the percentage of students, aggregated by grade level, provided accelerated instruction under Section 28.0211, rather than under Section 28.0211(c), the results of assessment instruments administered under that section, the subject of the assessment instrument on which each student failed to perform satisfactorily under each performance standard under Section 39.0241 (Performance Standards), and the performance of those students in the subsequent school year, rather than the school year following that promotion, on the assessment instruments required under Section 39.023. Deletes existing text requiring that indicators for reporting purposes include the percentage of students promoted through the grade placement committee process under Section 28.0211.

SECTION 18. Amends Section 51.338(d), Education Code, to provide that a student who has demonstrated the performance standard for college readiness as provided by Section 28.008 (Advancement of College Readiness in Curriculum) on the postsecondary readiness assessment instruments adopted under Section 39.0238 (Adoption and Administration of Postsecondary Readiness Assessment Instruments) for Algebra II and English III, as that section existed before repeal by ___B. _____, Acts of the 87th Legislature, Regular Session, 2021, is exempt from the requirements of Subchapter F-1 (Texas Success Initiative) with respect to those content areas.

SECTION 19. Repealer: Section 28.0211(b) (relating to additional testing opportunities in certain circumstances);

Repealer: Section 28.0211(d) (relating to certain parental notifications), Education Code;

Repealer: Section 28.0211(e) (relating to student retention due to failure to perform satisfactorily on a certain assessment instrument), Education Code;

Repealer: Section 28.0211(i-1) (relating to promoting a student to the next grade level under certain circumstances), Education Code;

Repealer: Section 28.0211(i-2) (relating to certain parental notification), Education Code;

Repealer: Section 28.0211(m) (relating to a requirement that the commissioner certify whether certain funds are appropriated sufficiently), Education Code;

Repealer: Section 28.0211(m-1) (relating to certain funds being inapplicable for Subsection (m)), Education Code;

Repealer: Section 39.0231 (Reporting of Results of Certain Assessments), Education Code.

Repealer: Section 39.0238 (Adoption and Administration of Postsecondary Readiness Assessment Instruments), Education Code.

Repealer: Section 39.039(a) (relating to prohibited political contributions or activity in regards to an election to or service on the SBOE), Education Code.

SECTION 20. Requires the board of trustees of a school district, as soon as practicable after the effective date of this Act, to adopt a policy as required by Section 28.0211(f-3), Education Code, as added by this Act.

SECTION 21. Makes application of Section 39.039, Education Code, as amended by this Act, prospective.

SECTION 22. (a) Provides that on the effective date of this Act:

(1) all powers and duties of SBOE under Section 33.0812 (Scheduling Extracurricular Activities Prohibited in Certain Circumstances) and Subchapter B (Assessment of Academic Skills), Chapter 39 (Public School System Accountability), Education Code, as those provisions existed immediately before the effective date of this Act, are transferred to the commissioner; and

(2) all rules, forms, and assessment instruments adopted or prescribed by SBOE are continued in effect as if they were rules, forms, or assessment instruments adopted or prescribed by the commissioner until they are repealed or otherwise changed by the commissioner.

(b) Provides that the validity of an action taken by SBOE before the effective date of this Act is not affected by the transfer of powers and duties under this Act.

SECTION 23. Provides that to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 24. Provides that this Act applies beginning with the 2021-2022 school year.

SECTION 25. Effective date: upon passage or September 1, 2021.