

By: González of El Paso

H.B. No. 166

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of an educational representative for
3 certain students with disabilities.

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

5 SECTION 1. Sections 29.017(a), (b), (c), and (c-2),
6 Education Code, are amended to read as follows:

7 (a) A student with a disability who is 18 years of age or
8 older or whose disabilities of minority have been removed for
9 general purposes under Chapter 31, Family Code, shall have the same
10 right to make educational decisions as a student without a
11 disability, except that the school district shall provide any
12 notice required by this subchapter or 20 U.S.C. Section 1415 to both
13 the student and the parents. All other rights accorded to parents
14 under this subchapter or 20 U.S.C. Section 1415 transfer to the
15 student or, if applicable, to the educational representative
16 appointed for the student under Section 29.0171.

17 (b) All rights accorded to parents under this subchapter or
18 20 U.S.C. Section 1415 transfer to a student [~~students~~] who is [~~are~~]
19 incarcerated in an adult or juvenile, state or local correctional
20 institution or, if applicable, to the educational representative
21 appointed for the student under Section 29.0171.

22 (c) Not later than one year before the 18th birthday of a
23 student with a disability, the school district at which the student
24 is enrolled shall:

1 (1) provide to the student and the student's parents:

2 (A) written notice regarding the transfer of
3 rights under this section; and

4 (B) information and resources regarding
5 guardianship, alternatives to guardianship, including a supported
6 decision-making agreement under Chapter 1357, Estates Code, the
7 appointment of an educational representative under Section
8 29.0171, and other supports and services that may enable the
9 student to live independently; and

10 (2) ensure that the student's individualized education
11 program includes a statement that the district provided the notice,
12 information, and resources required under Subdivision (1).

13 (c-2) If a student with a disability or the student's parent
14 requests information regarding guardianship, ~~[or]~~ alternatives to
15 guardianship, or the appointment of an educational representative
16 from the school district at which the student is enrolled, the
17 school district shall provide to the student or parent information
18 and resources on supported decision-making agreements under
19 Chapter 1357, Estates Code, and on the appointment of an
20 educational representative under Section 29.0171.

21 SECTION 2. Subchapter A, Chapter 29, Education Code, is
22 amended by adding Section 29.0171 to read as follows:

23 Sec. 29.0171. APPOINTMENT OF EDUCATIONAL REPRESENTATIVE.

24 (a) For purposes of compliance with 34 C.F.R. Section 300.520(b), a
25 school district or open-enrollment charter school shall appoint an
26 educational representative as provided by this section for a
27 student who:

1 (1) is 18 years of age or older or whose disabilities
2 of minority have been removed for general purposes under Chapter
3 31, Family Code;

4 (2) has been certified under Subsection (b) as not
5 having the ability to provide informed consent regarding the
6 student's educational program; and

7 (3) has not been determined to be incompetent.

8 (b) A professional who meets the qualifications under
9 Subsection (d) may certify in writing that a student does not have
10 the ability to provide informed consent with respect to the
11 student's educational program based on the professional's knowledge
12 and expertise and clear and convincing evidence obtained through a
13 personal examination of or interview with the student.

14 (c) In making the determination that a student does not have
15 the ability to provide informed consent regarding the student's
16 educational program under Subsection (b), the professional:

17 (1) shall consider whether the student is unable to:

18 (A) communicate, even with appropriate verbal
19 support, in writing or in the student's most proficient method of
20 communication, the student's preferences, decisions, and consent
21 with respect to the student's educational program; and

22 (B) use an alternative to guardianship,
23 including a supported decision-making agreement under Chapter
24 1357, Estates Code, or power of attorney, for educational
25 decision-making; and

26 (2) may not determine that the student is unable to
27 provide informed consent based solely on the fact that the student

1 has been voluntarily or involuntarily hospitalized for a mental
2 illness or has a diagnosis of an intellectual disability.

3 (d) To certify that a student does not have the ability to
4 provide informed consent regarding the student's educational
5 program under Subsection (b), a professional:

6 (1) must be one of the following practitioners
7 licensed to practice in this state:

8 (A) a physician;

9 (B) a physician assistant; or

10 (C) a clinical psychologist; and

11 (2) may not:

12 (A) be an employee of the school district or
13 open-enrollment charter school currently serving the student; and

14 (B) have any interests that conflict with the
15 interests of the student or the person seeking appointment as the
16 student's educational representative, including being related by
17 blood or marriage.

18 (e) A professional who provides a certification for a
19 student under Subsection (b) must provide a copy of the
20 certification to the student.

21 (f) A reevaluation of a student under 34 C.F.R. Section
22 300.303 may be used to request certification for the student under
23 Subsection (b).

24 (g) On receiving a written, signed request from a student's
25 parent, legal guardian, or spouse or another interested adult to
26 appoint an educational representative for the student that is
27 accompanied by the certification for the student made under

1 Subsection (b) dated not earlier than the 91st day before the date
2 the request is submitted, a school district or open-enrollment
3 charter school shall:

4 (1) not later than:

5 (A) the fifth business day following the date the
6 district or school receives the request, notify the student in the
7 manner appropriate for the student's most proficient method of
8 communication that the district or school has received the request;
9 and

10 (B) the 15th business day following the date the
11 district or school receives the request, determine whether the
12 certification conforms with Subsection (b); and

13 (2) if the district or school determines that the
14 certification conforms with Subsection (b), promptly appoint one of
15 the following individuals in the order listed as the student's
16 educational representative:

17 (A) the student's parent or legal guardian;

18 (B) the student's spouse; or

19 (C) another appropriate individual who:

20 (i) is preferred by the student;

21 (ii) is not employed by the district or
22 school; and

23 (iii) has significant knowledge of the
24 student and the student's strengths, opportunities, and
25 post-educational transitional goals.

26 (h) The scope of an appointment as an educational
27 representative under this section is limited to representing the

1 educational interests of the student in accordance with 34 C.F.R.
2 Section 300.520(b).

3 (i) An educational representative appointed for a student
4 under this section shall:

5 (1) in representing the student's educational
6 interests:

7 (A) consider the student's interests,
8 preferences, and goals; and

9 (B) consult with the student before providing
10 informed consent or making educational decisions on the student's
11 behalf; and

12 (2) notify the student when the representative has
13 provided informed consent or made any educational decisions on the
14 student's behalf.

15 (j) The term of an educational representative's appointment
16 under this section expires on the earliest of:

17 (1) the date the student is no longer eligible for
18 special education services;

19 (2) the date the student graduates from high school
20 with a high school diploma under Section 28.025(c)(1);

21 (3) the date a guardian is appointed for the student
22 under Chapter 1101, Estates Code;

23 (4) the date the student rescinds the representative's
24 appointment under Subsection (k); or

25 (5) the date the school district or open-enrollment
26 charter school receives a written notice of resignation from the
27 educational representative.

1 (k) A student who has not been determined to be incompetent
2 may rescind at any time, in writing or in the student's most
3 proficient method of communication, the appointment of an
4 educational representative for the student under this section. If
5 the student is unable to rescind the appointment in writing, the
6 school district or open-enrollment charter school serving the
7 student shall document the student's rescission on the student's
8 behalf. If rescinded, all rights accorded to parents under this
9 subchapter or 20 U.S.C. Section 1415 transfer from the educational
10 representative to the student.

11 (l) A certification under Subsection (b) that a student is
12 unable to provide informed consent with respect to the student's
13 educational program or the appointment of an educational
14 representative for the student under this section may not be
15 construed as a finding of the student's incompetence or incapacity
16 for any other purpose or as relevant or precedential evidence in any
17 future court or legal action seeking to remove decision-making
18 authority from the student.

19 (m) Any documentation relating to the appointment of an
20 educational representative under this section, including
21 certification under Subsection (b) or a request for the appointment
22 of an educational representative under Subsection (g), is
23 confidential and not subject to disclosure under Chapter 552,
24 Government Code.

25 (n) Nothing in this section prohibits the appointment of a
26 guardian under Chapter 1101, Estates Code, for a student for whom an
27 educational representative has been appointed under this section.

1 (o) The commissioner shall develop and post on the agency's
2 Internet website model forms that may be used for a certification
3 under Subsection (b) and a request for appointment of an
4 educational representative under Subsection (g).

5 (p) The commissioner shall adopt rules to implement this
6 section, including rules to ensure compliance with the Family
7 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
8 1232g).

9 SECTION 3. Section 29.017(f), Education Code, is repealed.

10 SECTION 4. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2023.