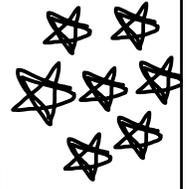


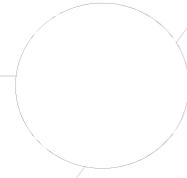
Addressing Failures on State Assessment and EOCs: HB 4545 and the Student with Special Needs



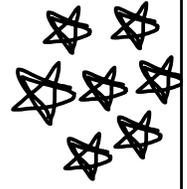
Jamie Turner



WALSH GALLEGOS
TREVINO KYLE & ROBINSON P.C.

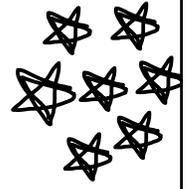


HB 4545



- What does HB 4545 require?
- How does that impact special education students?

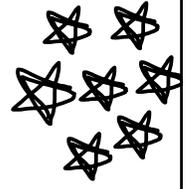




SOME HISTORY



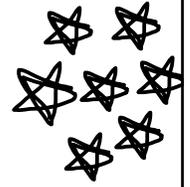
Historical Background



- Tex. Educ. Code 28.9211(a) required 5th and 8th graders to satisfactorily perform on math and reading statewide assessments in order to be promoted to the next grade
- School districts were required to provide “accelerated instruction” each time a student failed a required assessment in grades 3-8
- For 5th and 8th graders, grade placement committees had to convene after the second failure to perform satisfactorily
- If the child did not meet standard after 3 attempts, student would be retained



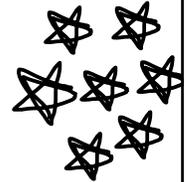
Historical Background



- Student's parent was allowed to appeal retention, which allowed the GPC to decide in favor of promotion under certain circumstances
- For students with an IEP, the ARD committee served as the GPC

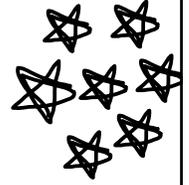


Important Terms

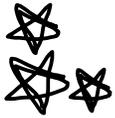


- Accelerated Instruction (AI) – Tex. Educ. Code 28.0211
 - Certified teacher (master, exemplary, or recognized) OR
 - Receiving SI
- Accelerated Learning Community (ALC)
- Supplemental Instruction (SI) – tutoring that meets 4545
- Intensive Programs of Instruction (IPI) – Tex. Educ. Code 28.0213

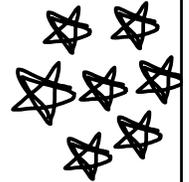




BILL ANALYSIS



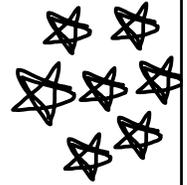
In Brief...



- Remove statutory requirements that 5th and 8th graders pass reading and math exams to be promoted
- Establish requirements to provide accelerated learning to students who failed an exam
- Create a grant program to help schools increase instructional rigor
- Provide outcomes funding for schools that met a certain level of student improvement on exams



Accelerated Learning Communities



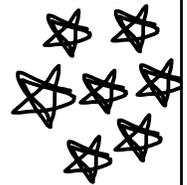
ALC would be established for each student who doesn't perform satisfactorily on state assessments in grades 3, 5, and 8 (math or reading exams)

ALCs would replace GPCs for students in 5th and 8th

ALC: principal (or designee), parent/guardian, and a teacher of the relevant subject



Accelerated Learning Communities



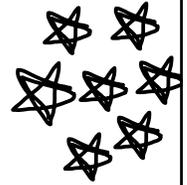
ALC would develop an educational plan for the student that would provide "necessary accelerated instruction not later than the start of the subsequent school year"

Written plan must be provided to parent/guardian

Board of Trustees would develop a policy similar to the grievance process for parents to contest the content or implementation of the educational plan



Accelerated Instruction

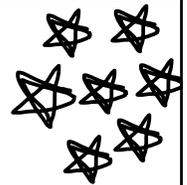


Students in 3-8 who did not perform satisfactorily with accelerated instruction during the subsequent summer or school year would be either:

- Assigned to a classroom teacher who is certified as a master, exemplary, or recognized teacher for the subsequent school year in the applicable subject area or
- Provided supplemental instruction (tutoring)



Accelerated Instruction



Cannot remove a student for Accelerated Instruction during

- Instruction for the current grade level
 - Foundation Curriculum
 - Enrichment Curriculum
- Recess or other physical activity

Accelerated instruction must be for no less than 30 hours during the subsequent summer or school year

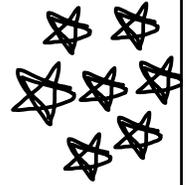
Ratio can be individually or in a group no more than 3

Teacher trained in instructional materials

Preference for one teacher for the entirety of the supplement instruction period



Accelerated Instruction

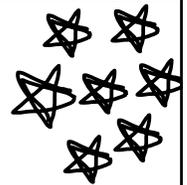


If more than one teacher is available to provide instruction in the area where the child did not meet standards, parents ~~could choose~~ can request the teacher who would provide instruction

AI required for high school students who did not meet standard for any of the 5 EOCs



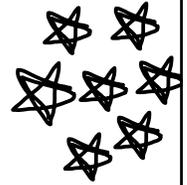
Strong Foundations Grant



- Program for pk-5th grade to implement “a rigorous school approach that combined high-quality instruction, materials, and support structures”
- In-kind resources, funds, or both
- Funds could be used to train educators or staff or pay for other entities to provide pre-k
- Intervention for low-performing schools



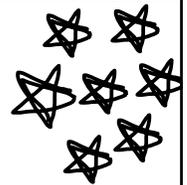
Outcomes Bonus / Instructional Materials



- Outcomes bonus under FSP for successfully accelerated students
- Commissioner could contract to provide items on behalf of school districts if the district dedicated local funds



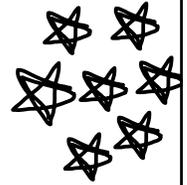
Proponents of HB 454



- ✓ Lower the high-stakes nature of STAAR exams because students would not be required to pass 5th and 8th grade exams to be promoted
- ✓ Improve accelerated learning
- ✓ Grant would assist schools implement high-quality instruction to approve student achievement



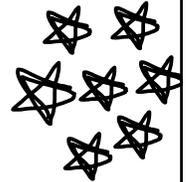
Not so fast.... Critics of HB 454



- ✓ Increased stakes of STAAR exams by driving funding to schools when students showed improvement
- ✓ Outcomes-based funding can create funding inequities and affect lower performing schools' ability to recruit and retain teachers

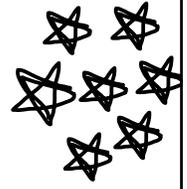


Estimated Cost



- ✓ LBB – negative impact of about \$227.6 million to general revenue through fiscal 2023

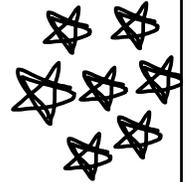




Enrolled Version



If funded, then some strings attached....

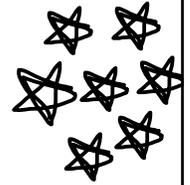


If a school receives funding under Coronavirus Response and Relief Supplemental Appropriations Act or the American Rescue Plan, the supplemental instruction must:

- Include targeted instruction in the TEKS for the applicable grade levels and subject area
- Be provided in addition to instruction normally provided to students



If funded, then some strings attached....

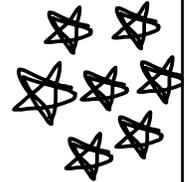


- No less than 30 hours
 - During summer or subsequent school year
 - If not all supplemental instruction is provided in the summer, then it must occur at least once per week during the school year
- Groups no larger than 3 (unless parents of each student agree to a larger group)
- Provided by an individual trained in aligned instructional materials
- To the extent possible, provided by one person for the entirety of the supplemental instructional period



WG

If AI not successful



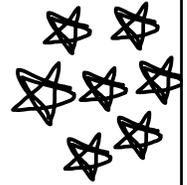
If AI is not successful and the child fails to perform satisfactorily in the subsequent year (in the same subject), the superintendent or designee shall meet with the committee to:

- Identify reasons student did not perform satisfactorily
- Determine whether
 - Education plan needs to be modified and
 - Any additional resources are needed
- Supt. designee cannot be a person that served on the ALC

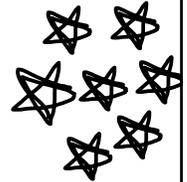


WG

If AI not successful



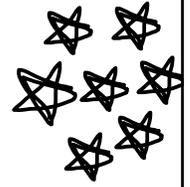
- Student must be assigned to an appropriately certified teacher in the subsequent school year (for that subject)
- Comm'r may waive requirement



SPECIAL EDUCATION AND 4545



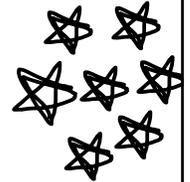
Can you use compensatory funds to pay AI required under HB 4545?



- Yes; may use LEA State Compensatory Education funds to fund supplemental programs and services under HB 4545



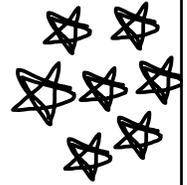
May an ARD committee waive or modify HB 4545 AI requirements?



- HB 4545 generally applies to all students
- If AI is required, the ARD must consider the individual needs of the student and determine whether adjustments to the AI plan are appropriate
- Supplemental instruction must be provided in accordance with HB 4545 unless a student's ARD has specifically determined that some or all of the supplemental instruction requirements would deny the student a FAPE



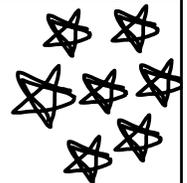
How do parents disagree with ARD determination regarding AI?



- If the parent doesn't agree with the AI proposed at the meeting, ARD disagreement procedures apply
- TEA FAQs reference following grievance policy if the ARD is acting as the ALC and parent using IDEA dispute resolution procedures to resolve issues arising under FAPE
 - Practical implications?



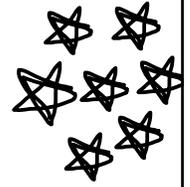
Do HB 4545 requirements apply to students who took STAAR Alt 2?



- Yes, for ALCs; ARD (acting as the ALC) must meet to determine the manner in which a student was unsuccessful in math and/or reading in grade 3, 5, and 8
- Specifications for AI look a bit different
- For no authentic academic response, ARD may determine to focus on strategies that focus on eliciting an authentic academic response



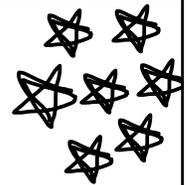
Do HB 4545 requirements apply to students who took STAAR Alt 2?



- No, for AI
- Accelerated instruction requirements do NOT apply to students eligible to participate in STAAR Alt 2



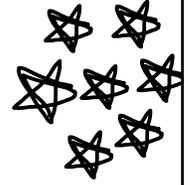
Where do we document AI?



- Can be included in deliberations of an IEP or as supplemental attachment



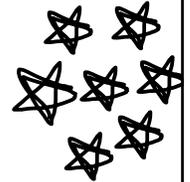
Would AI need to be documented in the IEP as IPI?



- No; the requirements for IPI still exist separate from the AI requirements
- Remember IPI is only for special education students
 - “to enable the student to attain a standard of growth on the basis of the student’s IEP”
 - Grades 3 – high school
 - STAAR & EOC (any subject, any form)
 - Includes not likely to graduated HS in 4 years



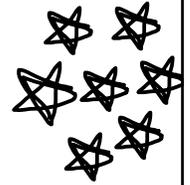
Do decisions of the ARD (serving as the ALC) require an ARD meeting?



- Yes; HB 4545 requires the ARD committee of a student served by special education to meeting and determine how the student will participate in an accelerated learning program
- ARD should include required members regarding the students AI program and document in the IEP



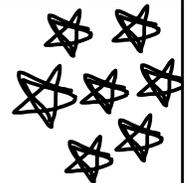
If no ALC is required, can an IEP amendment used to document AI?



- Yes; if the LEA and parents agree to the changes
- Can't do an IEP amendment if an ALC is required (3, 5, and 8 who were not successful in reading or math)



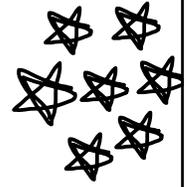
If ARD does not require passing EOC for graduation, is AI still required?



- Yes; HB 4545 AI must still be provided EVEN IF the ARD committee has determined the student does not need to pass the EOC in order to graduate
- If child does not retest, no further AI is required



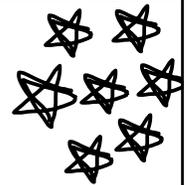
Are parents required to attend ARDs? What about teachers?



- When the ARD services as the ALC, LEAs must hold properly constituted ARDs in accordance with IDEA and state requirements
- Efforts must be made to ensure parental participation within the requirements of IDEA



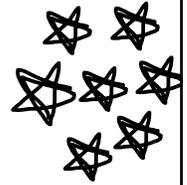
What about homebound students?



- - HB 4545 applies to all students
- LEA should prioritize health and safety of the student
- May require pausing the AI until the student is able to return to campus, sustain prolonged participation, etc.
- If student does not return to school during the current school year, required hours for AI do not carry forward to another school year



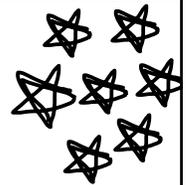
May IDEA part B funds be used for HB 4545 SI?



- Probably not, however...
- *If tutoring is used to help a student with disabilities struggling with required statewide assessment, the same fund source used for nondisabled students must be used for the student with disabilities. If the student with disabilities requires supplemental support while receiving tutoring services, the supplemental support can be paid from IDEA-B funds.*

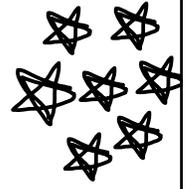


If the subject the child fails is in resource, can the resource teacher provide the AI?

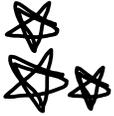


- If the resource teacher is appropriately certified under HB 4545 requirements, yes
- But...if LEA chooses to provide AI through SI, then SI must be provided in addition to regular instruction in accordance with their IEP

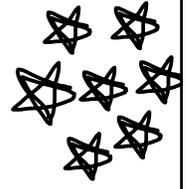




ADDITIONAL CONSIDERATIONS



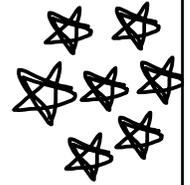
What is considered “performing satisfactorily”?



- Satisfactory (passing)
 - Approaches Grade Level
 - Meets Grade Level
 - Masters Grade Level
- Not satisfactory
 - Did Not Meet Grade Level
 - Did not test



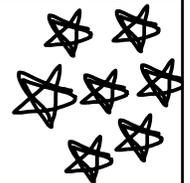
What funds can districts use to compensate teachers beyond standard duty for tutoring under HB454?



- State and local funds
- Title I, Part A funds*
- State compensatory education allotment
- ESSER funds



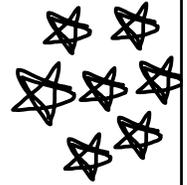
Implementation Timeline



- Effective on June 16, 2021
- Applies to AI required for or delivered during 2021-2022 school year
 - Evaluate spring 2021 STAAR scores to identify students requiring AI
- Boards need to adopt policies for contesting content or implementation of educational plans developed by ALCs



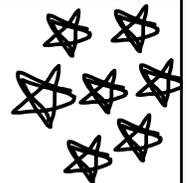
Implementation Timeline



- 2021-2022 School Year
 - AI delivered in 2021-2022 school year must be
 - 1) assigning a classroom teacher who is a certified master, exemplary, or recognized teacher OR
 - 2) delivering supplemental instruction before or after school, or embedded in the school day while still meeting HB 4545 requirements
- Starting in Summer 2022, ALCs must develop student plans during the summer and prior to the start of the school year



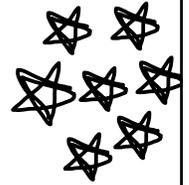
May a parent opt out of HB 4545 requirements?



- Treated like any other required instruction and subject to compulsory attendance requirements
- Statute lacks clarity
- How do we handle these types of issues locally?
- "School systems found to be intentionally discouraging parents from accessing curriculum or instructional services to which their students are entitled are subject to potential corrective actions and interventions by TEA"



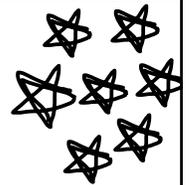
What if a student does not attend AI?



- Document efforts to communicate with parents regarding attendance for AI
- Consider keeping records of what was offered and how it was declined



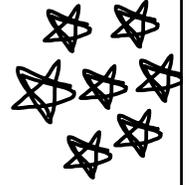
Speaking of Records / Documentation



- Districts need to forward documentation of AI to receiving school districts through TRex



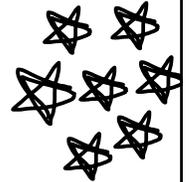
Which teacher / principal attends for ALC?



- Statute requires the teacher of the subject the student failed
- Some level of LEA discretion
- Recommended that receiving content teacher also participate
- May convene virtually
- Make reasonable substitutions for participants when appropriate
- Expert in the content area needs to be present



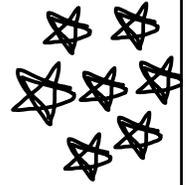
Enforcement



- TEA in 9/16/21 FAQ:
 - Acknowledging the difficulty of implementation...
 - “We do not plan to strictly enforce compliance in the first year, as long as districts are making reasonable efforts to meet the requirements and there is no evidence of willful non-compliance...”



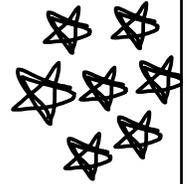
What if a student did not take STAAR in 2021?



- If student was absent and did not take the STAAR, student is required to receive AI
- Since Comm'r and Governor waived certain STAAR requirements in 2020-2021, schools may choose to administer an assessment to determine whether a student demonstrates grade level proficiency (must be TEKS-aligned)
- Still required to use 2021 scores UNLESS the student did not participate



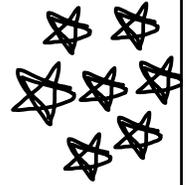
What if a student did not take STAAR in 2021?



- HB 4545 does not apply to students who attended out-of-state, private, or home schools during the previous school year



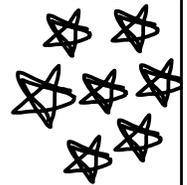
Can we stop AI once a student passes the STAAR EOC?



- YES!



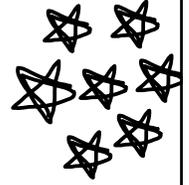
What about Individual Graduation Committees (IGCs)?



- Seniors going through IGC will be required to receive 30 hours of AI for each EOC the student does not pass
- Once the IGC accepts the project / portfolios as passing, the student will no longer be required to attend AI



Can supplemental instruction be provided virtually?



- Yes – but still must meet all the requirements of HB 4545, including student to teacher ratios
- TEA maintains a list of vetted tutoring programs



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