

By: Shapiro

S.B. No. 1301

A BILL TO BE ENTITLED

AN ACT

relating to the accessibility of services for certain students with autism or autism spectrum disorder.

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

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

SUBCHAPTER K. AUTISM SERVICES ACCESSIBILITY PROGRAM

Sec. 29.401. 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 autism services accessibility program for students described by this subchapter.

(3) "Qualifying school" means a nongovernmental community-based educational establishment that provides for the educational needs of students with autism. 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. 29.402. PROGRAM. An eligible student under Section 29.403 may, at the option of the student's parent:

(1) attend any public school in the district in which the student resides;

(2) attend a public school in a district other than the district in which the student resides; or

(3) access services as provided by Section 29.406

1 through a qualifying school.

2 Sec. 29.403. ELIGIBLE STUDENT. (a) A student is eligible
3 to participate in the program if:

4 (1) the student is eligible to receive public school
5 services and is eligible under Section 29.003 to participate in a
6 school district's special education program;

7 (2) the student has been diagnosed with autism or
8 autism spectrum disorder; and

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

11 (b) Each school year, a school district shall:

12 (1) provide written notice of the program to the
13 parent of a student who is eligible to participate in the program
14 under Subsection (a); and

15 (2) allow the parent an opportunity to enroll the
16 student in the program.

17 (c) A student who establishes eligibility under this
18 section may continue participating in the program until the earlier
19 of the date the student graduates from high school or the student's
20 22nd birthday.

21 Sec. 29.404. TRANSFER OF STATE AID BETWEEN SCHOOL
22 DISTRICTS. (a) Except as provided by Section 29.405, an eligible
23 student who as provided by Section 29.402(2) attends a public
24 school in a school district other than the district in which the
25 student resides is included in the average daily attendance of the
26 district in which the student resides for purposes of Chapters 41
27 and 42.

1 (b) The commissioner shall deduct an amount equal to the
2 amount of funding to which the school district in which the eligible
3 student resides is entitled under Chapter 42 for that student from
4 the total state aid to which that district is entitled and shall
5 transfer that amount to the district in which the student is
6 enrolled.

7 (c) If a student resides in a school district that does not
8 receive state aid under Chapter 42, the district in which the
9 student resides shall purchase attendance credits under Subchapter
10 D, Chapter 41, in an amount equal to the amount of funding the
11 district would receive for the student under Chapter 42 if the
12 district were entitled to state aid under that chapter, and the
13 commissioner shall transfer that amount to the school district in
14 which the student is enrolled.

15 Sec. 29.405. STATE AID IN CERTAIN CIRCUMSTANCES. An
16 eligible student who as provided by Section 29.402(2) attends a
17 public school in a school district other than the district in which
18 the student resides is counted in the average daily attendance of
19 the school district in which the student attends school if the total
20 amount of state aid that the enrolling district would receive by
21 counting the student in the district's average daily attendance is
22 greater than the amount of state aid the district would receive as a
23 result of receiving a transfer of funds from the district in which
24 the student resides under Section 29.404.

25 Sec. 29.406. FINANCING OF SERVICES PROVIDED BY QUALIFYING
26 SCHOOL. (a) For a student who attends a qualifying school under
27 this subchapter, a qualifying school is entitled to an annual

1 amount of funding that is equal to the amount of funding to which
2 the school district in which the student resides would be entitled
3 under Chapter 42 for the student. The agency shall directly
4 distribute the funding to the qualifying school.

5 (b) For an eligible student to participate in the program,
6 the parent of the student must apply to the agency on behalf of the
7 student not later than a date specified by the commissioner. The
8 application must specify the qualifying school the student plans to
9 attend and demonstrate that the student has been accepted for
10 admission by that school. On receiving the application from the
11 parent of an eligible student, the agency shall determine a
12 student's eligibility in accordance with rules adopted under
13 Section 29.414. If the agency determines that the student is
14 eligible for participation in the program, the agency shall notify
15 the student's parent of the student's eligibility.

16 (c) The agency shall direct the distribution of funds to the
17 qualifying school the student attends on a schedule adopted by the
18 agency after educational services have been provided. The agency
19 shall require that the qualifying school submit documentation of
20 the student's attendance before the agency directs funds to the
21 qualifying school.

22 (d) A student who attends a qualifying school under this
23 subchapter is included in the average daily attendance of the
24 school district in which the student resides for purposes of
25 determining the amount of the student's program funding. The
26 amount of the student's program funding is deducted from the total
27 state aid to which the school district is entitled. If a student

1 resides in a school district that does not receive state aid under
2 Chapter 42, the school district shall purchase attendance credits
3 under Subchapter D, Chapter 41, in an amount equal to the amount of
4 the student's program funding.

5 (e) The student's program funding is the entitlement of the
6 student, under the supervision of the student's parent, and not
7 that of any school.

8 (f) A qualifying school may not share a student's program
9 funding with or refund or rebate a student's program funding to the
10 parent or the student in any manner.

11 (g) A student's program funding may not be financed by money
12 appropriated from the available school fund.

13 Sec. 29.407. PARTICIPATION BY QUALIFYING SCHOOLS. (a) To
14 participate in the program, a qualifying school must:

15 (1) either:

16 (A) be accredited by an accrediting association
17 recognized by the commissioner to accredit nongovernmental schools
18 in this state; or

19 (B) have filed an application for accreditation
20 by an accrediting association described by Paragraph (A) that has
21 not been withdrawn, denied, or left pending for more than three
22 years;

23 (2) not advocate or foster unlawful behavior or teach
24 hatred of any person or group on the basis of race, ethnicity,
25 national origin, or religion;

26 (3) comply with all health and safety laws applicable
27 to nongovernmental schools; and

1 (4) hold a valid occupancy permit if required by the
2 municipality in which the school is located.

3 (b) A qualifying school must comply with all state laws
4 applicable to nongovernmental schools regarding criminal
5 background checks for employees and may not employ a person who is
6 not authorized under state law to work in a nongovernmental school.

7 Sec. 29.408. ADMISSIONS. (a) A qualifying school chosen by
8 an eligible student's parent under this subchapter may not deny
9 admission by discriminating on the basis of the student's race,
10 ethnicity, or national origin and must comply with the requirements
11 of:

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

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

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

26 (c) A qualifying school may submit a written request for
27 student records from the public school previously attended by an

1 eligible student. Not later than the 10th working day after the
2 date the public school receives the request, the public school
3 shall deliver to the qualifying school a copy of the school's
4 complete student records for that student, including attendance
5 records, disciplinary records, past results of any assessment
6 instruments administered to the student, the student's
7 individualized educational program, and any other comprehensive
8 assessments from each school the student previously attended. A
9 public school that is required to release student records under
10 this subsection shall comply with any applicable provision of the
11 Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
12 Section 1232g).

13 Sec. 29.409. ACADEMIC ACCOUNTABILITY. (a) Each school
14 year, a qualifying school shall establish academic goals for each
15 eligible student enrolled in the school. The goals must be
16 developed in a manner similar to an individualized education
17 program developed under Section 29.005. At least every six weeks,
18 the school shall provide a report to the student's parent
19 describing the student's progress toward achieving the academic
20 goals developed for the student under this subsection.

21 (b) Each qualifying school that enrolls a student under this
22 subchapter shall annually administer in the spring:

23 (1) the appropriate assessment instrument required
24 under Section 39.023; or

25 (2) a nationally norm-referenced assessment
26 instrument approved by the agency.

27 (c) The school shall provide:

1 (1) the student's results on assessment instruments
2 required under Subsection (b) to the student's parent; and

3 (2) the aggregated results of the assessment
4 instruments required under Subsection (b) to the public.

5 Sec. 29.410. FINANCIAL SOLVENCY. The commissioner may
6 adopt rules requiring a qualifying school that accepts funding
7 under this subchapter to demonstrate financial solvency.

8 Sec. 29.411. QUALIFYING SCHOOL AUTONOMY. (a) A qualifying
9 school that accepts funding under this subchapter is not an agent or
10 arm of the state or federal government.

11 (b) Except as provided by this subchapter, the
12 commissioner, the agency, the State Board of Education, or any
13 other state agency may not regulate the educational program of a
14 qualifying school that accepts funding under this subchapter.

15 (c) A qualifying school that accepts funding under this
16 subchapter is not required to implement an individualized education
17 program developed for the student under Section 29.005. The
18 student's parent and the qualifying school are responsible for
19 determining the services and educational program to be provided to
20 the student in accordance with the academic goals developed for the
21 student under Section 29.409(a).

22 Sec. 29.412. RESPONSIBILITIES OF PARENT AND STUDENT. (a)
23 It is the responsibility of the parent of an eligible student to:

24 (1) locate and select a qualifying school;

25 (2) apply for admission to the qualifying school; and

26 (3) apply in the manner provided under Section 29.406

27 for participation in the program.

1 (b) A student participating in the program must comply with
2 the student code of conduct of the qualifying school the student
3 attends. A student must attend the qualifying school each school
4 day unless the student is excused by the school for illness or other
5 good cause.

6 Sec. 29.413. TRANSFER. (a) An eligible student
7 participating in the program may transfer to a public school or
8 another qualifying school in the manner authorized by commissioner
9 rule. If a student transfers to another school under this section
10 after the beginning of the school year, the commissioner shall
11 prorate the amount of the student's program funding between the
12 qualifying schools or the qualifying school and the school
13 district, as applicable, according to the length of the student's
14 attendance at each school.

15 (b) The commissioner may adopt rules regarding the
16 frequency with which a parent may transfer an eligible student from
17 a qualifying school to another qualifying school or to a public
18 school.

19 Sec. 29.414. RULES. (a) The commissioner shall adopt rules
20 as necessary to implement, administer, and enforce the program,
21 including rules regarding:

22 (1) the calculation and distribution of payments for
23 qualifying schools;

24 (2) application and approval procedures for
25 qualifying school and student participation in the program,
26 including timelines for the application and approval procedures;

27 and

1 (3) student transfers under Section 29.413.

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

6 Sec. 29.415. PROGRAM COMPLIANCE. (a) The agency shall
7 enforce this subchapter and any rule adopted under this subchapter
8 and may withhold funds from any district or qualifying school that
9 violates this subchapter or a rule adopted under this subchapter.

10 (b) The commissioner may revoke a qualifying school's
11 permission to participate in the program if the commissioner
12 determines that the school:

13 (1) has not met the requirements provided by this
14 subchapter;

15 (2) has intentionally and substantially
16 misrepresented information required by this subchapter; or

17 (3) has failed to refund to the state in a timely
18 manner any overpayment of program funding made to the school.

19 (c) If the commissioner revokes a qualifying school's
20 permission to participate in the program under Subsection (b), the
21 agency shall immediately notify the parent of an eligible student
22 attending the school of the revocation.

23 Sec. 29.416. LIABILITY. The agency is not civilly liable
24 for any action arising as the result of a student's participation in
25 the program.

26 Sec. 29.417. EVALUATION OF PROGRAM. (a) The commissioner
27 shall designate an impartial organization with experience in

1 evaluating programs similar to the program established under this
2 subchapter to conduct an annual evaluation of the program. The
3 evaluation must be conducted without the use of state funds.

4 (b) An evaluation under this section must compare
5 differences between qualifying schools and public schools and must
6 include consideration of:

7 (1) student satisfaction;

8 (2) parent satisfaction;

9 (3) behavioral problems of program students attending
10 qualifying schools as compared with students attending public
11 schools;

12 (4) class size;

13 (5) the fiscal impact to the state and school
14 districts;

15 (6) academic performance by comparable students as
16 measured by an assessment instrument required under Section
17 29.409(b);

18 (7) factors resulting in more than 25 percent of
19 eligible students in a school district attending a different school
20 district or a qualifying school under this subchapter; and

21 (8) the practices of a qualifying school that
22 contribute to any change in student behavior or academic
23 performance.

24 (c) The evaluation must apply appropriate analytical and
25 behavioral science methodologies to ensure public confidence in the
26 evaluation.

27 (d) Not later than December 1, 2012, the commissioner shall

1 submit to each member of the legislature a copy of the evaluation
2 conducted under this section.

3 (e) School districts and qualifying schools shall cooperate
4 with the organization conducting the evaluation and shall provide
5 student assessment instrument results and any other information
6 necessary to complete the evaluation in compliance with any
7 applicable provision of the Family Educational Rights and Privacy
8 Act of 1974 (20 U.S.C. Section 1232g).

9 (f) The agency may accept grants to assist in funding the
10 evaluation.

11 Sec. 29.418. APPLICATION OF SUNSET ACT. (a) The autism
12 services accessibility program is subject to Chapter 325,
13 Government Code (Texas Sunset Act), as if the program were a state
14 agency. Unless continued in existence as provided by that chapter,
15 the program is abolished and this subchapter expires September 1,
16 2019.

17 (b) To the extent Chapter 325, Government Code, imposes a
18 duty on a state agency under review, the agency shall perform that
19 duty as it relates to the program.

20 SECTION 2. (a) The Texas Education Agency shall make the
21 autism services accessibility program under Subchapter K, Chapter
22 29, Education Code, as added by this Act, available for
23 participation beginning with the 2010-2011 academic school year.

24 (b) As soon as practicable, the commissioner of education
25 shall adopt and implement rules necessary for the administration of
26 the program.

27 SECTION 3. This Act takes effect September 1, 2009.