

1-1 By: Lucio, et al. S.B. No. 639
1-2 (In the Senate - Filed February 3, 2009; February 23, 2009,
1-3 read first time and referred to Committee on Health and Human
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1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 639 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the rights of persons with intellectual or
1-11 developmental disabilities residing in state schools.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 592, Health and Safety Code, is amended
1-14 by adding Subchapter E to read as follows:

1-15 SUBCHAPTER E. RIGHTS OF PERSONS RESIDING IN STATE SCHOOLS

1-16 Sec. 592.071. DEFINITIONS. In this subchapter:

1-17 (1) "State school" has the meaning assigned by Section
1-18 531.002.

1-19 (2) "State school resident bill of rights" means the
1-20 rights prescribed by this subchapter to which each resident of a
1-21 state school is entitled.

1-22 Sec. 592.072. RIGHTS GUARANTEED. (a) The rights
1-23 specifically listed in this subchapter are in addition to all other
1-24 rights that persons with intellectual or developmental
1-25 disabilities have and are not exclusive or intended to limit the
1-26 rights guaranteed by the constitution and laws of the United States
1-27 and this state.

1-28 (b) This subchapter may not be construed to authorize a
1-29 state school to take any action that would impair the health or
1-30 safety of any resident of that facility.

1-31 Sec. 592.073. LEGISLATIVE FINDINGS. The legislature
1-32 recognizes that all persons with intellectual or developmental
1-33 disabilities living in this state are entitled to the same rights
1-34 and privileges as any other person living in this state. It is the
1-35 policy of the state that all persons, regardless of disability, be
1-36 treated with dignity and respect. The legislature recognizes that
1-37 persons residing in state schools have the right to determine and
1-38 pursue their personal goals, dreams, and aspirations to be
1-39 contributing members of their communities.

1-40 Sec. 592.074. PURPOSE. The purpose of the state school
1-41 resident bill of rights is:

1-42 (1) to ensure the freedoms and rights of persons with
1-43 intellectual or developmental disabilities living in state
1-44 schools;

1-45 (2) to promote choice and self-determination;

1-46 (3) to protect the civil and constitutional rights of
1-47 residents in state schools consistent with federal and state laws;
1-48 and

1-49 (4) to ensure that residents receive adequate medical,
1-50 dental, and psychiatric interventions, care, and treatment in
1-51 accordance with acceptable standards of professional practice.

1-52 Sec. 592.075. STATE SCHOOL RESIDENT BILL OF RIGHTS. It is
1-53 the policy of the state that each person residing in a state school
1-54 has the following rights:

1-55 (1) to make decisions that impact the person's rights
1-56 and freedoms, or, if appropriate, to have a legally authorized
1-57 representative make those decisions;

1-58 (2) to be free from:

1-59 (A) physical or mechanical restraints, unless
1-60 necessary to prevent imminent physical injury to the person or
1-61 others and the use of the restraint is not prohibited by other law;

1-62 (B) restraint by a papoose board or a
1-63 straightjacket;

(C) medical restraint unless the medical restraint is administered only when necessary and:

(i) as a therapeutic treatment prescribed by a physician for the protection of the person's health;

(ii) during the performance of a specific medical, surgical, or dental procedure; or

(iii) for client protection during a medication-related emergency, as defined by Section 574.101;

(D) the administration of unnecessary or excessive psychoactive medication, as defined by Section 574.101; and

(E) temporary separation from others, unless necessary to protect the health and safety of the person or others and the use of the temporary separation is not prohibited by other law;

(3) to be free from abuse, neglect, or exploitation, including:

(A) corporal or physical punishment;

(B) sexual abuse; or

(C) emotional abuse;

(4) to refer all cases of confirmed abuse, neglect, or exploitation to the appropriate prosecuting attorney for prosecution of the perpetrator;

(5) to report incidents of abuse, neglect, or exploitation in confidence using a private telephone or computer;

(6) to have a representative of the director of a state school notify the person's legally authorized representative of an allegation of abuse, neglect, or exploitation not more than 24 hours after the allegation is made;

(7) to have the results of any investigation regarding an allegation of abuse, neglect, or exploitation be explained on completion of the investigation to the person in a language and format understandable to the person and, if applicable, to the person's legally authorized representative by a representative of the director of the state school;

(8) to report complaints about the state school, other than complaints about abuse, neglect, or exploitation, and have timely and appropriate resolution to those complaints;

(9) to live in the most integrated setting allowed by law and based on the person's preferences, including:

(A) having the opportunity to make an informed choice to move into a community with the necessary services and supports;

(B) having access to community services while waiting for a determination of eligibility for those services;

(C) choosing to participate in, and participating in, community activities;

(D) having regular reviews of placement, if the person was involuntarily committed to a state school;

(E) having access to well-developed, specialized community programs for alleged offenders with disabilities necessary to successfully reintegrate into the community, if available and determined to be appropriate; and

(F) requesting planning meetings to review community placement determinations or specific community options;

(10) to continue receiving services in a state school if:

(A) the person's legally authorized representative indicates a preference for the person continuing to receive services in the state school; and

(B) the state school is not required to transfer, furlough to an alternative placement, or discharge the person under Section 594.011;

(11) to form healthy social relationships with other persons;

(12) to receive quality assistive technology assessments, equipment, and training, and for staff to have the relevant training, necessary to ensure the person's successful inclusion in major life activities, to the greatest extent

possible, including:

- (A) communication;
- (B) mobility;
- (C) employment; and
- (D) education;

(13) to a quality and productive life, including:

(A) the opportunity to pursue the employment or education of the person's choice;

(B) a humane and safe living environment that provides reasonable protection from harm;

(C) opportunities to participate in an organization that advocates with and on behalf of people with disabilities;

(D) opportunities to interact with individuals with shared interests who do not reside at the state school, including mentors, friends, and family, and individuals participating in clubs, classes, and social groups;

(E) access to services or meetings of a religious organization of the person's choosing, including weekly services or meetings and services or meetings on the religious holy days of that religion; and

(F) personal living space with privacy to the greatest extent possible based on the person's individual needs;

(14) to have access to appropriate health and dental care, including:

(A) a well-balanced diet;

(B) regular access to physical activity, with supports as needed, in the least restrictive environment, with the opportunity to go outdoors when preferred if possible; and

(C) preventative and emergency medical care;

(15) to have the person's legally authorized representative notified of any significant medical, behavioral, or social event that occurs in the person's life; and

(16) to be provided with a written copy of this state school resident bill of rights in English and Spanish, to have the opportunity to review this document with an advocate or individual of the person's choosing, and to have the bill of rights explained to the person in simple, nontechnical language in the person's primary language, if possible.

Sec. 592.076. PROVISION OF BILL OF RIGHTS TO RESIDENTS. (a) The department shall provide a written copy of the state school resident bill of rights in English and Spanish and the person's primary language, if possible, to each person living in a state school and, if applicable, to the person's legally authorized representative.

(b) The state school shall ensure that, not later than the 24th hour after the hour the person is admitted to the state school, the rights specified in the state school resident bill of rights are explained to the person and, if applicable, the person's legally authorized representative. The facility's representative shall explain the state school resident bill of rights to the person:

(1) orally, in simple, nontechnical terms, in the person's primary language, if possible; or

(2) in another manner reasonably calculated to communicate with the person.

(c) A state school shall prominently and conspicuously display a copy of the state school resident bill of rights in English and Spanish in a public area of the facility that is readily accessible by the residents.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules relating to the form of the state school resident bill of rights.

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02446 to read as follows:

Sec. 531.02446. DIVERSION PROTOCOLS TO PREVENT COMMITMENT OF CHILDREN TO STATE SCHOOLS. (a) The executive commissioner by rule shall develop protocols to divert individuals under 22 years of age with intellectual or developmental disabilities from commitment to a state school.

4-1 (b) The executive commissioner shall ensure that the
4-2 diversion protocols:

4-3 (1) are designed to eliminate the commitment to state
4-4 schools of individuals younger than 22 years of age; and

4-5 (2) state that individuals under 22 years of age
4-6 admitted to a state school must be placed there on a temporary
4-7 basis.

4-8 (c) As part of the diversion protocols, the executive
4-9 commissioner shall:

4-10 (1) establish policies ensuring that individuals
4-11 younger than 22 years of age are adequately informed of and offered
4-12 community-based alternatives before admission to a state school;
4-13 and

4-14 (2) subject to the availability of funds appropriated
4-15 for that purpose, contract for the provision of temporary,
4-16 emergency living arrangements for individuals younger than 22 years
4-17 of age at immediate risk of commitment to a state school.

4-18 (d) An entity awarded a contract under this section must
4-19 provide temporary, emergency living arrangements at homes, with no
4-20 more than six individuals placed in the home.

4-21 SECTION 3. (a) The executive commissioner of the Health
4-22 and Human Services Commission shall adopt the rules required by
4-23 Section 592.076, Health and Safety Code, as added by this Act, and
4-24 Section 531.02446, Government Code, as added by this Act, not later
4-25 than January 1, 2010.

4-26 (b) A state school is not required to provide or display the
4-27 state school resident bill of rights under Subchapter E, Chapter
4-28 592, Health and Safety Code, as added by this Act, before February
4-29 1, 2010.

4-30 SECTION 4. This Act takes effect September 1, 2009.

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