

By: Shapiro

S.B. No. 1302

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, on September 1 of a school year, at  
5 least three but less than 11 years of age and is otherwise eligible  
6 to receive public school services and participate in a school  
7 district's special education program;

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

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

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

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

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

18 (c) A student who establishes eligibility under this  
19 section may continue participating in the program each school year  
20 that the student is less than 11 years of age on September 1.

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 29.415. 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 education 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. ANNUAL REVIEW. (a) Within the final two months  
6 of each school year, the parent of a student enrolled in a  
7 qualifying school must meet with the admission, review, and  
8 dismissal committee that was formed by the school district in which  
9 the student resides to develop the student's individualized  
10 education program. At the meeting, the parent and committee must:

11           (1) review the student's progress while enrolled in  
12 the qualifying school;

13           (2) set goals for the upcoming school year; and

14           (3) set goals with specific timelines for the  
15 potential transition of the student back into the public school  
16 system.

17           (b) Notwithstanding Section 29.406, the commissioner shall  
18 adjust the funding provisions specified by that section as  
19 necessary to permit the school district that facilitates the  
20 meeting required by Subsection (a) to retain \$100 each year to pay  
21 costs associated with the meeting.

22           Sec. 29.411. FINANCIAL SOLVENCY. The commissioner may  
23 adopt rules requiring a qualifying school that accepts funding  
24 under this subchapter to demonstrate financial solvency.

25           Sec. 29.412. QUALIFYING SCHOOL AUTONOMY. (a) A qualifying  
26 school that accepts funding under this subchapter is not an agent or  
27 arm of the state or federal government.



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

5 (c) A qualifying school that accepts funding under this  
6 subchapter is not required to implement an individualized education  
7 program developed for the student under Section 29.005. The  
8 student's parent and the qualifying school are responsible for  
9 determining the services and educational program to be provided to  
10 the student in accordance with the academic goals developed for the  
11 student under Section 29.409(a).

12 Sec. 29.413. RESPONSIBILITIES OF PARENT AND STUDENT. (a)  
13 It is the responsibility of the parent of an eligible student to:

- 14 (1) locate and select a qualifying school;  
15 (2) apply for admission to the qualifying school; and  
16 (3) apply in the manner provided under Section 29.406  
17 for participation in the program.

18 (b) A student participating in the program must comply with  
19 the student code of conduct of the qualifying school the student  
20 attends. A student must attend the qualifying school each school  
21 day unless the student is excused by the school for illness or other  
22 good cause.

23 Sec. 29.414. TRANSFER. (a) An eligible student  
24 participating in the program may transfer to a public school or  
25 another qualifying school in the manner authorized by commissioner  
26 rule. If a student transfers to another school under this section  
27 after the beginning of the school year, the commissioner shall

1 prorate the amount of the student's program funding between the  
2 qualifying schools or the qualifying school and the school  
3 district, as applicable, according to the length of the student's  
4 attendance at each school.

5 (b) The commissioner may adopt rules regarding the  
6 frequency with which a parent may transfer an eligible student from  
7 a qualifying school to another qualifying school or to a public  
8 school.

9 Sec. 29.415. RULES. (a) The commissioner shall adopt rules  
10 as necessary to implement, administer, and enforce the program,  
11 including rules regarding:

12 (1) the calculation and distribution of payments for  
13 qualifying schools;

14 (2) application and approval procedures for  
15 qualifying school and student participation in the program,  
16 including timelines for the application and approval procedures;  
17 and

18 (3) student transfers under Section 29.414.

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

23 Sec. 29.416. PROGRAM COMPLIANCE. (a) The agency shall  
24 enforce this subchapter and any rule adopted under this subchapter  
25 and may withhold funds from any district or qualifying school that  
26 violates this subchapter or a rule adopted under this subchapter.

27 (b) The commissioner may revoke a qualifying school's

1 permission to participate in the program if the commissioner  
2 determines that the school:

3 (1) has not met the requirements provided by this  
4 subchapter;

5 (2) has intentionally and substantially  
6 misrepresented information required by this subchapter; or

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

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

13 Sec. 29.417. LIABILITY. The agency is not civilly liable  
14 for any action arising as the result of a student's participation in  
15 the program.

16 Sec. 29.418. EVALUATION OF PROGRAM. (a) The commissioner  
17 shall designate an impartial organization with experience in  
18 evaluating programs similar to the program established under this  
19 subchapter to conduct an annual evaluation of the program. The  
20 evaluation must be conducted without the use of state funds.

21 (b) An evaluation under this section must compare  
22 differences between qualifying schools and public schools and must  
23 include consideration of:

24 (1) student satisfaction;

25 (2) parent satisfaction;

26 (3) behavioral problems of program students attending  
27 qualifying schools as compared with students attending public

1 schools;

2 (4) class size;

3 (5) the fiscal impact to the state and school  
4 districts;

5 (6) academic performance by comparable students as  
6 measured by an assessment instrument required under Section  
7 29.409(b);

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

11 (8) the practices of a qualifying school that  
12 contribute to any change in student behavior or academic  
13 performance.

14 (c) The evaluation must apply appropriate analytical and  
15 behavioral science methodologies to ensure public confidence in the  
16 evaluation.

17 (d) Not later than December 1, 2012, the commissioner shall  
18 submit to each member of the legislature a copy of the evaluation  
19 conducted under this section.

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

26 (f) The agency may accept grants to assist in funding the  
27 evaluation.

1       Sec. 29.419. APPLICATION OF SUNSET ACT. (a) The autism  
2 services accessibility program is subject to Chapter 325,  
3 Government Code (Texas Sunset Act), as if the program were a state  
4 agency. Unless continued in existence as provided by that chapter,  
5 the program is abolished and this subchapter expires September 1,  
6 2019.

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

10       SECTION 2. (a) The Texas Education Agency shall make the  
11 autism services accessibility program under Subchapter K, Chapter  
12 29, Education Code, as added by this Act, available for  
13 participation beginning with the 2010-2011 academic school year.

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

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