

COMPENSATORY SERVICES AND INTENSIVE PROGRAMS
ACCELERATED INSTRUCTION

EHBCA
(LEGAL)

**Accelerated
Instruction**

To ensure that each student achieves at least satisfactory performance on each state assessment instrument, a district shall ensure that the district's curricular and instructional systems provide instruction to all students that is consistently aligned with the essential knowledge and skills for the applicable subject area and grade level; and strategically and timely addresses deficiencies in the prerequisite essential knowledge and skills for the applicable subject area and grade level. *Education Code 28.0211(a)*

Each time a student fails to perform satisfactorily on a state assessment instrument, the district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to certain exceptions, below, either:

1. Allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under the local optional teacher designation system [see DEAA] for the subsequent school year in the applicable subject area; or
2. Provide the student supplemental instruction under Education Code 28.0211(a-4) [see Supplemental Instruction Requirements, below].

The assessments in this provision include a state assessment instrument administered under Education Code 39.021(a) [see EKB] in third through eighth grade or an end-of-course assessment instrument. The assessments also include a Spanish assessment for emergent bilingual students but exclude an assessment instrument developed or adopted based on alternative academic achievement standards.

Education Code 28.0211(a-1)

Exceptions

Accelerated instruction requirements 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 district may not be required to provide supplemental instruction to a student in more than two subject areas per school year. If the district would otherwise be required to provide supplemental instruction to a student in more than two subject areas for a school year, the district shall 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.

Education Code 28.0211(a-7)-(a-8)

A district is not required to provide accelerated instruction to a student who, instead of being administered an assessment instrument

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specified above, was administered a substitute assessment instrument in accordance with other law or Texas Education Agency (TEA) rule authorizing the use of the substitute assessment instrument for purposes of satisfying the requirements concerning the applicable assessment instrument. *Education Code 28.0211(a-10)*

Off-Campus
Arrangements

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 due to the student's condition, the district may determine that the student be provided the accelerated instruction when the student attends school in an on-campus instructional setting. If the student's 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. *Education Code 28.0211(i-1)*

Participation
Requirements

Supplemental accelerated instruction may require a student to participate before or after normal school hours and may include participation at times of the year outside normal school operations. 19 *TAC 104.1001(c)*

In providing accelerated instruction, a district may not remove a student, except under circumstances for which a student enrolled in the same grade level who is not receiving accelerated instruction would be removed, from:

1. Instruction in the foundation curriculum and enrichment curriculum adopted under Education Code 28.002 for the grade level in which the student is enrolled [see EHA series]; or
2. Recess or other physical activity that is available to other students enrolled in the same grade level.

Education Code 28.0211(a-3)

The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.

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In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for supplemental accelerated instruction. [See Supplemental Instruction Requirements for Certain Funding, item 3, below.]

19 TAC 104.1001(c)

Supplemental
Instruction
Requirements

If a district receives funding under Education Code 29.0881 or Education Code 48.104 [see EHBC], 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 district must:

1. Include targeted instruction in the essential knowledge and skills for the applicable grade levels and subject area;
2. Be provided in addition to instruction normally provided to students in the grade level in which the student is enrolled;
3. Be provided during the subsequent summer or school year:
 - a. To each student for no less than:
 - (1) 15 hours; or
 - (2) 30 hours for a student whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule; and
 - b. Unless the instruction is provided fully during summer, 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. Be designed to assist the student in achieving satisfactory performance in the applicable grade level and subject area;
5. Include effective instructional materials designed for supplemental instruction;
6. Be provided to a student individually or in a group of no more than four students, unless the parent or guardian of each student in the group authorizes a larger group;
7. Be provided by a person with training in the applicable instructional materials for the supplemental instruction and under the oversight of the district; and

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8. To the extent possible, be provided by one person for the entirety of the student's supplemental instruction period.

Education Code 28.0211(a-4)

Parent Choice

A parent or guardian of a student to whom supplemental instruction will be provided and who either was administered and failed to perform satisfactorily on an assessment instrument specified above 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 an accelerated education plan applies, may elect to modify or remove a requirement for that instruction under Education Code 28.0211(a-4) by submitting a written request to an administrator of the campus at which the student is enrolled.

A district may not encourage or direct a parent or guardian to make an election under this provision that would allow the district to not provide supplemental instruction to the student or provide supplemental instruction in a group larger than authorized.

Education Code 28.0211(a-9)

Transportation

A district shall provide students required to attend the accelerated programs described above with transportation to those programs if the programs occur outside of regular school hours, unless the district does not operate, or contract or agree with another entity to operate, a transportation system. *Education Code 28.0211(j)*

Unlisted Service
Provider

A district may 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. *Education Code 28.0211(a-12)*

Optional
Assessment

A school district that is required to provide to a student accelerated instruction or supplemental instruction 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. *Education Code 28.0211(a-13)*

Notice to Parents

A district shall provide to the parent or guardian of a student who fails to perform satisfactorily on a state assessment instrument specified above notice that the student is not performing on grade level in the applicable subject area. 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, by another

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means. TEA shall develop and provide to districts a model notice in plain language for use under this provision. *Education Code 28.0211(a-14)*

In each instance in which a district is specifically required to provide notice or a written copy to a parent or guardian of a student, the district shall 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. *Education Code 28.0211(h)*

Parent Request

A district shall establish a process allowing for the parent or guardian of a student who fails to perform satisfactorily a state assessment instrument under Education Code 28.0211(a-1) [see above] 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. *Education Code 28.0211(a-5)*

**Assessments Not
Required**

Education Code 28.0211 does not require the administration of a fifth or eighth grade assessment instrument in a subject under Education Code 39.023(a) to a student enrolled in the fifth or eighth grade, as applicable, if the student:

1. Is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Education Code 39.023(a) [see EKB] that aligns with the curriculum for the course in which the student is enrolled; or
2. Is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course (EOC) assessment instrument [see EKB] for the course.

Notwithstanding any other provision of Education Code 28.0211, the student may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument not required to be administered to the student, nor may a student in grade 5 or grade 8 be denied promotion to the next grade on the basis of failure to perform satisfactorily on a reading or mathematics assessment instrument intended for use above the student's grade level.

Education Code 28.0211(o)-(p)

Students At Risk

A district shall provide accelerated instruction to an enrolled student who has taken an EOC assessment instrument and has not performed satisfactorily or who is at risk of dropping out of school [see EHBC].

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A district shall offer before the next scheduled administration of the assessment instrument, without cost to the student, additional accelerated instruction to each student in any subject in which the student failed to perform satisfactorily on an end-of-course assessment instrument required for graduation.

A district that is required to provide accelerated instruction must separately budget sufficient funds for that purpose. [See CE]

A district shall evaluate the effectiveness of accelerated instruction programs and annually hold a public hearing to consider the results.

Education Code 29.081(b), (b-1), (b-2), (b-3), 39.025(b-1)

Effectiveness

A district shall evaluate and document the effectiveness of the accelerated instruction in reducing any disparity in performance on state assessment instruments or disparity in the rates of high school completion between students at risk of dropping out of school and all other district students. *Education Code 29.081(c)*

**No Available Test
Score**

The superintendent of each district shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate supplemental accelerated instruction as warranted on an individual student basis. *19 TAC 104.1001(b)(4)*

**Accelerated
Education Plan**

For each student who does not perform satisfactorily on a state assessment instrument specified above for two or more consecutive school years in the same subject area, the district the student attends shall develop an accelerated education plan. *Education Code 28.0211(b)*

Not later than the start of the subsequent school year, a district shall develop an accelerated education plan for the student that provides the necessary accelerated instruction to enable the student to perform at the appropriate grade level or course by the conclusion of the school year.

The plan must:

1. Identify the reason the student did not perform satisfactorily on the applicable assessment instrument; and
2. Require the student to be provided with no less than 30 hours, or a greater number of hours if appropriate, of supplemental instruction for each consecutive school year in which the student does not perform satisfactorily on the assessment instrument in the applicable subject area.

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The plan may require that, as appropriate to ensure the student performs satisfactorily on the assessment instrument in the applicable subject area at the next administration of the assessment instrument:

1. The district expand the times in which supplemental instruction is available to the student;
2. The student be assigned for the school year to a specific teacher who is better able to provide accelerated instruction; and
3. The district provide any necessary additional resources to the student.

The accelerated education plan must be documented in writing, and a copy must be provided to the student's parent or guardian.

During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the accelerated education plan.

The board shall adopt a policy consistent with the grievance procedure adopted under Education Code 26.011 [see FNG] to allow a parent to contest the content or implementation of an accelerated education plan.

Education Code 28.0211(f)-(f-3)

Parent Conference

A district shall make a good faith attempt to provide to the parent or guardian of a student to whom an accelerated education plan 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 Education Code 28.0211(a-14); and
2. An explanation of:
 - a. The accelerated instruction to which the student is entitled under this provision, and
 - b. The accelerated education plan that must be developed for the student and the manner in which the parent or guardian may participate in developing the plan.

Education Code 28.0211(b-1)

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Classroom
Assignment

Except as requested under Education Code 28.0211(a-5), a student for whom an accelerated instructional plan must be developed must 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.

In a manner consistent with federal law and notwithstanding any other law, the commissioner may waive the requirement regarding the assignment of a student to an appropriately certified classroom teacher on the request of a district.

Education Code 28.0211(n)-(n-1)

**ARD Committee
Review**

The admission, review, and dismissal (ARD) committee of a student who does not perform satisfactorily on a state assessment instrument described above shall, at the student's next annual review meeting, review the student's participation and progress in, as applicable, accelerated instruction, supplemental instruction, or an accelerated education plan.

The student's parent may request, or the district may schedule, an additional committee meeting if a committee member believes that the student's individualized education program needs to be modified based on the accelerated instruction requirements. If the district refuses to convene a committee meeting requested by the student's parent, the district shall provide the parent with written notice explaining the reason the district refuses to convene the meeting.

Education Code 28.0211(i)

**Commissioner
Waiver**

The commissioner may waive the requirements regarding accelerated instruction for a 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. For purposes of determining whether a school district qualifies for a waiver, the commissioner shall:

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

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2. By rule provide that a district may not qualify 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.

Education Code 28.0211(q)