

By: Shapiro

S.B. No. 2204

A BILL TO BE ENTITLED

AN ACT

relating to the enhancement of services for certain students with autism or autism spectrum disorder and training and support for educators who serve students with autism.

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 INTERDISCIPLINARY ENHANCEMENT 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 interdisciplinary enhancement program for students described by this subchapter.

(3) "Qualifying community provider" means a nongovernmental community-based program that provides for the educational, communication, and behavioral needs of students with autism and that has been approved by the agency as a provider for the program.

Sec. 29.402. PROGRAM. An eligible student under Section 29.403 may, at the option of the student's parent, access services as provided by Section 29.404 through a qualifying community provider.

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

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

4           (2) the student has been diagnosed with autism or  
5 autism spectrum disorder and is considered to be at high risk for  
6 residential treatment or institutionalization; and

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

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

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

13           (2) allow the parent an opportunity to enroll the  
14 student in the program.

15           (c) A student who establishes eligibility under this  
16 section may continue participating in the program until the autism  
17 interdisciplinary enhancement team established for the student as  
18 required by Section 29.407 determines that it is appropriate for  
19 the student to make the transition back into the public school  
20 system.

21           Sec. 29.404. FINANCING OF SERVICES PROVIDED BY QUALIFYING  
22 COMMUNITY PROVIDER. (a) For a student who accesses services  
23 through a qualifying community provider under this subchapter, the  
24 provider is entitled to an annual amount of funding that is equal to  
25 the amount of funding to which the school district in which the  
26 student resides would be entitled under Chapter 42 for the student.  
27 The agency shall directly distribute the funding to the qualifying

1 community provider.

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

13 (c) The agency shall direct the distribution of funds to the  
14 qualifying community provider whose services the student accesses  
15 on a schedule adopted by the agency after educational services have  
16 been provided. The agency shall require that the qualifying  
17 community provider submit documentation of the student's  
18 attendance before the agency directs funds to the provider.

19 (d) A student who accesses services through a qualifying  
20 community provider under this subchapter is included in the average  
21 daily attendance of the school district in which the student  
22 resides for purposes of determining the amount of the student's  
23 program funding. The amount of the student's program funding is  
24 deducted from the total state aid to which the school district is  
25 entitled. If a student resides in a school district that does not  
26 receive state aid under Chapter 42, the school district shall  
27 purchase attendance credits under Subchapter D, Chapter 41, in an

1 amount equal to the amount of the student's program funding.

2 (e) The student's program funding is the entitlement of the  
3 student, under the supervision of the student's parent, and not  
4 that of any community provider.

5 (f) A qualifying community provider may not share a  
6 student's program funding with or refund or rebate a student's  
7 program funding to the parent or the student in any manner.

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

10 Sec. 29.405. PARTICIPATION BY QUALIFYING COMMUNITY  
11 PROVIDERS. (a) To participate in the program, a qualifying  
12 community provider must:

13 (1) be approved as a nonpublic community provider by  
14 the commissioner;

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

18 (3) comply with all health and safety laws applicable  
19 to nongovernmental schools; and

20 (4) hold a valid occupancy permit if required by the  
21 municipality in which the community provider is located.

22 (b) A qualifying community provider must comply with all  
23 state laws applicable to nongovernmental schools regarding  
24 criminal background checks for employees and may not employ a  
25 person who is not authorized under state law to work in a  
26 nongovernmental school.

27 Sec. 29.406. ADMISSIONS. (a) A qualifying community

1 provider chosen by an eligible student's parent under this  
2 subchapter may not deny admission by discriminating on the basis of  
3 the student's race, ethnicity, or national origin and must comply  
4 with the requirements of:

5 (1) 42 U.S.C. Section 2000d et seq. with respect to  
6 nondiscrimination on the basis of race, color, or national origin;  
7 and

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

11 (b) Except as provided by this subsection, a qualifying  
12 community provider that has more qualified program applicants for  
13 services under this subchapter than available positions must fill  
14 the available program positions by a random selection process. To  
15 achieve continuity in education, a community provider may give  
16 preference among program applicants to a previously enrolled  
17 student and to other students residing in the same household as a  
18 previously enrolled student.

19 (c) A qualifying community provider may submit a written  
20 request for student records from the public school previously  
21 attended by an eligible student. Not later than the 10th working  
22 day after the date the public school receives the request, the  
23 public school shall deliver to the qualifying community provider a  
24 copy of the school's complete student records for that student,  
25 including attendance records, disciplinary records, past results  
26 of any assessment instruments administered to the student, the  
27 student's individualized educational program, and any other

1 comprehensive assessments from each school the student previously  
2 attended. A public school that is required to release student  
3 records under this subsection shall comply with any applicable  
4 provision of the Family Educational Rights and Privacy Act of 1974  
5 (20 U.S.C. Section 1232g).

6 Sec. 29.407. AUTISM INTERDISCIPLINARY ENHANCEMENT TEAM.

7 (a) For each student enrolled in the program, an autism  
8 interdisciplinary enhancement team must be established. The team  
9 shall consist of a representative from the school district in which  
10 the student resides, a representative of the qualifying community  
11 provider, and a parent of the student. The team may include a  
12 member of the community with knowledge and experience in autism or  
13 autism spectrum disorder.

14 (b) The team shall meet on a regular basis to:

15 (1) develop an individual service plan for the  
16 student;

17 (2) monitor the progress of the student, including  
18 review of the student's assessments and progress reports; and

19 (3) set goals for the student, including specific  
20 timelines for the potential transition of the student back into the  
21 public school system.

22 (c) The plan and goals developed by the team for a student  
23 must be considered and incorporated by the qualifying community  
24 provider in developing the goals required to be established under  
25 Section 29.408.

26 (d) At the time the student makes the transition back into  
27 the public school system, the team shall provide to the public

1 school that the student will attend training in and assistance with  
2 the methodologies that have been successful with the student during  
3 the student's participation in the program. The team may provide  
4 any support or service requested by the school.

5 Sec. 29.408. ACADEMIC ACCOUNTABILITY. (a) Each school  
6 year, a qualifying community provider shall establish academic  
7 goals for each program student accessing services through the  
8 provider. The goals under this section must include communication  
9 and behavior skills. The goals must be developed in a manner  
10 similar to an individualized education program developed under  
11 Section 29.005, based on individual student assessment, and include  
12 recommendations from the student's autism interdisciplinary  
13 enhancement team. Every six weeks, the provider shall provide a  
14 report to the student's parent and autism interdisciplinary  
15 enhancement team describing the student's progress toward  
16 achieving the goals developed for the student.

17 (b) Each qualifying community provider that provides  
18 services to a student under this subchapter shall annually  
19 administer:

20 (1) the appropriate assessment instrument required  
21 under Section 39.023; or

22 (2) a nationally norm-referenced assessment  
23 instrument approved by the agency.

24 (c) The qualifying community provider shall provide:

25 (1) the student's results on assessment instruments  
26 required under Subsection (b) to the student's parent and the  
27 student's autism interdisciplinary enhancement team; and

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

3           Sec. 29.409. AUTISM INTERDISCIPLINARY ENHANCEMENT TEAM  
4 TRANSITION AND COORDINATION INITIATIVE. (a) If a student  
5 participating in the program is ready to make the transition back  
6 into the public school system, based on the student's performance  
7 on assessment instruments and other measures of progress, the  
8 student's autism interdisciplinary enhancement team shall assist  
9 with the transition. The team must provide training in the  
10 research-based instruction that has proven effective for the  
11 student to the school district the student will attend.

12           (b) Training by the autism interdisciplinary enhancement  
13 team shall be funded by the regional education service center that  
14 provides services to the school district the student will attend.  
15 The regional education service center shall assist in the  
16 coordination of teacher training between the school district and  
17 the qualifying community provider.

18           (c) The qualifying community provider and the autism  
19 interdisciplinary enhancement team shall develop appropriate  
20 training for the educators who will serve the student in the school  
21 district. The training must include scientifically and  
22 behaviorally based training.

23           (d) The autism interdisciplinary enhancement team shall  
24 develop procedures for the school district to use in determining  
25 the training needs of educators who will serve the student,  
26 including:

27           (1) evaluating student counts and distribution;



1           (2) conducting an inventory of staff knowledge; and

2           (3) conducting an inventory of staff resources.

3           (e) The autism interdisciplinary enhancement team shall  
4 ensure that all elements identified as necessary for the student's  
5 transition are in place before the transition occurs.

6           (f) After the transition has occurred, the autism  
7 interdisciplinary enhancement team shall meet at least once every  
8 12 weeks at the school to monitor the transition and ensure each  
9 aspect of the student's transition is being effectively  
10 implemented.

11           (g) The commissioner may adopt rules as necessary to  
12 implement this section.

13           Sec. 29.410. FINANCIAL SOLVENCY. The commissioner may  
14 adopt rules requiring a qualifying community provider that accepts  
15 funding under this subchapter to demonstrate financial solvency.

16           Sec. 29.411. QUALIFYING COMMUNITY PROVIDER AUTONOMY. (a)  
17 A qualifying community provider that accepts funding under this  
18 subchapter is not an agent or arm of the state or federal  
19 government.

20           (b) Except as provided by this subchapter, the  
21 commissioner, the agency, the State Board of Education, or any  
22 other state agency may not regulate the educational program of a  
23 qualifying community provider that accepts funding under this  
24 subchapter.

25           (c) A qualifying community provider that accepts funding  
26 under this subchapter is not required to implement an  
27 individualized education program developed for the student under

1 Section 29.005. The student's parent and the qualifying community  
2 provider are responsible for determining the services and  
3 educational program to be provided to the student in accordance  
4 with the goals developed for the student under Section 29.408(a).

5 Sec. 29.412. RESPONSIBILITIES OF PARENT AND STUDENT. (a)

6 It is the responsibility of the parent of an eligible student to:

7 (1) locate and select a qualifying community provider;

8 (2) apply for acceptance by the qualifying community  
9 provider; and

10 (3) apply in the manner provided under Section 29.404  
11 for participation in the program.

12 (b) A student participating in the program must comply with  
13 the student code of conduct of the qualifying community provider  
14 providing services to the student. A student must receive services  
15 from the qualifying community provider each school day or as  
16 otherwise determined to be appropriate for the student's needs.

17 Sec. 29.413. TRANSFER. (a) An eligible student

18 participating in the program may transfer to another qualifying  
19 community provider in the manner authorized by commissioner rule.

20 If a student transfers to another provider under this section after  
21 the beginning of the school year, the commissioner shall prorate  
22 the amount of the student's program funding between the qualifying  
23 community providers according to the length of the period that the  
24 student received services from each provider.

25 (b) The commissioner may adopt rules regarding the  
26 frequency with which a parent may transfer an eligible student from  
27 a qualifying community provider to another qualifying community

1 provider.

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

5 (1) the calculation and distribution of payments for  
6 qualifying community providers; and

7 (2) application and approval procedures for  
8 qualifying community provider and student participation in the  
9 program, including timelines for the application and approval  
10 procedures.

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

15 Sec. 29.415. PROGRAM COMPLIANCE. (a) The agency shall  
16 enforce this subchapter and any rule adopted under this subchapter  
17 and may withhold funds from any qualifying community provider that  
18 violates this subchapter or a rule adopted under this subchapter.

19 (b) The commissioner may revoke a qualifying community  
20 provider's permission to participate in the program if the  
21 commissioner determines that the provider:

22 (1) has not met the requirements provided by this  
23 subchapter;

24 (2) has intentionally and substantially  
25 misrepresented information required by this subchapter; or

26 (3) has failed to refund to the state in a timely  
27 manner any overpayment of program funding made to the provider.

1       (c) If the commissioner revokes a qualifying community  
2 provider's permission to participate in the program under  
3 Subsection (b), the agency shall immediately notify the parent of  
4 an eligible student receiving services from the provider of the  
5 revocation.

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

9       Sec. 29.417. EVALUATION OF PROGRAM. (a) The commissioner  
10 shall designate an impartial organization with experience in  
11 evaluating programs similar to the program established under this  
12 subchapter to conduct an annual evaluation of the program. The  
13 evaluation must be conducted without the use of state funds.

14       (b) An evaluation under this section must compare  
15 differences between qualifying community providers and public  
16 schools and must include consideration of:

17               (1) student satisfaction;

18               (2) parent satisfaction;

19               (3) behavioral problems of program students receiving  
20 services from qualifying community providers as compared with  
21 students attending public schools;

22               (4) class size;

23               (5) the fiscal impact to the state and school  
24 districts;

25               (6) academic performance by comparable students as  
26 measured by an assessment instrument required under Section  
27 29.408(b);

1           (7) factors resulting in more than 25 percent of  
2 eligible students in a school district electing to receive services  
3 through a qualifying community provider under this subchapter; and

4           (8) the practices of a qualifying community provider  
5 that contribute to any change in student behavior or academic  
6 performance.

7           (c) The evaluation must apply appropriate analytical and  
8 behavioral science methodologies to ensure public confidence in the  
9 evaluation.

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

13           (e) School districts and qualifying community providers  
14 shall cooperate with the organization conducting the evaluation and  
15 shall provide student assessment instrument results and any other  
16 information necessary to complete the evaluation in compliance with  
17 any applicable provision of the Family Educational Rights and  
18 Privacy Act of 1974 (20 U.S.C. Section 1232g).

19           (f) The agency may accept grants to assist in funding the  
20 evaluation.

21           Sec. 29.418. APPLICATION OF SUNSET ACT. (a) The autism  
22 interdisciplinary enhancement program is subject to Chapter 325,  
23 Government Code (Texas Sunset Act), as if the program were a state  
24 agency. Unless continued in existence as provided by that chapter,  
25 the program is abolished and this subchapter expires September 1,  
26 2019.

27           (b) To the extent Chapter 325, Government Code, imposes a

1 duty on a state agency under review, the agency shall perform that  
2 duty as it relates to the program.

3           SECTION 2. (a) The Texas Education Agency shall make the  
4 autism interdisciplinary enhancement program under Subchapter K,  
5 Chapter 29, Education Code, as added by this Act, available for  
6 participation beginning with the 2010-2011 academic school year.

7           (b) As soon as practicable, the commissioner of education  
8 shall adopt and implement rules necessary for the administration of  
9 the program.

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