

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1871
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Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The rising incidence of autism is well-documented. According to the United States Department of Education (DOE) Data Accountability Center, the number of Texas schoolchildren with autism rose five-fold over the past 10 years (from 5,134 in 1999 to 25,912 in 2009), while children with intellectual developmental delays (IDD) rose just under 15 percent over the same period. This surge in the special needs population puts financial pressure on the state and on local school districts, as a study funded by DOE showed that the annual cost of education for children with autism is 2.9 times that of the overall average, while children with IDD cost 2.3 times those who are typically developing.

Contracted services for special needs children is not a new idea, as Texas school districts currently contract with private schools when they determine that the public sector is unable to adequately meet the student's needs. In that case, the local school district must pay 100 percent of the cost, often at the end of a contentious process.

C.S.S.B. 1871 implements the contracted services concept in Texas by allowing families to access the amount of funding that is equal to the amount schools receive for a student. The proposed legislation lays out clear qualifying criteria for students, provides guidelines for establishing academic oversight, and delineates additional oversight and administrative roles and responsibilities.

C.S.S.B. 1871 creates an additional education option for parents of special needs children that could also be cost-effective for public schools.

C.S.S.B. 1871 amends current law relating to a contracted services program for certain students with a severe pervasive developmental disorder or a severe intellectual disability.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 29.511, 29.514, and 29.515, Education Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 29, Education Code, by adding Subchapter M, as follows:

SUBCHAPTER M. CONTRACTED SERVICES PROGRAM

Sec. 29.501. DEFINITIONS. Defines, in this subchapter, "parent," "pervasive developmental disorder," "program," and "qualifying institution."

Sec. 29.502. CONTRACTED SERVICES PROGRAM. (a) Authorizes an eligible student under Section 29.503 to:

- (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) receive contracted services through a qualifying institution.

(b) Requires a school district or open-enrollment charter school, each school year, to provide written notice of the program to the parent of a student who is eligible to participate in the program under Section 29.503. Provides that notice under this subsection must:

(1) include information explaining that the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) does not apply to a qualifying institution participating in the program and that a student attending a qualifying institution under this subchapter waives any rights under the Act; and

(2) require that the student's parent sign a confirmation of the receipt of the notice and return the confirmation to the district.

Sec. 29.503. ELIGIBLE STUDENT. (a) Provides that a student is eligible to participate in the program if the student:

(1) has sought public school services under an individualized education plan at the time the parent applies for the program;

(2) is eligible to participate in a school district's special education program under Section 29.003 (Eligibility Criteria);

(3) has been diagnosed by a medical doctor with a severe pervasive developmental disorder, or a severe intellectual disability; and

(4) requires a limited duration of intense services for the purpose of attaining school readiness skills to participate in a classroom. Requires that school readiness skills include the following skills:

(A) spontaneous imitation of their peers' basic functions;

(B) the ability to sit and attend quietly for at least five minutes in a group setting;

(C) basic communication skills;

(D) basic social skills such as sharing, and responding to peers;

(E) compliance skills; and

(F) maladaptive behaviors at a rate, frequency, and intensity that does not disrupt the class.

(b) Requires the school district in which the student resides, the qualifying institution and the student's parent to annually review for a student who attends a qualifying institution under this subchapter:

(1) the continued applicability of the student's original diagnosis;

(2) the student's continued eligibility for participation in the program.

(3) the plan for transition of the student to a public school; and

(4) the goals established and assessments administered under Section 29.510.

(c) Authorizes the parent to seek a second diagnosis as established under Subsection (d) of this section if the parent and the school district disagree with whether a student continues to meet the qualifications for an eligible student under Section 29.503(a).

(d) Authorizes a parent to seek a second diagnosis by a second medical doctor to determine whether the student requires a limited duration of intense services for the purpose of attaining school readiness skills if the parent and the school district disagree with whether a student meets the requirements for eligibility under Subsection (a)(4). Requires the school district and the parent to meet to discuss the results of the second diagnosis not later than the 30th day following the second diagnosis as provided by this subsection. Provides that the second diagnosis determines whether the student meets the eligibility requirements under Subsection (a)(4). Requires the parent to be responsible for the costs and effort in obtaining a second diagnosis.

Sec. 29.504. TRANSFER OF STATE AID BETWEEN SCHOOL DISTRICTS. Provides that, except as provided by Section 29.505, an eligible student who as provided by Section 29.502(2) attends a public school in a school district other than the district in which the student resides is included in the average daily attendance of the district in which the student resides for purposes of Chapters 41 (Equalized Wealth Level) and 42 (Foundation School Program).

Sec. 29.505. STATE AID IN CERTAIN CIRCUMSTANCES. Provides that an eligible student who as provided by Section 29.502(2) attends a public school in a school district other than the district in which the student resides is counted in the average daily attendance of the school district in which the student attends school if the total amount of state aid that the enrolling district would receive by counting the student in the district's average daily attendance is greater than the amount of state aid the district would receive as a result of receiving a transfer of funds from the district in which the student resides under Section 29.504.

Sec. 29.506. FINANCING OF SERVICES PROVIDED BY QUALIFYING INSTITUTION. (a) Entitles the qualifying institution, for a student who attends a qualifying institution under this subchapter, to an annual amount of funding that is equal to the amount the institution would receive for a student if the institution were an open-enrollment charter school, as calculated under Sections 12.106(a)(2) (relating to the amount of funds to which a charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42) and (a-1) (relating to determining funding for an open-enrollment charter school), multiplied by 1.1, except as provided by Subsection (b).

(b) Authorizes the commissioner of education (commissioner) to withhold a portion of the funding to which a qualifying institution is entitled under Subsection (a) to pay the costs of administering the program.

(c) Prohibits a student's program funding under this section from being financed by money appropriated from the available school fund, or federal funds.

(d) Requires the Texas Education Agency (TEA) to directly distribute the funding to the qualifying institution on a monthly basis. Prohibits TEA from distributing funding to the qualifying institution the student attends until after services have been provided.

(e) Requires TEA to require that the qualifying institution submit documentation of the student's attendance before TEA distributes funding to the qualifying institution. Requires the qualifying institution to submit the documentation to TEA on a monthly basis and requires TEA to distribute funding to the qualifying institution not later than the 30th day after receiving the documentation.

(f) Prohibits a qualifying institution from sharing a student's program funding with, or refunding or rebating a student's program funding to, the parent, the student, or a nonqualifying institution in any manner.

Sec. 29.507. PARTICIPATION BY QUALIFYING INSTITUTIONS. (a) Requires a qualifying institution, to participate in the program:

(1) must:

(A) comply with all health and safety laws applicable to nongovernmental schools;

(B) hold a valid occupancy permit if required by the municipality in which the institution is located;

(C) employ a health care practitioner described by Section 1355.015(b) (relating to requiring that a health care practitioner meet certain qualifications), Insurance Code; and

(D) comply with all state laws regarding criminal background checks for employees and prohibits a qualifying institution from employing a person who is not authorized under state law to work in a public school district or open-enrollment charter school. Requires qualifying institutions to follow and have access to the same procedures and information as established by Section 22.083 (Access to Criminal History Records of Employees by Local and Regional Education Authorities), Education Code; and

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

(b) Requires qualifying institutions to be determined through a request for qualification process established by TEA, in collaboration with the Department of Assistive and Rehabilitative Services (DARS), and subject to public comment as to the criteria and standards to be used to establish qualification. Requires TEA and DARS to have equal input in the request for qualification process and selection of qualifying institutions.

(c) Authorizes the request for qualification process established under Subsection (b) to include provisions considering whether an institution:

(1) is accredited by an accrediting association recognized by the commissioner to accredit nongovernmental schools in this state;

(2) has filed an application for accreditation by an accrediting association described by Subdivision (1) that has not been withdrawn, denied, or left pending for more than 18 months; or

(3) has previously provided contracted services for individuals with pervasive developmental disorders or intellectual disabilities for DARS.

(d) Authorizes a nongovernmental community-based educational establishment that provides for the educational needs of students with severe pervasive developmental disorders or severe intellectual disabilities to apply to TEA to participate in the program as a qualifying institution. Requires TEA, in consultation with DARS, to create and maintain a list of participating qualifying institutions and ensure the list is available to the public.

- (e) Prohibits a sectarian institution from being a qualifying institution under this subchapter.

Sec. 29.508. APPLICATION FOR CONTRACTED SERVICES THROUGH PROGRAM. (a) Requires the parent of an eligible student to apply to TEA on behalf of the student for the student to participate in the program and receive contracted services through a qualifying institution. Requires that the application specify the qualifying institution the student plans to attend and demonstrate that the student has been accepted for admission by that institution.

(b) Requires TEA, on receiving the application from the parent of an eligible student, to verify a student's eligibility. Requires TEA to notify the student's parent of the student's eligibility if TEA verifies that the student is eligible for participation in the program.

(c) Provides that a verification of student eligibility by TEA under Subsection (b) is for review purposes only and does not preempt the decision made at the local level on whether a student qualifies for contracted services under the program.

(d) Authorizes a parent to apply on behalf of the student to participate in the program at any time.

Sec. 29.509. ADMISSIONS. (a) Prohibits a qualifying institution, in order to receive funding under Section 29.506, from denying admission by discriminating on the basis of the student's race, ethnicity, religion, creed, or national origin and requires the institution to comply with the requirements of:

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

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

(b) Requires a qualifying institution or a school district or campus that has more qualified program applicants for attendance under this subchapter than available positions to fill the available program positions in the order the institution district, or campus receives the applications. Authorizes the school district, public school or qualifying institution to consider staff needs, financial resources and facility space in considering whether the entity has more qualified applicants than availability for qualified applicants.

(c) Authorizes a qualifying institution or public school in another district to refuse an eligible student if it determines that admittance would require additional staff, financial resources, or facility space.

(d) Authorizes a qualifying institution to submit a written request for student records from the school district or open-enrollment charter school previously attended by an eligible student, if applicable. Requires the district or school, not later than the 10th working day after the date the district or school receives the request, to deliver to the qualifying institution a copy of the school's complete student records for that student, including attendance records, disciplinary records, results of any assessment instruments administered to the student, the student's individualized educational program, and any other comprehensive assessments from each school the student previously attended. Requires a district or school that is required to release student records under this subsection to comply with any applicable provision of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

Sec. 29.510. ACADEMIC ACCOUNTABILITY. (a) Requires a qualifying institution, in collaboration with the school district in which the student resides, to establish

academic and functional goals for each eligible student receiving contracted services from the institution. Requires that the goals be developed in a manner similar to an individualized education program developed under Section 29.005 (Individualized Education Program). Requires a qualifying institution to review and revise the goals developed for the student under this subsection each school year. Requires the institution, at regular intervals not less than three times each academic year, to provide a report to the student's parent describing the student's progress toward achieving the goals developed for the student under this subsection.

(b) Requires a qualifying institution that provides contracted services to a student under this subchapter, each spring semester, to assess the student's progress. Requires the institution to administer the appropriate assessment instrument adopted under Subchapter B (Assessment of Academic Skills), Chapter 39 (Public School System Accountability), under an agreement with TEA.

(c) Requires the qualifying institution to provide:

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

(2) the aggregated results of assessment instruments administered under Subsection (b) to the public, subject to the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

Sec. 29.511. FINANCIAL SOLVENCY. Authorizes the commissioner of education (commissioner) to adopt rules requiring a qualifying institution that accepts funding under this subchapter to demonstrate financial solvency.

Sec. 29.512. QUALIFYING INSTITUTION AUTONOMY. (a) Provides that a qualifying institution that accepts funding under this subchapter is not an agent or arm of the state or federal government.

(b) Prohibits the commissioner, TEA, the State Board of Education, or any other state agency from regulating the educational program of a qualifying institution that accepts funding under this subchapter, except as provided by this subchapter.

(c) Provides that a qualifying institution that accepts funding under this subchapter is not required to implement an individualized education program developed for the student under Section 29.005. Requires the eligible student's parent and the qualifying institution to determine the services and educational program to be provided to the eligible student.

Sec. 29.513. RIGHTS AND RESPONSIBILITIES OF PARENTS AND STUDENTS.

(a) Provides that it is the responsibility of the parent of an eligible student to:

(1) locate and select a qualifying institution;

(2) apply for admission to the qualifying institution; and

(3) apply in the manner provided under Section 29.508 for participation in the program.

(b) Requires a student participating in the program to attend the qualifying institution each school day unless the student is excused by the school for illness or other good cause, as determined by the institution.

(c) Provides that participation in the program does not create a property right for either the parents or the participating institution.

Sec. 29.514. TRANSFER. (a) Authorizes an eligible student participating in the program to transfer to a public school or another qualifying institution in the manner authorized by commissioner rule. Requires the commissioner to prorate the amount of a student's program funding between the qualifying institutions or the qualifying institution and the school district, as applicable, according to the length of the student's attendance at each entity if the student transfers to another school or qualifying institution under this section after the beginning of the school year.

(b) Authorizes the commissioner to adopt rules regarding the frequency with which a parent is authorized to transfer an eligible student from a qualifying institution to another qualifying institution.

(c) Prohibits the commissioner from adopting rules restricting the frequency with which a parent is authorized to transfer an eligible student from a qualifying institution to a public school.

Sec. 29.515. RULES. (a) Requires the commissioner to adopt rules as necessary to implement, administer, and enforce the program, including rules regarding:

- (1) the calculation and distribution of payments for qualifying institutions;
- (2) application and approval procedures for qualifying institution and student participation in the program, including timelines for the application and approval procedures; and
- (3) student transfers under Section 29.514.

Sec. 29.516. PROGRAM COMPLIANCE. (a) Authorizes TEA to withhold funding from any district or qualifying institution that violates this subchapter or a rule adopted under this subchapter. Provides that TEA decisions are final and may not be appealed.

(b) Authorizes the commissioner to revoke a qualifying institution's permission to participate in the program if the commissioner determines that the institution:

- (1) has not met the requirements provided by this subchapter;
- (2) has willfully misrepresented information required by this subchapter; or
- (3) has failed to refund to the state in a timely manner any overpayment of program funding made to the institution.

(c) Requires TEA to immediately notify the public through TEA's website if the commissioner revocation of a qualifying institution's permission to participate in the program under Subsection (b).

Sec. 29.517. LIABILITY. Provides that TEA is not civilly liable for any action arising as the result of a student's participation in the program.

Sec. 29.518. EVALUATION OF PROGRAM. (a) Requires the commissioner to designate, subject to available financial resources, an impartial organization with experience in evaluating programs similar to the program established under this subchapter to conduct an annual evaluation of the program.

(b) Requires that an evaluation under this section compare differences between qualifying institutions and public schools and authorizes the evaluation to include consideration of:

- (1) student satisfaction;

- (2) parent satisfaction;
- (3) behavioral problems of program students attending qualifying institutions as compared with students attending public schools;
- (4) class size;
- (5) the fiscal impact to the state and school districts;
- (6) academic performance by comparable students as measured by an assessment under Section 29.510(b);
- (7) factors resulting in more than 25 percent of eligible students in a school district attending a qualifying institution or public school in another district under this subchapter; and
- (8) the practices of a qualifying institution that contribute to any change in student behavior or academic performance.

- (c) Requires that the evaluation apply appropriate analytical and behavioral science methodologies to ensure public confidence in the evaluation.
- (d) Requires the commissioner, not later than December 1, 2014, to submit to each member of the legislature a copy of any evaluation conducted under this section.
- (e) Requires school districts, open-enrollment charter schools, and qualifying institutions to provide to the organization conducting the evaluation student assessment instrument results and any other information necessary to complete the evaluation, subject to any other federal or state law, including an applicable provision of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).
- (f) Authorizes TEA to accept grants to assist in funding the evaluation.

Sec. 29.519. APPLICATION OF SUNSET ACT. (a) Provides that the contracted services program is subject to Chapter 325 (Sunset Law), Government Code, as if the program were a state agency. Provides that, unless continued in existence as provided by that chapter, the program is abolished and this subchapter expires September 1, 2017.

- (b) Requires TEA, to the extent Chapter 325, Government Code, imposes a duty on a state agency under review, to perform that duty as it relates to the program subject to available financial resources.

SECTION 2. (a) Requires TEA to make the contracted services program under Subchapter M, Chapter 29, Education Code, as added by this Act, available for participation beginning with the 2012-2013 academic school year.

- (b) Requires the commissioner to adopt and implement rules necessary for the administration of the program as soon as practicable.

SECTION 3. Effective date: September 1, 2011.