

CHAPTER 1267

H.B. No. 866

AN ACT

relating to the administration to public school students in certain grades of state-administered assessment instruments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 39.023, Education Code, is amended by amending Subsections (a), (a-1), (a-2), (b), (c-1), (c-3), (e), (1), (m), (n), and (p) and adding Subsections (a-3), (a-4), (a-5), (a-6), (a-7), (a-8), (a-9), and (a-10) to read as follows:

(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 (1) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, [~~annually~~] in grades three and five [~~through seven~~] without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;

(2) reading, [~~annually~~] in grades three, five, and [~~through~~] eight;

(3) writing, including spelling and grammar, in grades four and seven;

(4) social studies, in grade eight; and

(5) science, in grades five and eight [~~, and~~]

1 ~~[(6) any other subject and grade required by federal~~
2 ~~law].~~

3 (a-1) The agency shall develop assessment instruments
4 required under Subsections (a), (a-4), (a-5), and (a-6) [~~Subsection~~
5 ~~(a)~~] in a manner that allows, to the extent practicable:

6 (1) the score a student receives to provide reliable
7 information relating to a student's satisfactory performance for
8 each performance standard under Section 39.0241; and

9 (2) an appropriate range of performances to serve as a
10 valid indication of growth in student achievement.

11 (a-2) A student is not required to be assessed in a subject
12 otherwise assessed at the student's grade level under Subsection
13 (a) if the student:

14 (1) is enrolled in a course in the subject intended for
15 students above the student's grade level and will be administered
16 an assessment instrument adopted or developed under Subsection (a),
17 (a-4), (a-5), or (a-6) that aligns with the curriculum for the
18 course in which the student is enrolled; or

19 (2) is enrolled in a course in the subject for which
20 the student will receive high school academic credit and will be
21 administered an end-of-course assessment instrument adopted under
22 Subsection (c) for the course.

23 (a-3) For each assessment instrument administered under
24 Subsection (a) or (a-5), the agency shall determine, based on
25 available information for that assessment instrument, the minimum
26 satisfactory adjusted scale score. The minimum satisfactory
27 adjusted scale score is the sum of the scale score that indicates

1 satisfactory performance on that assessment instrument, as
2 determined by the commissioner under Section 39.0241(a), plus the
3 minimum number of points that when added to the scale score produces
4 a score that, within a three percent margin of error, is predictive
5 that a student achieving that score would achieve satisfactory
6 performance on an assessment instrument in the same subject
7 administered to the student during the following school year.

8 (a-4) A student shall be assessed in grade four in a subject
9 for which an assessment instrument is administered under Subsection
10 (a) in grade three if, on the final assessment instrument in that
11 subject administered under Subsection (a) to the student in grade
12 three during the preceding school year, the student did not achieve
13 a score equal to or greater than the minimum satisfactory adjusted
14 scale score for that assessment instrument, as determined under
15 Subsection (a-3).

16 (a-5) A student shall be assessed in grade six in a subject
17 for which an assessment instrument is administered under Subsection
18 (a) in grade five if, on the final assessment instrument in that
19 subject administered under Subsection (a) to the student in grade
20 five during the preceding school year, the student did not achieve a
21 score equal to or greater than the minimum satisfactory adjusted
22 scale score for that assessment instrument, as determined under
23 Subsection (a-3).

24 (a-6) A student shall be assessed in grade seven in a
25 subject for which an assessment instrument was administered under
26 Subsection (a-5) to the student in grade six if, on the final
27 assessment instrument in that subject administered to the student

1 in grade six during the preceding school year, the student did not
2 achieve a score equal to or greater than the minimum satisfactory
3 adjusted scale score for that assessment instrument, as determined
4 under Subsection (a-3).

5 (a-7) A student assessed in mathematics under Subsection
6 (a-4), (a-5), or (a-6) shall be assessed without the aid of
7 technology.

8 (a-8) A school district or open-enrollment charter school
9 may, for its own use in determining whether students are performing
10 at a satisfactory level, administer to a student at the appropriate
11 grade level, other than a student required to be assessed, an
12 assessment instrument developed for purposes of Subsection (a-4),
13 (a-5), or (a-6). At the request of a district or open-enrollment
14 charter school, the agency shall provide, allow for the
15 administration of, and score each assessment instrument
16 administered under this subsection in the same manner and at the
17 same cost as for assessment instruments required to be administered
18 under the applicable subsection. The results of an assessment
19 instrument administered under this subsection may not be included
20 as an indicator of student achievement under Section 39.053 or any
21 other provision.

22 (a-9) If there is a conflict between this section and a
23 federal law or regulation as a result of forgoing under this section
24 certain administration of assessment instruments to students who
25 have recently performed successfully on assessment instruments
26 assessing the same subject, the commissioner shall seek a waiver
27 from the application of the conflicting federal law or regulation.

1 In seeking a waiver, the commissioner shall submit all relevant
2 data, including data relating to:

3 (1) the likelihood that a student who achieves a score
4 on an assessment instrument equal to or greater than the minimum
5 satisfactory adjusted scale score for that assessment instrument,
6 as determined under Subsection (a-3), will, in subsequent years,
7 perform satisfactorily on assessment instruments in the same
8 subject;

9 (2) the costs associated with ongoing assessment of
10 students who have proven likely to perform successfully on
11 subsequent assessment instruments; and

12 (3) the benefit of redirecting resources from
13 assessment of students who have proven likely to perform
14 successfully on subsequent assessment instruments toward enabling
15 lower performing students to perform successfully on assessment
16 instruments after one school year.

17 (a-10) This subsection and Subsections (a-3), (a-4), (a-5),
18 (a-6), (a-7), (a-8), and (a-9) expire September 1, 2017.

19 (b) The agency shall develop or adopt appropriate
20 criterion-referenced alternative assessment instruments to be
21 administered to a [each] student in a special education program
22 under Subchapter A, Chapter 29, for whom an assessment instrument
23 adopted under Subsection (a) or, to the extent applicable,
24 Subsection (a-4), (a-5), or (a-6), even with allowable
25 accommodations, would not provide an appropriate measure of student
26 achievement, as determined by the student's admission, review, and
27 dismissal committee.

1 (c-1) To the greatest extent practicable, the [~~The~~] agency
2 shall develop any assessment instrument required under this section
3 in a manner that allows for the measurement of annual improvement in
4 student achievement as required by Sections 39.034(c) and (d).

5 (c-3) In adopting a schedule for the administration of
6 assessment instruments under this section, the State Board of
7 Education shall require:

8 (1) assessment instruments administered under
9 Subsections (a), (a-4), (a-5), and (a-6) [~~Subsection (a)~~] to be
10 administered on a schedule so that the first assessment instrument
11 is administered at least two weeks later than the date on which the
12 first assessment instrument was administered under Subsection (a)
13 during the 2006-2007 school year; and

14 (2) the spring administration of end-of-course
15 assessment instruments under Subsection (c) to occur in each school
16 district not earlier than the first full week in May, except that
17 the spring administration of the end-of-course assessment
18 instruments in English I, English II, and English III must be
19 permitted to occur at an earlier date.

20 (e) Under rules adopted by the State Board of Education,
21 every third year, the agency shall release the questions and answer
22 keys to each assessment instrument administered under Subsection
23 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any
24 assessment instrument administered to a student for the purpose of
25 retaking the assessment instrument, after the last time the
26 instrument is administered for that school year. To ensure a valid
27 bank of questions for use each year, the agency is not required to

1 release a question that is being field-tested and was not used to
2 compute the student's score on the instrument. The agency shall
3 also release, under board rule, each question that is no longer
4 being field-tested and that was not used to compute a student's
5 score.

6 (1) The State Board of Education shall adopt rules for the
7 administration of the assessment instruments adopted under
8 Subsection (a) and, to the extent applicable, the assessment
9 instruments adopted under Subsection (a-4) in Spanish to students
10 in grades three, four, and [~~through~~] five who are of limited English
11 proficiency, as defined by Section 29.052, whose primary language
12 is Spanish, and who are not otherwise exempt from the
13 administration of an assessment instrument under Section
14 39.027(a)(1) or (2). Each student of limited English proficiency
15 whose primary language is Spanish, other than a student to whom
16 Subsection (b) applies, may be assessed using assessment
17 instruments in Spanish under this subsection for up to three years
18 or assessment instruments in English under Subsection (a) and, as
19 applicable, Subsection (a-4). The language proficiency assessment
20 committee established under Section 29.063 shall determine which
21 students are administered assessment instruments in Spanish under
22 this subsection.

23 (m) The commissioner by rule shall develop procedures under
24 which the language proficiency assessment committee established
25 under Section 29.063 shall determine which students are exempt from
26 the administration of the assessment instruments under Section
27 39.027(a)(1) or (2). The rules adopted under this subsection shall

1 ensure that the language proficiency assessment committee provides
2 that the exempted students are administered the assessment
3 instruments under Subsections (a) and (c) and, to the extent
4 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest
5 practical date.

6 (n) This subsection applies only to a student who is
7 determined to have dyslexia or a related disorder and who is an
8 individual with a disability under 29 U.S.C. Section 705(20) and
9 its subsequent amendments. The agency shall adopt or develop
10 appropriate criterion-referenced assessment instruments designed
11 to assess the ability of and to be administered to each student to
12 whom this subsection applies for whom the assessment instruments
13 adopted under Subsection (a) and, to the extent applicable, the
14 assessment instruments adopted under Subsections (a-4), (a-5), and
15 (a-6), even with allowable modifications, would not provide an
16 appropriate measure of student achievement, as determined by the
17 committee established by the board of trustees of the district to
18 determine the placement of students with dyslexia or related
19 disorders. The committee shall determine whether any allowable
20 modification is necessary in administering to a student an
21 assessment instrument required under this subsection. The
22 assessment instruments required under this subsection shall be
23 administered on the same schedule as the assessment instruments
24 administered under Subsections (a), (a-4), (a-5), and (a-6), as
25 applicable [~~Subsection (a)~~].

26 (p) On or before September 1 of each year, the commissioner
27 shall make the following information available on the agency's

1 Internet website for each assessment instrument administered under
2 Subsection (a), (a-4), (a-5), (a-6), (c), or (1):

3 (1) the number of questions on the assessment
4 instrument;

5 (2) the number of questions that must be answered
6 correctly to achieve satisfactory performance as determined by the
7 commissioner under Section 39.0241(a);

8 (3) the number of questions that must be answered
9 correctly to achieve satisfactory performance under the college
10 readiness performance standard as provided by Section 39.0241; and

11 (4) the corresponding scale scores.

12 SECTION 2. Effective September 1, 2017, Sections 39.023(a),
13 (a-1), (a-2), (b), (c-1), (c-3), (e), (l), (m), (n), and (p),
14 Education Code, are amended to read as follows:

15 (a) The agency shall adopt or develop appropriate
16 criterion-referenced assessment instruments designed to assess
17 essential knowledge and skills in reading, writing, mathematics,
18 social studies, and science. Except as provided by Subsection
19 (a-2), all students, other than students assessed under Subsection
20 (b) or (1) or exempted under Section 39.027, shall be assessed in:

21 (1) mathematics, annually in grades three through
22 seven without the aid of technology and in grade eight with the aid
23 of technology on any assessment instrument that includes algebra;

24 (2) reading, annually in grades three through eight;

25 (3) writing, including spelling and grammar, in grades
26 four and seven;

27 (4) social studies, in grade eight;

1 (5) science, in grades five and eight; and
2 (6) any other subject and grade required by federal
3 law.

4 (a-1) The agency shall develop assessment instruments
5 required under Subsection (a) in a manner that allows, to the extent
6 practicable:

7 (1) the score a student receives to provide reliable
8 information relating to a student's satisfactory performance for
9 each performance standard under Section 39.0241; and

10 (2) an appropriate range of performances to serve as a
11 valid indication of growth in student achievement.

12 (a-2) A student is not required to be assessed in a subject
13 otherwise assessed at the student's grade level under Subsection
14 (a) if the student:

15 (1) is enrolled in a course in the subject intended for
16 students above the student's grade level and will be administered
17 an assessment instrument adopted or developed under Subsection (a)
18 that aligns with the curriculum for the course in which the student
19 is enrolled; or

20 (2) is enrolled in a course in the subject for which
21 the student will receive high school academic credit and will be
22 administered an end-of-course assessment instrument adopted under
23 Subsection (c) for the course.

24 (b) The agency shall develop or adopt appropriate
25 criterion-referenced alternative assessment instruments to be
26 administered to each student in a special education program under
27 Subchapter A, Chapter 29, for whom an assessment instrument adopted

1 under Subsection (a), even with allowable accommodations, would not
2 provide an appropriate measure of student achievement, as
3 determined by the student's admission, review, and dismissal
4 committee.

5 (c-1) The agency shall develop any assessment instrument
6 required under this section in a manner that allows for the
7 measurement of annual improvement in student achievement, as
8 required by Sections 39.034(c) and (d).

9 (c-3) In adopting a schedule for the administration of
10 assessment instruments under this section, the State Board of
11 Education shall require:

12 (1) assessment instruments administered under
13 Subsection (a) to be administered on a schedule so that the first
14 assessment instrument is administered at least two weeks later than
15 the date on which the first assessment instrument was administered
16 under Subsection (a) during the 2006-2007 school year; and

17 (2) the spring administration of end-of-course
18 assessment instruments under Subsection (c) to occur in each school
19 district not earlier than the first full week in May, except that
20 the spring administration of the end-of-course assessment
21 instruments in English I, English II, and English III must be
22 permitted to occur at an earlier date.

23 (e) Under rules adopted by the State Board of Education,
24 every third year, the agency shall release the questions and answer
25 keys to each assessment instrument administered under Subsection
26 (a), (b), (c), (d), or (1), excluding any assessment instrument
27 administered to a student for the purpose of retaking the

1 assessment instrument, after the last time the instrument is
2 administered for that school year. To ensure a valid bank of
3 questions for use each year, the agency is not required to release a
4 question that is being field-tested and was not used to compute the
5 student's score on the instrument. The agency shall also release,
6 under board rule, each question that is no longer being
7 field-tested and that was not used to compute a student's score.

8 (1) The State Board of Education shall adopt rules for the
9 administration of the assessment instruments adopted under
10 Subsection (a) in Spanish to students in grades three through five
11 who are of limited English proficiency, as defined by Section
12 29.052, whose primary language is Spanish, and who are not
13 otherwise exempt from the administration of an assessment
14 instrument under Section 39.027(a)(1) or (2). Each student of
15 limited English proficiency whose primary language is Spanish,
16 other than a student to whom Subsection (b) applies, may be assessed
17 using assessment instruments in Spanish under this subsection for
18 up to three years or assessment instruments in English under
19 Subsection (a). The language proficiency assessment committee
20 established under Section 29.063 shall determine which students are
21 administered assessment instruments in Spanish under this
22 subsection.

23 (m) The commissioner by rule shall develop procedures under
24 which the language proficiency assessment committee established
25 under Section 29.063 shall determine which students are exempt from
26 the administration of the assessment instruments under Section
27 39.027(a)(1) or (2). The rules adopted under this subsection shall

1 ensure that the language proficiency assessment committee provides
2 that the exempted students are administered the assessment
3 instruments under Subsections (a) and (c) at the earliest practical
4 date.

5 (n) This subsection applies only to a student who is
6 determined to have dyslexia or a related disorder and who is an
7 individual with a disability under 29 U.S.C. Section 705(20) and
8 its subsequent amendments. The agency shall adopt or develop
9 appropriate criterion-referenced assessment instruments designed
10 to assess the ability of and to be administered to each student to
11 whom this subsection applies for whom the assessment instruments
12 adopted under Subsection (a), even with allowable modifications,
13 would not provide an appropriate measure of student achievement, as
14 determined by the committee established by the board of trustees of
15 the district to determine the placement of students with dyslexia
16 or related disorders. The committee shall determine whether any
17 allowable modification is necessary in administering to a student
18 an assessment instrument required under this subsection. The
19 assessment instruments required under this subsection shall be
20 administered on the same schedule as the assessment instruments
21 administered under Subsection (a).

22 (p) On or before September 1 of each year, the commissioner
23 shall make the following information available on the agency's
24 Internet website for each assessment instrument administered under
25 Subsection (a), (c), or (l):

26 (1) the number of questions on the assessment
27 instrument;

1 (2) the number of questions that must be answered
2 correctly to achieve satisfactory performance as determined by the
3 commissioner under Section 39.0241(a);

4 (3) the number of questions that must be answered
5 correctly to achieve satisfactory performance under the college
6 readiness performance standard as provided by Section 39.0241; and

7 (4) the corresponding scale scores.

8 SECTION 3. (a) Except as otherwise provided by this Act,
9 this Act takes effect on any date not later than September 1, 2015,
10 on which the commissioner of education:

11 (1) obtains any necessary waiver from the application
12 of federal law or regulation conflicting with Section 39.023,
13 Education Code, as amended by this Act, as required by Section
14 39.023(a-9), Education Code, as added by this Act; or

15 (2) receives written notification from the United
16 States Department of Education that a waiver is not required.

17 (b) This Act applies beginning with the first school year
18 that begins after the date on which this Act takes effect under
19 Subsection (a) of this section.

20 (c) If the commissioner of education obtains any necessary
21 waiver or receives written notification as described by Subsection
22 (a) of this section, the commissioner shall certify that the
23 commissioner has obtained the waiver or received notification that
24 a waiver is not required, as applicable, and shall publish notice of
25 that fact in the Texas Register as soon as practicable after
26 obtaining the waiver or receiving notification.

David Newhall

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 866 was passed by the House on May 3, 2013, by the following vote: Yeas 142, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 866 on May 23, 2013, by the following vote: Yeas 146, Nays 0, 2 present, not voting.

Robert Honey

Chief Clerk of the House

I certify that H.B. No. 866 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 29, Nays 2.

Patsy Spaw

Secretary of the Senate

APPROVED: 14 JUNE '13

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10pm O'CLOCK

JUN 14 2013

[Signature]
Secretary of State