

By: Davis

S.B. No. 1871

A BILL TO BE ENTITLED

AN ACT

relating to a contracted services program for certain students with pervasive developmental disorder or intellectual disability.

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. Contracted Services 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) "Pervasive developmental disorder" includes, as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders:

(A) Autistic disorder;

(B) Asperger's disorder;

(C) Pervasive developmental disorder not otherwise specified;

(D) Rett's disorder; and

(E) Childhood disintegrative disorder.

(3) "Program" means the contracted services program for eligible students described by this subchapter.

(4) "Qualifying institution":

(A) means a nongovernmental community-based educational, medical, or therapeutic establishment that:

1 (i) provides for the educational, medical,
2 or therapeutic needs of students with pervasive developmental
3 disorder or intellectual disability; and

4 (ii) is selected for participation in the
5 program, as provided by Section 29.404; and

6 (B) does not include a school that provides
7 education in a home setting or that limits enrollment to relatives
8 of the school's staff.

9 Sec. 29.402. PROGRAM. An eligible student under Section
10 29.403 may, at the option of the student's parent:

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

13 (2) attend a public school in a district other than the
14 district in which the student resides, pursuant to Section 25.001,
15 Education Code; or

16 (3) access contracted services as provided by Section
17 29.405 through a qualifying institution.

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

20 (1) the student is eligible to receive public school
21 services and is eligible under Section 29.003, Education Code to
22 participate in a school district's special education program; and

23 (2) the student has been diagnosed with pervasive
24 developmental disorder or as having an intellectual disability.

25 (b) Each school year, a school district or open-enrollment
26 charter school shall:

27 (1) provide written notice of the program to the

1 parent of a student who is eligible to participate in the program
2 under Subsection (a); and

3 (c) A student who establishes eligibility under this
4 section may continue participating in the program until the earlier
5 of the date the student graduates from high school or the student's
6 22nd birthday.

7 (d) A student establishes eligibility to participate in a
8 school district's special education program in the manner provided
9 by Subchapter A, Chapter 29, Education Code. If a student who has
10 not previously been identified as eligible to receive special
11 education services under Subchapter A, Chapter 29, Education Code,
12 and who attends a qualifying institution wishes to establish
13 eligibility to participate in the program, the qualifying
14 institution and school district in which the student resides shall
15 jointly determine whether the student would be eligible to receive
16 special education services if the student were enrolled in the
17 district.

18 (e) A student is not required to attend a public school for
19 any period of time in order to establish eligibility to participate
20 in the program.

21 (f) For a student who attends a qualifying institution under
22 this subchapter, the school district in which the student resides,
23 the qualifying institution, and the student's parent shall
24 biannually review:

25 (1) the continued presence of the student's original
26 diagnosis; and

27 (2) the student's continued eligibility for

1 participation in the program.

2 Sec. 29.404. FINANCING OF SERVICES PROVIDED BY QUALIFYING
3 INSTITUTION. (a) Except as otherwise provided by this section, for
4 a student who attends a qualifying institution under this
5 subchapter, a qualifying institution is entitled to an annual
6 amount of funding that is equal to the amount the institution would
7 receive for a student if the institution were an open-enrollment
8 charter school, as calculated under Sections 12.106(a)(2) and
9 (a-1), Education Code, less any amount to which the State
10 determines is necessary to meet the costs of administration,
11 oversight, and other elements of program development and
12 implementation.

13 (b) A student's program funding under this section may not
14 be financed by:

15 (1) money appropriated from the available school fund;
16 or,

17 (2) federal funds.

18 (c) The agency shall directly distribute the funding to the
19 qualifying institution. Qualifying institutions shall be
20 determined through a Request for Qualifications (RFQ) process
21 established by the Agency, in collaboration with the Department of
22 Assistive and Rehabilitative Services (DARS), subject to public
23 comment as to the criteria and standards to be used to establish
24 qualification. The agency and DARS shall have equal input in the RFQ
25 process and selection of qualifying institutions.

26 (d) For an eligible student to participate in the program,
27 the parent of the student must apply to the agency on behalf of the

1 student. The application must specify the qualifying institution
2 the student plans to attend and demonstrate that the student has
3 been accepted for admission by that institution. On receiving the
4 application from the parent of an eligible student, the agency
5 shall determine a student's eligibility in accordance with rules
6 adopted under Section 29.412. If the agency determines that the
7 student is eligible for participation in the program, the agency
8 shall notify the student's parent of the student's eligibility. A
9 parent may apply on behalf of the student to participate in the
10 program at any time.

11 (e) The agency shall direct the distribution of funds to the
12 qualifying institution the student attends after services have been
13 provided. The agency shall require that the qualifying institution
14 submit documentation of the student's attendance before the agency
15 directs funds to the qualifying institution. The qualifying
16 institution shall submit the documentation to the agency on a
17 monthly basis and the agency shall direct the distribution of funds
18 to the qualifying institution not later than the 30th day after
19 receiving the documentation.

20 (f) The student's program funding is the entitlement of the
21 student, under the supervision of the student's parent, and not
22 that of any institution.

23 (g) A qualifying institution may not share a student's
24 program funding with or refund or rebate a student's program
25 funding to the parent or the student in any manner.

26 Sec. 29.405. PARTICIPATION BY QUALIFYING INSTITUTIONS. (a)
27 To participate in the program, a qualifying institution must:

1 (1) either:

2 (A) be accredited by an accrediting association
3 recognized by the commissioner to accredit nongovernmental schools
4 in this state;

5 (B) have filed an application for accreditation
6 by an accrediting association described by Paragraph (A) that has
7 not been withdrawn, denied, or left pending for more than eighteen
8 months; or,

9 (C) recognized as an institution under the
10 Department of Assistive and Rehabilitative Services that provides
11 medical and therapeutic services for disorders listed in Section
12 29.401(2) of this subchapter.

13 (i) The Department of Assistive and
14 Rehabilitative Services has the rulemaking authority to create
15 rules regarding Section 29.405(a)(1)(C).

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

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

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

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

27 (c) A nongovernmental community-based educational

1 establishment that provides for the educational needs of students
2 with pervasive developmental disorder or intellectual disability
3 may apply to the agency to participate in the program as a
4 qualifying institution. The agency, in consultation with the
5 Department of Assistive and Rehabilitative Services, shall create
6 and maintain a list of qualifying institutions and ensure the list
7 is available to the public.

8 Sec. 29.406. ADMISSIONS. (a) A qualifying institution
9 chosen by an eligible student's parent under this subchapter may
10 not deny admission by discriminating on the basis of the student's
11 race, ethnicity, religion, creed, or national origin and must
12 comply with the requirements of:

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

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

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

27 (c) A qualifying institution may submit a written request

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

14 Sec. 29.407. ACADEMIC ACCOUNTABILITY. (a) Each school
15 year, a qualifying institution shall establish academic goals for
16 each eligible student enrolled in the school. The goals must be
17 developed in a manner similar to an individualized education
18 program developed under Section 29.005, Education Code. At regular
19 intervals not less than three times each academic year, the school
20 shall provide a report to the student's parent describing the
21 student's progress toward achieving the academic goals developed
22 for the student under this subsection.

23 (b) Each qualifying institution that enrolls a student
24 under this subchapter shall, each spring, administer an assessment
25 instrument to the student in order to assess the student's academic
26 progress. The assessment instrument administered by the
27 institution may be an assessment instrument adopted under

1 Subchapter B, Chapter 39, Education Code.

2 (c) The institution shall provide:

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

5 (2) the aggregated results of any assessment
6 instruments administered under Subsection (b) to the public.

7 Sec. 29.408. FINANCIAL SOLVENCY. The commissioner may
8 adopt rules requiring a qualifying institution that accepts funding
9 under this subchapter to demonstrate financial solvency.

10 Sec. 29.409. QUALIFYING INSTITUTION AUTONOMY. (a) A
11 qualifying institution that accepts funding under this subchapter
12 is not an agent or arm of the state or federal government.

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

17 (c) A qualifying institution that accepts funding under
18 this subchapter is not required to implement an individualized
19 education program developed for the student under Section 29.005,
20 Education Code. The student's parent and the qualifying
21 institution are responsible for determining the services and
22 educational program to be provided to the student.

23 Sec. 29.410. RESPONSIBILITIES OF PARENT AND STUDENT. (a)
24 It is the responsibility of the parent of an eligible student to:

25 (1) locate and select a qualifying institution;

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

27 and

1 (3) apply in the manner provided under Section 29.406
2 for participation in the program.

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

8 Sec. 29.411. TRANSFER. (a) An eligible student
9 participating in the program may transfer to a public school or
10 another qualifying institution in the manner authorized by
11 commissioner rule. If a student transfers to another school under
12 this section after the beginning of the school year, the
13 commissioner shall prorate the amount of the student's program
14 funding between the qualifying institutions or the qualifying
15 institution and the school district, as applicable, according to
16 the length of the student's attendance at each school.

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

21 Sec. 29.412. RULES. (a) The commissioner shall adopt rules
22 as necessary to implement, administer, and enforce the program,
23 including rules regarding:

24 (1) the calculation and distribution of payments for
25 qualifying institutions;

26 (2) application and approval procedures for
27 qualifying institution and student participation in the program,

1 including timelines for the application and approval procedures;
2 and

3 (3) student transfers under Section 29.411.

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

8 Sec. 29.413. PROGRAM COMPLIANCE. (a) The agency shall
9 enforce this subchapter and any rule adopted under this subchapter
10 and may withhold funds from any district or qualifying institution
11 that violates this subchapter or a rule adopted under this
12 subchapter. Agency decisions are final and may not be appealed.

13 (1) Participation in the program does not create a
14 property right for either the parents or the participating
15 institution.

16 (b) The commissioner may revoke a qualifying institution's
17 permission to participate in the program if the commissioner
18 determines that the institution:

19 (1) has not met the requirements provided by this
20 subchapter;

21 (2) has willfully misrepresented information required
22 by this subchapter; or

23 (3) has failed to refund to the state in a timely
24 manner any overpayment of program funding made to the institution.

25 (c) If the commissioner revokes a qualifying institution's
26 permission to participate in the program under Subsection (b), the
27 agency shall immediately notify the public through the agency's

1 website of the revocation.

2 Sec. 29.414. LIABILITY. The agency is not civilly liable
3 for any action arising as the result of a student's participation in
4 the program.

5 Sec. 29.415. EVALUATION OF PROGRAM. (a) The commissioner
6 may designate, subject to available financial resources, an
7 impartial organization with experience in evaluating programs
8 similar to the program established under this subchapter to conduct
9 an annual evaluation of the program. The evaluation must be
10 conducted without the use of state funds.

11 (b) An evaluation under this section must compare
12 differences between qualifying institutions and public schools and
13 may include consideration of:

14 (1) student satisfaction;

15 (2) parent satisfaction;

16 (3) behavioral problems of program students attending
17 qualifying institutions as compared with students attending public
18 schools;

19 (4) class size;

20 (5) the fiscal impact to the state and school
21 districts;

22 (6) academic performance by comparable students as
23 measured by an assessment instrument required under Section
24 29.407(b);

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

1 (8) the practices of a qualifying institution that
2 contribute to any change in student behavior or academic
3 performance.

4 (c) The evaluation must apply appropriate analytical and
5 behavioral science methodologies to ensure public confidence in the
6 evaluation.

7 (d) Not later than December 1, 2014, the commissioner shall
8 submit to each member of the legislature a copy of any evaluation
9 conducted under this section.

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

16 (f) The agency may accept grants to assist in funding the
17 evaluation subject to available financial resources.

18 Sec. 29.416. APPLICATION OF SUNSET ACT. (a) The contracted
19 services program is subject to Chapter 325, Government Code (Texas
20 Sunset Act), as if the program were a state agency. Unless
21 continued in existence as provided by that chapter, the program is
22 abolished and this subchapter expires September 1, 2017.

23 (b) To the extent Chapter 325, Government Code, imposes a
24 duty on a state agency under review, the agency shall perform that
25 duty as it relates to the program subject to available financial
26 resources.

27 SECTION 2. (a) The Texas Education Agency shall make the

1 contracted services program under Subchapter K, Chapter 29,
2 Education Code, as added by this Act, available for participation
3 beginning with the 2012-2013 academic school year.

4 (b) As soon as practicable, the commissioner of education
5 shall adopt and implement rules necessary for the administration of
6 the program.

7 SECTION 3. This Act takes effect September 1, 2011.