

## **BILL ANALYSIS**

Senate Research Center  
88R26122 KJE-F

C.S.H.B. 1416  
By: Bell, Keith et al. (Paxton)  
Education  
5/11/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

For over 20 years, when students score below grade level on the state's end-of-year test (currently STAAR), Texas law has required school districts to provide "accelerated instruction" in an effort to help students pass the test the following year and get them caught up.

In the wake of the COVID-19 pandemic, the 87th Legislature passed H.B. 4545, which prescribed specific "supplemental instruction" tutoring requirements. School districts reported multiple implementation challenges, including meeting requirements and staffing concerns.

This bill addresses the implementation barriers and complications experienced by school districts to provide additional flexibility and local control for schools without compromising the quality or availability of the much-needed high-impact tutoring for students recovering from COVID learning loss.

(Original Author's/Sponsor's Statement of Intent)

The committee substitute for H.B. 1416 aligns the bill with the amendments made to its companion, S.B. 1261. The differences between the proposed substitute and C.S.S.B. 1261 are:

If a student fails to perform satisfactorily on more than two state assessments, the student's supplemental instruction will prioritize reading and/or math, as appropriate for the student's academic needs. A student will receive supplemental instruction in a maximum of two subjects.

Removes the requirement for school districts to maintain a district-wide average of 30 hours of supplemental instruction.

Clarifies that "computerized" methods for providing supplemental instruction are options for the waiver for utilizing automated or augmented methods.

Further fine-tuning of the provisions for special education and homebound students.

Parents have the broader right to "modify" their child's supplemental instruction, not just to "reduce or remove."

Simplifies the process for parents to modify supplemental instruction by allowing the request to be submitted to the student's campus (rather than at the school district level).

Corrects drafting errors.

C.S.H.B. 1416 amends current law relating to accelerated instruction provided to public school students who fail to achieve satisfactory performance on certain assessment instruments.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 28.0211, Education Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 28.0211, Education Code, to read as follows:

Sec. 28.0211. ACCELERATED INSTRUCTION; MODIFIED TEACHER ASSIGNMENT.

SECTION 2. Amends Section 28.0211, Education Code by amending Subsections (a), (a-1), (a-4), (a-5), (f), (f-1), (f-2), (f-3), (g), (h), (i), (j), (k), and (n) and adding Subsections (a-7), (a-8), (a-9), (a-10), (a-11), (a-12), (a-13), (a-14), (b), (b-1), (i-1), (l), (q), and (r), as follows:

(a) Requires a school district, to ensure that each student achieves at least satisfactory performance on each assessment instrument administered under Section 39.023 (Adoption and Administration of Instruments), to ensure that the district's curricular and instructional systems provide instruction to all students that:

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

(2) strategically and timely addresses deficiencies in the prerequisite essential knowledge and skills for the applicable subject area and grade level.

Deletes existing text requiring a school district to establish an accelerated learning committee described by Subsection (c) (relating to requiring an accelerated learning committee to be established after a student fails to perform satisfactorily on an assessment instrument) for each student who does not perform satisfactorily on the third grade mathematics or reading assessment instrument under Section 39.023, the fifth grade mathematics or reading assessment instrument under Section 39.023, or the eighth grade mathematics or reading assessment instrument 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) (relating to requiring the Texas Education Agency (TEA) to adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in certain areas) or (l) (relating to requiring the State Board of Education to adopt rules for the administration of certain assessment instruments to bilingual students) in the third, fourth, fifth, sixth, seventh, or eighth grade or an end-of-course assessment instrument administered under Section 39.023(c) (relating to requiring TEA to adopt end-of-course assessment instruments for certain secondary-level courses), other than an assessment instrument developed or adopted based on alternative academic achievement standards, to 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:

(1)-(2) makes no changes to these subdivisions.

(a-4) Provides that if a district receives funding under Section 29.0881 (Strong Foundations Grant Programs) or 48.104 (Compensatory Education Allotment), 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) is required to:

(1)-(2) makes no changes to these subdivisions;

(3) be provided, rather than be provided for no less than 30 total hours, during the subsequent summer or school year:

(A) to each student for no less than:

(i) 15 hours; or

(ii) 30 hours for a student whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner of education (commissioner) rule;

(B) unless the instruction is provided to a student fully during summer, no less than once per week during the school year, rather than include instruction 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;

(4)-(5) makes no changes to these subdivisions;

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

(7)-(8) makes no changes to these subdivisions.

(a-5) Requires each school district to 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), rather than Subsection (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-7) Provides that the requirements under Subsection (a-1)(1) (relating to requiring the school district in which a student attends school to allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher) or (2) (relating to requiring the school district in which a student attends school to provide certain supplemental instruction) do not apply to a student who is retained at a grade level for the school year in which those requirements would otherwise apply.

(a-8) Prohibits a school district from being required to provide supplemental instruction under Subsection (a-1)(2) to a student in more than two subject areas per school year. Requires the district, if the district would otherwise be required to provide supplemental instruction to a student in more than two subject areas for a school year, to 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.

(a-9) Authorizes 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, to 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. Prohibits a school district from encouraging or directing a parent or guardian to make an election under this subsection that would allow the district to:

(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-10) Provides that 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 TEA 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-11) Requires TEA to approve one or more products that use an automated, computerized, or other augmented method for providing supplemental instruction under Subsection (a-1)(2) that is authorized to 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. Authorizes TEA to approve a method 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). Requires the commissioner to adopt rules regarding when a method approved under Subsection (a-4) for which the product is authorized to be substituted.

(a-12) Authorizes a school district, for the purpose of providing accelerated instruction or supplemental instruction under this section, to use a service provider that is not on a list of service providers approved by TEA if the district can demonstrate to the commissioner that use of the service provider results in measurable improvement in student outcomes.

(a-13) Provides that 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-14) Requires a school district to 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. Requires the district, notwithstanding Subsection (h), to 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. Requires TEA to develop and provide to school districts a model notice in plain language for use under this section.

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

(b-1) Requires a school district to 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. Requires the district, at the conference, to 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 is required to be developed for the student under Subsection (f) and the manner in which the parent or guardian is authorized to participate in developing the plan.

(f) Requires a school district, not later the start of the subsequent school year, to develop an accelerated education plan for each 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. Provides that the plan:

(1) is required to:

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

(B) notwithstanding Subsections (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) is authorized to 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:

(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.

Deletes existing text requiring an accelerated learning committee described by Subsection (c), 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.

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

(f-2) Requires the student, during the school year, to be monitored to ensure that the student is progressing in accordance with the accelerated education plan developed under Subsection (f). Deletes existing text requiring the district to 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.

(f-3) Requires the board 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 accelerated education, plan, rather than an educational plan, developed under Subsection (f).

(g) Provides that 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), rather than Subsection (a).

(h) Requires the district, 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, to 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.

(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, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a-1), to, 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). Authorizes the student's parent to request, or the district to 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. Requires the district, if the district refuses to convene a committee meeting requested by the student's parent under this subsection, to provide the parent with written notice explaining the reason the district refuses to convene the meeting.

Deletes existing text requiring 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) and administered under Section 39.023(a) or (b) (relating to requiring TEA to develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to certain students) to meet to determine the manner in which the student will participate in an accelerated instruction program under this section.

(i-1) Authorizes a school district, 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 medical condition, to determine that the student be provided the accelerated instruction when the student attends school in an on-campus instructional setting. Provides that if the student's medical 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.

(j) Requires a school district or open-enrollment charter school to 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.

(k) Authorizes the commissioner to adopt rules as necessary to implement this section, including rules for required reporting necessary to support student transfers.

(l) Requires TEA to monitor and evaluate the effectiveness of the accelerated instruction required under this section.

(n) Requires a student for whom an accelerated education plan is required to be developed under Subsection (b), except as requested under Subsection (a-5) or provided by Subsection (n-1) (relating to authorizing the commissioner to 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), to 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.

Deletes existing text requiring a student who fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and is promoted to the next grade level, except as provided by Subsection (n-1), to be assigned, 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 an appropriately certified teacher who meets all state and federal qualifications to teach that subject and grade.

(q) Authorizes the commissioner to 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. Requires the commissioner, for purposes of determining whether a school district qualifies for a waiver under this subsection, to:

(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

(2) by rule provide that a school district is prohibited from qualifying 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.

(r) Requires the commissioner, not later than the beginning of each year, to publish a list of school districts that qualify for a waiver under Subsection (q).

SECTION 3. Amends Section 29.0881(e), Education Code, as follows:

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

(1)-(2) makes no changes to these subdivisions; or

(3) pay for accelerated instruction provided under Section 28.0211, rather than Section 28.0211 or 28.0217 (Accelerated Instruction for High School Students).

SECTION 4. Amends Section 39.025(b-1), Education Code, as follows:

(b-1) Requires a school district to provide each student who fails to perform satisfactorily as determined by the commissioner under Section 39.0241(a) (relating to requiring the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments) on an end-of-course assessment instrument with accelerated instruction under Section 28.0211, rather than Section 28.0217, in the subject assessed by the assessment instrument.

SECTION 5. Repealers: Sections 28.0211(c) (relating to requiring an accelerated learning committee to be established after a student fails to perform satisfactorily on certain assessment instruments) and (f-4) (relating to requiring the superintendent of the district, or the superintendent's designee, to meet with the student's accelerated learning committee if a student who fails to perform satisfactorily on a specific assessment instrument fails in the subsequent school year to perform satisfactorily on an assessment instrument in the same subject), Education Code.

Repealers: Section 28.0211(f-5) (relating to authorizing the superintendent's designee to be an employee of a regional education service center and prohibiting the superintendent's designee from being a person who served on the student's accelerated learning committee) and Section 28.0217 (Accelerated Instruction for High School Students), Education Code.

SECTION 6. Provides that 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. Provides that the repeal by this Act of Section 28.0217, Education Code, applies beginning with the 2023–2024 school year.

SECTION 8. (a) Provides that TEA, notwithstanding any other section of this Act, in a state fiscal year, 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 TEA to take an action unless money is specifically appropriated to TEA for that fiscal year to carry out that duty. Authorizes TEA to implement the provision in that fiscal year to the extent other funding is available to TEA to do so.

(b) Requires TEA, if, as authorized by Subsection (a) of this section, TEA does not implement the mandatory provision in a state fiscal year, in its legislative budget request for the next state fiscal biennium, to 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) Provides that this section and the suspension of TEA'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. Effective date: upon passage or September 1, 2023.