

By: Riddle

H.B. No. 716

A BILL TO BE ENTITLED

AN ACT

relating to a school choice program for certain students with disabilities.

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

SECTION 1. Chapter 29, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. SCHOOL CHOICE PROGRAM FOR STUDENTS WITH DISABILITIES

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Parent" includes a guardian, custodian, or other person with authority to act on behalf of a student.

(2) "Program" means the school choice program described by this subchapter.

(3) "Qualifying school" means a nongovernmental community-based educational establishment that exists for the public good and provides for the education needs of elementary and secondary students with disabilities. The term does not include a school that provides education in a home setting or that limits enrollment to relatives of the school's staff.

Sec. 29.352. PROGRAM. An eligible student under Section 29.353 may, at the option of the student's parent:

(1) attend any public school in the school district in which the student resides as provided by Subchapter G;

(2) subject to the limitations of Section 29.203, attend a public school in a district other than the district in

1 which the student resides as provided by Subchapter G; or

2 (3) receive a scholarship as provided by Section
3 29.354 to pay the costs of attending a qualifying school.

4 Sec. 29.353. ELIGIBLE STUDENT. (a) A student is eligible
5 to participate in the program if:

6 (1) the student is in kindergarten through grade 12
7 and eligible under Section 29.003 to participate in a school
8 district's special education program; and

9 (2) an individualized educational program has been
10 developed for the student under Section 29.005.

11 (b) A school district shall provide written notice of the
12 program to the parent of a student who is eligible to participate in
13 the program under Subsection (a).

14 (c) A student who establishes eligibility under this
15 section may continue participating in the program until the earlier
16 of the date the student graduates from high school or the student's
17 22nd birthday.

18 Sec. 29.354. FINANCING; SCHOLARSHIP. (a) A student who
19 attends a qualifying school under this subchapter is entitled to
20 receive an annual scholarship in an amount equal to the amount of
21 funding to which the school district in which the student resides
22 would be entitled under Section 42.151 for the student.

23 (b) On application by the parent of an eligible student, the
24 agency shall determine a student's eligibility in accordance with
25 rules adopted under Section 29.359. If the agency determines that
26 the student is eligible for participation in the program, the
27 agency shall issue a scholarship certificate to the parent. The

1 parent shall endorse and present the certificate to the qualifying
2 school chosen by the parent.

3 (c) The qualifying school the student attends must endorse
4 and present the student's scholarship certificate to the agency to
5 receive payment. The agency shall distribute to the qualifying
6 school the amount of the student's scholarship under Subsection
7 (a).

8 (d) The agency shall direct the distribution of funds to the
9 qualifying school the student attends on a monthly pro rata basis
10 after educational services have been provided. The agency shall
11 require that the qualifying school submit documentation of the
12 student's attendance before the agency directs funds to the
13 qualifying school. The payment shall be made not later than the 30th
14 day after the date on which the agency receives from the qualifying
15 school a request for payment.

16 (e) The student's scholarship is the entitlement of the
17 student, under the supervision of the student's parent, and not
18 that of any school.

19 (f) A qualifying school may not share a student's
20 scholarship with or refund or rebate a student's scholarship to the
21 parent or the student in any manner.

22 (g) A student's scholarship may not be financed by money
23 appropriated from the available school fund.

24 Sec. 29.355. PARTICIPATION BY QUALIFYING SCHOOLS. To
25 participate in the program, a qualifying school must:

26 (1) be accredited by or have filed an application for
27 accreditation by an accrediting association recognized by the

1 commissioner to accredit nongovernmental schools in this state; and

2 (2) not advocate or foster unlawful behavior or teach
3 hatred of any person or group on the basis of race, ethnicity,
4 national origin, or religion.

5 Sec. 29.356. ADMISSIONS. (a) A qualifying school chosen by
6 an eligible student's parent under this subchapter may not deny
7 admission by discriminating on the basis of the student's race,
8 ethnicity, or national origin and must comply with the requirements
9 of:

10 (1) 42 U.S.C. Section 2000d et seq. with respect to
11 nondiscrimination on the basis of race, color, or national origin;
12 and

13 (2) Section 504, Rehabilitation Act of 1973 (29 U.S.C.
14 Section 794), with respect to nondiscrimination on the basis of
15 disability.

16 (b) Except as provided by this subsection, a qualifying
17 school that has more qualified scholarship applicants for
18 attendance under this subchapter than available positions must fill
19 the available scholarship positions by a random selection process.
20 To achieve continuity in education, a school may give preference
21 among scholarship applicants to a previously enrolled student and
22 to other students residing in the same household as a previously
23 enrolled student.

24 (c) A qualifying school may submit a written request for
25 student records from the public school previously attended by an
26 eligible student. On receipt of a request submitted under this
27 subsection, the public school shall in a timely manner deliver to

1 the qualifying school a copy of the school's complete student
2 records for that student, including attendance records,
3 disciplinary records, past results of any assessment instruments
4 administered to the student, the student's individualized
5 educational program, and any other comprehensive assessments from
6 each school the student previously attended. A public school that
7 is required to release student records under this subsection shall
8 comply with any applicable provision of the Family Educational
9 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

10 Sec. 29.357. ACCOUNTABILITY. (a) Each qualifying school
11 that enrolls a student under this subchapter shall annually
12 administer in the spring:

13 (1) the appropriate assessment instrument required
14 under Section 39.023; or

15 (2) a nationally norm-referenced assessment
16 instrument approved by the agency.

17 (b) The school shall provide:

18 (1) the student's results to the student's parent; and

19 (2) the aggregated results of the assessment
20 instruments to the public.

21 Sec. 29.358. QUALIFYING SCHOOL AUTONOMY. (a) A qualifying
22 school that accepts a scholarship under this subchapter is not an
23 agent or arm of the state or federal government.

24 (b) Except as provided by this subchapter, the
25 commissioner, the agency, the State Board of Education, or any
26 other state agency may not regulate the educational program of a
27 qualifying school that accepts a scholarship under this subchapter.

1 Sec. 29.359. RULES. (a) The commissioner shall adopt rules
2 as necessary to implement, administer, and enforce the program,
3 including rules regarding:

4 (1) the calculation and distribution of payments for
5 qualifying schools; and

6 (2) application and approval procedures for
7 qualifying school and student participation in the program.

8 (b) A rule adopted under this section is binding on any
9 other state or local governmental entity, including a political
10 subdivision, as necessary to implement, administer, and enforce the
11 program.

12 Sec. 29.360. PROGRAM COMPLIANCE. (a) The agency shall
13 respond to and investigate any complaint or dispute arising under
14 this subchapter.

15 (b) The agency shall enforce this subchapter and any rule
16 adopted under this subchapter and may withhold funds from any
17 school district or qualifying school that violates this subchapter
18 or a rule adopted under this subchapter.

19 SECTION 2. Section 29.202(a), Education Code, is amended to
20 read as follows:

21 (a) A student is eligible to receive a public education
22 grant or to attend another public school in the district in which
23 the student resides under this subchapter if:

24 (1) the student is assigned to attend a public school
25 campus:

26 (A) [~~1~~] at which 50 percent or more of the
27 students did not perform satisfactorily on an assessment instrument

1 administered under Section 39.023(a) or (c) in any two of the
2 preceding three years; or

3 (B) [~~(2)~~] that was, at any time in the preceding
4 three years, considered academically unacceptable under Section
5 39.132; or

6 (2) the student is eligible to participate in the
7 school choice program under Subchapter J.

8 SECTION 3. (a) The Texas Education Agency shall make the
9 school choice program as provided by Subchapter J, Chapter 29,
10 Education Code, as added by this Act, available for participation
11 beginning with the 2009-2010 academic school year.

12 (b) As soon as practicable, the commissioner of education
13 shall adopt and implement rules necessary for the administration of
14 the program.

15 SECTION 4. (a) The constitutionality and other validity
16 under the state or federal constitution of all or any part of
17 Subchapter J, Chapter 29, Education Code, as added by this Act, may
18 be determined in an action for declaratory judgment in a district
19 court in Travis County under Chapter 37, Civil Practice and
20 Remedies Code.

21 (b) An appeal of a declaratory judgment or order, however
22 characterized, of a district court, including an appeal of the
23 judgment of an appellate court, holding or otherwise determining
24 that all or any part of Subchapter J, Chapter 29, Education Code, as
25 added by this Act, is constitutional or unconstitutional, or
26 otherwise valid or invalid, under the state or federal constitution
27 is an accelerated appeal.

1 (c) If the judgment or order is interlocutory, an
2 interlocutory appeal may be taken from the judgment or order and is
3 an accelerated appeal.

4 (d) A district court in Travis County may grant or deny a
5 temporary or otherwise interlocutory injunction or a permanent
6 injunction on the grounds of the constitutionality or
7 unconstitutionality, or other validity or invalidity, under the
8 state or federal constitution of all or any part of Subchapter J,
9 Chapter 29, Education Code, as added by this Act.

10 (e) There is a direct appeal to the supreme court from an
11 order, however characterized, of a trial court granting or denying
12 a temporary or otherwise interlocutory injunction or a permanent
13 injunction on the grounds of the constitutionality or
14 unconstitutionality, or other validity or invalidity, under the
15 state or federal constitution of all or any part of Subchapter J,
16 Chapter 29, Education Code, as added by this Act.

17 (f) The direct appeal is an accelerated appeal.

18 (g) This section exercises the authority granted by Section
19 3-b, Article V, Texas Constitution.

20 (h) The filing of a direct appeal under this section will
21 automatically stay any temporary or otherwise interlocutory
22 injunction or permanent injunction granted in accordance with this
23 section pending final determination by the supreme court, unless
24 the supreme court makes specific findings that the applicant
25 seeking such injunctive relief has pleaded and proved that:

26 (1) the applicant has a probable right to the relief it
27 seeks on final hearing; and

1 (2) the applicant will suffer a probable injury that
2 is imminent and irreparable, and that the applicant has no other
3 adequate legal remedy.

4 (i) An appeal under this section, including an
5 interlocutory, accelerated, or direct appeal, is governed, as
6 applicable, by the Texas Rules of Appellate Procedure, including
7 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
8 38.6(a) and (b), 40.1(b), and 49.4.

9 SECTION 5. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2009.