

1-1 By: Paxton S.B. No. 1261
1-2 (In the Senate - Filed February 27, 2023; March 9, 2023,
1-3 read first time and referred to Committee on Education;
1-4 April 24, 2023, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 12, Nays 0; April 24, 2023,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Creighton	X			
1-9 Campbell	X			
1-10 Bettencourt	X			
1-11 Birdwell			X	
1-12 Flores	X			
1-13 King	X			
1-14 LaMantia	X			
1-15 Menéndez	X			
1-16 Middleton	X			
1-17 Parker	X			
1-18 Paxton	X			
1-19 Springer	X			
1-20 West	X			
1-21				

1-22 COMMITTEE SUBSTITUTE FOR S.B. No. 1261 By: Campbell

1-23 A BILL TO BE ENTITLED
1-24 AN ACT

1-25 relating to accelerated instruction provided to public school
1-26 students who fail to achieve satisfactory performance on certain
1-27 assessment instruments.

1-28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-29 SECTION 1. The heading to Section 28.0211, Education Code,
1-30 is amended to read as follows:

1-31 Sec. 28.0211. [ACCELERATED LEARNING COMMITTEE;]
1-32 ACCELERATED INSTRUCTION; MODIFIED TEACHER ASSIGNMENT.

1-33 SECTION 2. Section 28.0211, Education Code, is amended by
1-34 amending Subsections (a), (a-1), (a-4), (a-5), (f), (f-1), (f-2),
1-35 (f-3), (g), (h), (i), (j), (k), and (n) and adding Subsections
1-36 (a-7), (a-8), (a-9), (a-10), (a-11), (a-12), (a-13), (b), (b-1),
1-37 (i-1), (l), (q), and (r) to read as follows:

1-38 (a) To ensure that each student achieves at least
1-39 satisfactory performance on each assessment instrument
1-40 administered under Section 39.023, a [A] school district shall
1-41 ensure that the district's curricular and instructional systems
1-42 provide instruction to all students that:

1-43 (1) is consistently aligned with the essential
1-44 knowledge and skills for the applicable subject area and grade
1-45 level; and

1-46 (2) strategically and timely addresses deficiencies
1-47 in the prerequisite essential knowledge and skills for the
1-48 applicable subject area and grade level [establish an accelerated
1-49 learning committee described by Subsection (c) for each student who
1-50 does not perform satisfactorily on:

1-51 [(1) the third grade mathematics or reading assessment
1-52 instrument under Section 39.023;

1-53 [(2) the fifth grade mathematics or reading assessment
1-54 instrument under Section 39.023; or

1-55 [(3) the eighth grade mathematics or reading
1-56 assessment instrument under Section 39.023].

1-57 (a-1) Each time a student fails to perform satisfactorily on
1-58 an assessment instrument administered under Section 39.023(a) or
1-59 (1) in the third, fourth, fifth, sixth, seventh, or eighth grade or
1-60 an end-of-course assessment instrument administered under Section

2-1 39.023(c), other than an assessment instrument developed or adopted
 2-2 based on alternative academic achievement standards, the school
 2-3 district in which the student attends school shall provide to the
 2-4 student accelerated instruction in the applicable subject area
 2-5 during the subsequent summer or school year and, subject to
 2-6 Subsection (a-7), either:

2-7 (1) allow the student to be assigned a classroom
 2-8 teacher who is certified as a master, exemplary, or recognized
 2-9 teacher under Section 21.3521 for the subsequent school year in the
 2-10 applicable subject area; or

2-11 (2) provide the student supplemental instruction
 2-12 under Subsection (a-4).

2-13 (a-4) If a district receives funding under Section 29.0881
 2-14 or 48.104, the Coronavirus Response and Relief Supplemental
 2-15 Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260), or the
 2-16 American Rescue Plan Act of 2021 (Pub. L. No. 117-2), then
 2-17 supplemental instruction provided by a school district under
 2-18 Subsection (a-1)(2) must:

2-19 (1) include targeted instruction in the essential
 2-20 knowledge and skills for the applicable grade levels and subject
 2-21 area;

2-22 (2) be provided in addition to instruction normally
 2-23 provided to students in the grade level in which the student is
 2-24 enrolled;

2-25 (3) be provided [~~for no less than 30 total hours~~]
 2-26 during the subsequent summer or school year:

2-27 (A) to each student for no less than:

2-28 (i) 15 hours; or

2-29 (ii) 30 hours for a student whose

2-30 performance on the applicable assessment instrument was
 2-31 significantly below satisfactory, as defined by commissioner rule;

2-32 (B) for an average of no less than 30 hours per
 2-33 student for all students receiving supplemental instruction; and

2-34 (C) [–] unless the instruction is provided to a
 2-35 student fully during summer, [include instruction] no less than
 2-36 once per week during the school year, except as otherwise provided
 2-37 by commissioner rule to account for school holidays or shortened
 2-38 school weeks;

2-39 (4) be designed to assist the student in achieving
 2-40 satisfactory performance in the applicable grade level and subject
 2-41 area;

2-42 (5) include effective instructional materials
 2-43 designed for supplemental instruction;

2-44 (6) be provided to a student individually or in a group
 2-45 of no more than four [~~three~~] students, unless the parent or guardian
 2-46 of each student in the group authorizes a larger group;

2-47 (7) be provided by a person with training in the
 2-48 applicable instructional materials for the supplemental
 2-49 instruction and under the oversight of the school district; and

2-50 (8) to the extent possible, be provided by one person
 2-51 for the entirety of the student's supplemental instruction period.

2-52 (a-5) Each school district shall establish a process
 2-53 allowing for the parent or guardian of a student who fails to
 2-54 perform satisfactorily on an assessment instrument specified under
 2-55 Subsection (a-1) [a] to make a request for district consideration
 2-56 that the student be assigned to a particular classroom teacher in
 2-57 the applicable subject area for the subsequent school year, if more
 2-58 than one classroom teacher is available.

2-59 (a-7) The requirements under Subsection (a-1)(1) or (2) do
 2-60 not apply to a student who is retained at a grade level for the
 2-61 school year in which those requirements would otherwise apply.

2-62 (a-8) A parent or guardian of a student to whom supplemental
 2-63 instruction will be provided under Subsection (a-1)(2) and who
 2-64 either was administered and failed to perform satisfactorily on an
 2-65 assessment instrument specified under Subsection (a-1) or was
 2-66 administered a beginning-of-year assessment instrument aligned
 2-67 with the essential knowledge and skills for the applicable subject
 2-68 area, including a student to whom Subsection (b) applies, may elect
 2-69 to reduce or remove a requirement for that instruction under

Subsection (a-4) by submitting a written request to the school district. 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:

student; or (1) not provide supplemental instruction to the
(2) provide supplemental instruction in a group larger

(2) provide supplemental instruction in a group larger than authorized under Subsection (a-4)(6).

(a-9) 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).

(a-10) The agency shall approve one or more automated or other augmented methods 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 method under this subsection only if evidence indicates that the method is more effective than the individual or group instruction required under Subsection (a-4)(6). The commissioner shall adopt rules regarding when a method approved under this subsection may be used and the requirements under Subsection (a-4) for which the method may be substituted.

(a-11) For the purpose of providing tutoring services as part of the district's accelerated instruction program, 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-12) 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.

(a-13) A school district shall provide to the parent or guardian of a student who fails to perform satisfactorily on an 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, make a good faith effort to provide the notice in person. The agency shall develop and provide to school districts a model notice in plain language for use under this section.

(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, the school district the student attends shall develop an accelerated education plan as described by Subsection (f).

(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:

(1) the notice required under Subsection (a-13); and
(2) an explanation of:

(A) the accelerated instruction to which the student is entitled under this section; and
(B) the accelerated education plan that must be

(B) the accelerated education plan that must be developed for the student under Subsection (f) and the manner in

4-1 which the parent or guardian may participate in developing the
 4-2 plan.

4-3 (f) Not [An accelerated learning committee described by
 4-4 Subsection (c) shall, not] later than the start of the subsequent
 4-5 school year, a school district shall develop an accelerated
 4-6 education [educational] plan for each [the] student to whom
 4-7 Subsection (b) applies that provides the necessary accelerated
 4-8 instruction to enable the student to perform at the appropriate
 4-9 grade level by the conclusion of the school year. The plan:

4-10 (1) must:

4-11 (A) identify the reason the student did not
 4-12 perform satisfactorily on the applicable assessment instrument
 4-13 specified under Subsection (a-1); and

4-14 (B) notwithstanding Subsections (a-4)(3)(A) and
 4-15 (B), require the student to be provided with no less than 30 hours,
 4-16 or a greater number of hours if appropriate, of supplemental
 4-17 instruction under Subsection (a-4) for each consecutive school year
 4-18 in which the student does not perform satisfactorily on the
 4-19 assessment instrument in the applicable subject area specified
 4-20 under Subsection (a-1); and

4-21 (2) may require that, as appropriate to ensure the
 4-22 student performs satisfactorily on the assessment instrument in the
 4-23 applicable subject area specified under Subsection (a-1) at the
 4-24 next administration of the assessment instrument:

4-25 (A) notwithstanding Subsection (a-4)(6), the
 4-26 student be provided supplemental instruction under Subsection
 4-27 (a-4) individually or in a group of fewer than four students;

4-28 (B) the district expand the times in which
 4-29 supplemental instruction under Subsection (a-4) is available to the
 4-30 student;

4-31 (C) the student be assigned for the school year
 4-32 to a specific teacher who is better able to provide accelerated
 4-33 instruction; and

4-34 (D) the district provide any necessary
 4-35 additional resources to the student.

4-36 (f-1) The accelerated education [educational] plan under
 4-37 Subsection (f) must be documented in writing, and a copy must be
 4-38 provided to the student's parent or guardian.

4-39 (f-2) During the school year, the student shall be monitored
 4-40 to ensure that the student is progressing in accordance with the
 4-41 accelerated education plan developed under Subsection (f). The
 4-42 district shall administer to the student the assessment instrument
 4-43 for the grade level in which the student is placed at the time the
 4-44 district regularly administers the assessment instruments for that
 4-45 school year.

4-46 (f-3) The board of trustees of each school district shall
 4-47 adopt a policy consistent with the grievance procedure adopted
 4-48 under Section 26.011 to allow a parent to contest the content or
 4-49 implementation of an accelerated education [educational] plan
 4-50 developed under Subsection (f).

4-51 (g) This section does not preclude the retention at a grade
 4-52 level, in accordance with state law or school district policy, of a
 4-53 student who performs satisfactorily on an assessment instrument
 4-54 specified under Subsection (a-1) [(a)].

4-55 (h) In each instance under this section in which a school
 4-56 district is specifically required to provide notice or a written
 4-57 copy to a parent or guardian of a student, the district shall make a
 4-58 good faith effort to ensure that such notice or copy is provided
 4-59 either in person or by regular mail and that the notice or copy is
 4-60 clear and easy to understand and is written in English or the parent
 4-61 or guardian's native language.

4-62 (i) The admission, review, and dismissal committee of a
 4-63 student who participates in a district's special education program
 4-64 under Subchapter A, Chapter 29, and who does not perform
 4-65 satisfactorily on an assessment instrument specified under
 4-66 Subsection (a-1) [(a) and administered under Section 39.023(a) or
 4-67 (b)] must [meet to] determine the manner in which the student will
 4-68 participate in an accelerated instruction program under this
 4-69 section. For a student for whom the committee determines

5-1 participation in the required tutoring model for supplemental
 5-2 instruction under Subsection (a-4) is not appropriate, the
 5-3 committee must review the student's individualized education plan
 5-4 and adjust the plan as appropriate to target the areas in which the
 5-5 student did not perform satisfactorily on the assessment
 5-6 instrument.

5-7 (i-1) If a student who attends school in a homebound or
 5-8 other off-campus instructional arrangement is unable to
 5-9 participate in an accelerated instruction program required under
 5-10 this section due to the student's medical condition, the school
 5-11 district may determine that the student be provided the accelerated
 5-12 instruction when the student attends school in an on-campus
 5-13 instructional setting. If the student's medical condition prevents
 5-14 the student from attending school in an on-campus instructional
 5-15 setting for the school year during which the accelerated
 5-16 instruction is required to be provided to the student, the district
 5-17 is not required to provide the accelerated instruction to the
 5-18 student for that school year.

5-19 (j) A school district or open-enrollment charter school
 5-20 shall provide students required to attend accelerated programs
 5-21 under this section with transportation to those programs if the
 5-22 programs occur outside of regular school hours, unless the district
 5-23 or school does not operate, or contract or agree with another entity
 5-24 to operate, a transportation system.

5-25 (k) The commissioner may adopt rules as necessary to
 5-26 implement this section, including rules for required reporting
 5-27 necessary to support student transfers.

5-28 (l) The agency shall monitor and evaluate the effectiveness
 5-29 of the accelerated instruction required under this section.

5-30 (n) Except as requested under Subsection (a-5) or provided
 5-31 by Subsection (n-1), a student for whom an accelerated education
 5-32 plan must be developed [who fails to perform satisfactorily on an
 5-33 assessment instrument specified] under Subsection (b) [(a) and is
 5-34 promoted to the next grade level] must be assigned, in each [the
 5-35 subsequent] school year and [in each] subject covered by the
 5-36 accelerated education plan, [in which the student failed to perform
 5-37 satisfactorily on an assessment instrument specified under
 5-38 Subsection (a)] to an appropriately certified teacher who meets all
 5-39 state and federal qualifications to teach that subject and grade.

5-40 (q) The commissioner may waive the requirements under this
 5-41 section regarding accelerated instruction for a school district for
 5-42 each school year in which at least 60 percent of the students who
 5-43 received accelerated instruction during the school year
 5-44 immediately preceding the previous school year, including at least
 5-45 60 percent of students whose performance on the applicable
 5-46 assessment instrument was significantly below satisfactory, as
 5-47 defined by commissioner rule, performed satisfactorily in the
 5-48 previous school year on the assessment instrument in each subject
 5-49 in which the student previously failed to perform satisfactorily.
 5-50 For purposes of determining whether a school district qualifies for
 5-51 a waiver under this subsection, the commissioner shall:

5-52 (1) if a student received accelerated instruction in
 5-53 more than one subject during the applicable school year, consider
 5-54 the student's performance on the assessment instrument in each
 5-55 subject separately from the student's performance on the assessment
 5-56 instrument for each other subject; and

5-57 (2) by rule provide that a school district may not
 5-58 qualify for a waiver if students who are receiving special
 5-59 education services or are educationally disadvantaged are
 5-60 overrepresented among the students in the district who received
 5-61 accelerated instruction during the school year immediately
 5-62 preceding the previous school year and did not perform
 5-63 satisfactorily in the previous school year on the assessment
 5-64 instrument in each applicable subject.

5-65 (r) Not later than the beginning of each school year, the
 5-66 commissioner shall publish a list of school districts that qualify
 5-67 for a waiver under Subsection (q).

5-68 SECTION 3. Section 29.0881(e), Education Code, is amended
 5-69 to read as follows:

(e) A school district or open-enrollment charter school that receives grant funds under this section may use the funds to:

- (1) financially support or train or otherwise prepare educators and other staff;
- (2) pay for agreements with other entities to provide prekindergarten services; or
- (3) pay for accelerated instruction provided under Section 28.0211 ~~or 28.0217~~.

SECTION 4. Section 39.025(b-1), Education Code, is amended to read as follows:

(b-1) A school district shall provide each student who fails to perform satisfactorily as determined by the commissioner under Section 39.0241(a) on an end-of-course assessment instrument with accelerated instruction under Section 28.0211 [28.0217] in the subject assessed by the assessment instrument.

SECTION 5. The following provisions of the Education Code are repealed:

(1) Sections 28.0211(c), (f-4), and (f-5); and
(2) Section 28.0217.

SECTION 6. 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.

SECTION 7. The repeal by this Act of Section 28.0217, Education Code, applies beginning with the 2023-2024 school year.

SECTION 8. (a) Notwithstanding any other section of this Act, in a state fiscal year, the Texas Education Agency is not required to implement a provision found in another section of this Act that is drafted as a mandatory provision imposing a duty on the agency to take an action unless money is specifically appropriated to the agency for that fiscal year to carry out that duty. The Texas Education Agency may implement the provision in that fiscal year to the extent other funding is available to the agency to do so.

(b) If, as authorized by Subsection (a) of this section, the Texas Education Agency does not implement the mandatory provision in a state fiscal year, the agency, in its legislative budget request for the next state fiscal biennium, shall certify that fact to the Legislative Budget Board and include a written estimate of the costs of implementing the provision in each year of that next state fiscal biennium.

(c) This section and the suspension of the Texas Education Agency's duty to implement a mandatory provision of this Act, as provided by Subsection (a) of this section, expires and the duty to implement the mandatory provision resumes on September 1, 2027.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

* * * *