

1-1 By: Davis S.B. No. 1871
1-2 (In the Senate - Filed March 11, 2011; March 24, 2011, read
1-3 first time and referred to Committee on Education; May 12, 2011,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 5, Nays 3; May 12, 2011, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1871 By: Davis

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to a contracted services program for certain students with
1-10 a severe pervasive developmental disorder or a severe intellectual
1-11 disability.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 29, Education Code, is amended by adding
1-14 Subchapter M to read as follows:

1-15 SUBCHAPTER M. CONTRACTED SERVICES PROGRAM

1-16 Sec. 29.501. DEFINITIONS. In this subchapter:

1-17 (1) "Parent" includes a guardian, custodian, or other
1-18 person with authority to act on behalf of a student.

1-19 (2) "Pervasive developmental disorder" includes, as
1-20 defined by the most recent edition of the Diagnostic and
1-21 Statistical Manual of Mental Disorders:

1-22 (A) autism;

1-23 (B) Asperger's syndrome;

1-24 (C) Rett's syndrome;

1-25 (D) childhood disintegrative disorder; and

1-26 (E) a pervasive developmental disorder, not
1-27 otherwise specified.

1-28 (3) "Program" means the contracted services program
1-29 for eligible students created by this subchapter.

1-30 (4) "Qualifying institution":

1-31 (A) means a nongovernmental community-based
1-32 educational and therapeutic establishment that:

1-33 (i) provides for the educational and
1-34 therapeutic needs of students with a severe pervasive developmental
1-35 disorder or severe intellectual disability;

1-36 (ii) qualifies for participation in the
1-37 program, as provided by Section 29.507; and

1-38 (iii) is eligible to receive insurance
1-39 payments or Medicaid payments made on behalf of an eligible
1-40 student; and

1-41 (B) does not include a school that solely
1-42 provides education in a home setting or that limits enrollment to
1-43 relatives of the school's staff.

1-44 Sec. 29.502. CONTRACTED SERVICES PROGRAM. (a) An eligible
1-45 student under Section 29.503 may:

1-46 (1) attend any public school in the district in which
1-47 the student resides;

1-48 (2) attend a public school in a district other than the
1-49 district in which the student resides; or

1-50 (3) receive contracted services through a qualifying
1-51 institution.

1-52 (b) Each school year, a school district or open-enrollment
1-53 charter school shall provide written notice of the program to the
1-54 parent of a student who is eligible to participate in the program
1-55 under Section 29.503. Notice under this subsection must:

1-56 (1) include information explaining that the
1-57 Individuals with Disabilities Education Act (20 U.S.C. Section 1400
1-58 et seq.) does not apply to a qualifying institution participating
1-59 in the program and that a student attending a qualifying
1-60 institution under this subchapter waives any rights under the Act;
1-61 and

1-62 (2) require that the student's parent sign a
1-63 confirmation of receipt of the notice and return the confirmation

2-1 to the district.
2-2 Sec. 29.503. ELIGIBLE STUDENT. (a) A student is eligible
2-3 to participate in the program if the student:
2-4 (1) has sought public school services under an
2-5 individualized education plan at the time the parent applies for
2-6 the program;
2-7 (2) is eligible to participate in a school district's
2-8 special education program under Section 29.003;
2-9 (3) has been diagnosed by a medical doctor with:
2-10 (A) a severe pervasive developmental disorder;
2-11 or
2-12 (B) a severe intellectual disability; and
2-13 (4) requires a limited duration of intense services
2-14 for the purpose of attaining school readiness skills to participate
2-15 in a classroom. School readiness skills shall include the
2-16 following skills:
2-17 (A) spontaneous imitation of their peers basic
2-18 functions;
2-19 (B) the ability to sit and attend quietly for at
2-20 least five minutes in a group setting;
2-21 (C) basic communication skills;
2-22 (D) basic social skills such as:
2-23 (i) sharing; and
2-24 (ii) responding to peers;
2-25 (E) compliance skills; and
2-26 (F) maladaptive behaviors at a rate, frequency,
2-27 and intensity that does not disrupt the class.
2-28 (b) For a student who attends a qualifying institution under
2-29 this subchapter, the school district in which the student resides,
2-30 the qualifying institution, and the student's parent shall annually
2-31 review:
2-32 (1) the continued applicability of the student's
2-33 original diagnosis;
2-34 (2) the student's continued eligibility for
2-35 participation in the program;
2-36 (3) the plan for transition of the student to a public
2-37 school; and
2-38 (4) the goals established and assessments
2-39 administered under Section 29.510.
2-40 (c) If the parent and the school district disagree as to
2-41 whether a student continues to meet the qualifications for an
2-42 eligible student under Subsection (a), the parent may seek a second
2-43 diagnosis as established under Subsection (d).
2-44 (d) If the parent and the school district disagree as to
2-45 whether a student meets the requirements for eligibility under
2-46 Subsection (a)(4), the parent may seek a second diagnosis by a
2-47 second medical doctor to determine whether the student requires a
2-48 limited duration of intense services for the purpose of attaining
2-49 school readiness skills. Not later than the 30th day following the
2-50 second diagnosis as provided by this subsection, the school
2-51 district and the parent shall meet to discuss the results of the
2-52 second diagnosis. The second diagnosis determines whether the
2-53 student meets the eligibility requirements under Subsection
2-54 (a)(4). The parent shall be responsible for the costs and effort in
2-55 obtaining a second diagnosis.
2-56 Sec. 29.504. TRANSFER OF STATE AID BETWEEN SCHOOL
2-57 DISTRICTS. Except as provided by Section 29.505, an eligible
2-58 student who, as provided by Section 29.502(a)(2), attends a public
2-59 school in a school district other than the district in which the
2-60 student resides is included in the average daily attendance of the
2-61 district in which the student resides for purposes of Chapters 41
2-62 and 42.
2-63 Sec. 29.505. STATE AID IN CERTAIN CIRCUMSTANCES. An
2-64 eligible student who, as provided by Section 29.502(a)(2), attends
2-65 a public school in a school district other than the district in
2-66 which the student resides is counted in the average daily
2-67 attendance of the school district in which the student attends
2-68 school if the total amount of state aid that the enrolling district
2-69 would receive by counting the student in the district's average

3-1 daily attendance is greater than the amount of state aid the
 3-2 district would receive as a result of receiving a transfer of funds
 3-3 from the district in which the student resides under Section
 3-4 29.504.

3-5 Sec. 29.506. FINANCING OF SERVICES PROVIDED BY QUALIFYING
 3-6 INSTITUTION. (a) Except as provided by Subsection (b), for a
 3-7 student who attends a qualifying institution under this subchapter,
 3-8 the qualifying institution is entitled to an annual amount of
 3-9 funding that is equal to the amount the institution would receive
 3-10 for a student if the institution were an open-enrollment charter
 3-11 school, as calculated under Sections 12.106(a)(2) and (a-1),
 3-12 multiplied by 1.1.

3-13 (b) The commissioner may withhold a portion of the funding
 3-14 to which a qualifying institution is entitled under Subsection (a)
 3-15 to pay the costs of administering the program.

3-16 (c) A student's program funding under this section may not
 3-17 be financed by:

3-18 (1) money appropriated from the available school fund;
 3-19 or

3-20 (2) federal funds.

3-21 (d) The agency shall directly distribute funding to the
 3-22 qualifying institution on a monthly basis. The agency may not
 3-23 distribute funding to the qualifying institution the student
 3-24 attends until after services have been provided.

3-25 (e) The agency shall require that the qualifying
 3-26 institution submit documentation of the student's attendance
 3-27 before the agency distributes funding to the qualifying
 3-28 institution. The qualifying institution shall submit the
 3-29 documentation to the agency on a monthly basis, and the agency shall
 3-30 distribute funding to the qualifying institution not later than the
 3-31 30th day after the date of receiving the documentation.

3-32 (f) A qualifying institution may not share a student's
 3-33 program funding with or refund or rebate a student's program
 3-34 funding to the parent, the student, or a nonqualifying institution
 3-35 in any manner.

3-36 Sec. 29.507. PARTICIPATION BY QUALIFYING INSTITUTIONS.

3-37 (a) To participate in the program, a qualifying institution:

3-38 (1) must:

3-39 (A) comply with all health and safety laws
 3-40 applicable to nongovernmental schools;

3-41 (B) hold a valid occupancy permit if required by
 3-42 the municipality in which the institution is located;

3-43 (C) employ a health care practitioner described
 3-44 by Section 1355.015(b), Insurance Code; and

3-45 (D) comply with all state laws regarding criminal
 3-46 background checks for employees and may not employ a person who is
 3-47 not authorized under state law to work in a public school district
 3-48 or open-enrollment charter school; qualifying institutions shall
 3-49 follow and have access to the same procedures and information as
 3-50 established by Section 22.083; and

3-51 (2) may not advocate or foster unlawful behavior or
 3-52 teach hatred of any person or group on the basis of race, ethnicity,
 3-53 national origin, or religion.

3-54 (b) Qualifying institutions shall be determined through a
 3-55 request for qualification process established by the agency, in
 3-56 collaboration with the Department of Assistive and Rehabilitative
 3-57 Services, and subject to public comment as to the criteria and
 3-58 standards to be used to establish qualification. The agency and the
 3-59 Department of Assistive and Rehabilitative Services shall have
 3-60 equal input in the request for qualification process and selection
 3-61 of qualifying institutions.

3-62 (c) The request for qualification process established under
 3-63 Subsection (b) may include provisions considering whether an
 3-64 institution:

3-65 (1) is accredited by an accrediting association
 3-66 recognized by the commissioner to accredit nongovernmental schools
 3-67 in this state;

3-68 (2) has filed an application for accreditation by an
 3-69 accrediting association described by Subdivision (1) that has not

4-1 been withdrawn, denied, or left pending for more than 18 months; or
 4-2 (3) has previously provided contracted services for
 4-3 individuals with pervasive developmental disorders or intellectual
 4-4 disabilities for the Department of Assistive and Rehabilitative
 4-5 Services.

4-6 (d) A nongovernmental community-based educational
 4-7 establishment that provides for the educational needs of students
 4-8 with severe pervasive developmental disorders or severe
 4-9 intellectual disabilities may apply to the agency to participate in
 4-10 the program as a qualifying institution. The agency, in
 4-11 consultation with the Department of Assistive and Rehabilitative
 4-12 Services, shall create and maintain a list of participating
 4-13 qualifying institutions and ensure that the list is available to
 4-14 the public.

4-15 (e) A sectarian institution may not be a qualifying
 4-16 institution under this subchapter.

4-17 Sec. 29.508. APPLICATION FOR CONTRACTED SERVICES THROUGH
 4-18 PROGRAM. (a) For an eligible student to participate in the
 4-19 program and receive contracted services through a qualifying
 4-20 institution, the parent of the student must apply to the agency on
 4-21 behalf of the student. The application must specify the qualifying
 4-22 institution the student plans to attend and demonstrate that the
 4-23 student has been accepted for admission by that institution.

4-24 (b) On receiving the application from the parent of an
 4-25 eligible student, the agency shall verify a student's eligibility.
 4-26 If the agency verifies that the student is eligible for
 4-27 participation in the program, the agency shall notify the student's
 4-28 parent of the student's eligibility.

4-29 (c) A verification of student eligibility by the agency
 4-30 under Subsection (b) is for review purposes only and does not
 4-31 preempt the decision made at the local level on whether a student
 4-32 qualifies for contracted services under the program.

4-33 (d) A parent may apply on behalf of the student to
 4-34 participate in the program at any time.

4-35 Sec. 29.509. ADMISSIONS. (a) In order to receive funding
 4-36 under Section 29.506, a qualifying institution may not deny
 4-37 admission by discriminating on the basis of the student's race,
 4-38 ethnicity, religion, creed, or national origin and must comply with
 4-39 the requirements of:

4-40 (1) Title VI, Civil Rights Act of 1964 (42 U.S.C.
 4-41 Section 2000d et seq.) with respect to discrimination on the basis
 4-42 of race, color, or national origin; and

4-43 (2) Section 504, Rehabilitation Act of 1973 (29 U.S.C.
 4-44 Section 794), with respect to nondiscrimination on the basis of
 4-45 disability.

4-46 (b) A qualifying institution or a school district or campus
 4-47 that has more qualified program applicants for attendance under
 4-48 this subchapter than available positions must fill the available
 4-49 program positions in the order the institution, district, or campus
 4-50 receives the applications. In considering whether the school
 4-51 district, public school, or qualifying institution has more
 4-52 qualified applicants than availability for qualified applicants,
 4-53 the entity may consider staff needs, financial resources, and
 4-54 facility space.

4-55 (c) A qualifying institution or public school in another
 4-56 district may refuse an eligible student if it determines that
 4-57 admittance would require additional staff, financial resources, or
 4-58 facility space.

4-59 (d) A qualifying institution may submit a written request
 4-60 for student records from the school district or open-enrollment
 4-61 charter school previously attended by an eligible student, if
 4-62 applicable. Not later than the 10th working day after the date the
 4-63 district or school receives the request, the district or school
 4-64 shall deliver to the qualifying institution a copy of the school's
 4-65 complete student records for that student, including attendance
 4-66 records, disciplinary records, results of any assessment
 4-67 instruments administered to the student, the student's
 4-68 individualized educational program, and any other comprehensive
 4-69 assessments from each school the student previously attended. A

5-1 district or school that is required to release student records
 5-2 under this subsection shall comply with any applicable provision of
 5-3 the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
 5-4 Section 1232g).

5-5 Sec. 29.510. ACADEMIC ACCOUNTABILITY. (a) A qualifying
 5-6 institution, in collaboration with the school district in which the
 5-7 student resides, shall establish academic and functional goals for
 5-8 each eligible student receiving contracted services from the
 5-9 institution. The goals must be developed in a manner similar to an
 5-10 individualized educational program developed under Section 29.005.
 5-11 Each school year, a qualifying institution shall review and revise
 5-12 the goals developed for the student under this subsection. At
 5-13 regular intervals not less than three times each academic year, the
 5-14 qualifying institution shall provide a report to the student's
 5-15 parent describing the student's progress toward achieving the goals
 5-16 developed for the student under this subsection.

5-17 (b) Each spring semester, a qualifying institution that
 5-18 provides contracted services to a student under this subchapter
 5-19 shall assess the student's progress. Under an agreement with the
 5-20 agency, the qualifying institution shall administer the
 5-21 appropriate assessment instrument adopted under Subchapter B,
 5-22 Chapter 39.

5-23 (c) The qualifying institution shall provide:

5-24 (1) the student's results on assessment instruments
 5-25 administered under Subsection (b) to the student's parent; and

5-26 (2) the aggregated results of assessment instruments
 5-27 administered under Subsection (b) to the public, subject to the
 5-28 applicable provisions of the Family Educational Rights and Privacy
 5-29 Act of 1974 (20 U.S.C. Section 1232g).

5-30 Sec. 29.511. FINANCIAL SOLVENCY. The commissioner may
 5-31 adopt rules requiring a qualifying institution that accepts funding
 5-32 under this subchapter to demonstrate financial solvency.

5-33 Sec. 29.512. QUALIFYING INSTITUTION AUTONOMY. (a) A
 5-34 qualifying institution that accepts funding under this subchapter
 5-35 is not an agent or arm of the state or federal government.

5-36 (b) Except as provided by this subchapter, the
 5-37 commissioner, the agency, the State Board of Education, or any
 5-38 other state agency may not regulate the educational program of a
 5-39 qualifying institution that accepts funding under this subchapter.

5-40 (c) A qualifying institution that accepts funding under
 5-41 this subchapter is not required to implement an individualized
 5-42 educational program developed for the student under Section 29.005.
 5-43 The eligible student's parent and the qualifying institution shall
 5-44 determine the services and educational program to be provided to
 5-45 the eligible student.

5-46 Sec. 29.513. RIGHTS AND RESPONSIBILITIES OF PARENTS AND
 5-47 STUDENTS. (a) It is the responsibility of the parent of an
 5-48 eligible student to:

5-49 (1) locate and select a qualifying institution;

5-50 (2) apply for admission to the qualifying institution;

5-51 and

5-52 (3) apply in the manner provided under Section 29.508
 5-53 for participation in the program.

5-54 (b) A student participating in the program must attend the
 5-55 qualifying institution each school day unless the student is
 5-56 excused by the school for illness or other good cause, as determined
 5-57 by the institution.

5-58 (c) Participation in the program does not create a property
 5-59 right for either the parents or the participating qualifying
 5-60 institution.

5-61 Sec. 29.514. TRANSFER. (a) An eligible student
 5-62 participating in the program may transfer to a public school or
 5-63 another qualifying institution in the manner authorized by
 5-64 commissioner rule. If a student transfers to another school or
 5-65 qualifying institution under this section after the beginning of
 5-66 the school year, the commissioner shall prorate the amount of the
 5-67 student's program funding between the qualifying institutions or
 5-68 the qualifying institution and the school district, as applicable,
 5-69 according to the length of the student's attendance at each entity.

6-1 (b) The commissioner may adopt rules regarding the
6-2 frequency with which a parent may transfer an eligible student from
6-3 a qualifying institution to another qualifying institution.

6-4 (c) The commissioner may not adopt rules restricting the
6-5 frequency with which a parent may transfer an eligible student from
6-6 a qualifying institution to a public school.

6-7 Sec. 29.515. RULES. The commissioner shall adopt rules as
6-8 necessary to implement, administer, and enforce the program,
6-9 including rules regarding:

6-10 (1) the calculation and distribution of payments for
6-11 qualifying institutions;

6-12 (2) application and approval procedures for
6-13 qualifying institutions and student participation in the program,
6-14 including timelines for the application and approval procedures;
6-15 and

6-16 (3) student transfers under Section 29.514.

6-17 Sec. 29.516. PROGRAM COMPLIANCE. (a) The agency may
6-18 withhold funding from any district or qualifying institution that
6-19 violates this subchapter or a rule adopted under this subchapter.
6-20 Agency decisions are final and may not be appealed.

6-21 (b) The commissioner may revoke a qualifying institution's
6-22 permission to participate in the program if the commissioner
6-23 determines that the institution:

6-24 (1) has not met the requirements provided by this
6-25 subchapter;

6-26 (2) has wilfully misrepresented information required
6-27 by this subchapter; or

6-28 (3) has failed to refund to the state in a timely
6-29 manner any overpayment of program funding made to the institution.

6-30 (c) If the commissioner revokes a qualifying institution's
6-31 permission to participate in the program under Subsection (b), the
6-32 agency shall immediately notify the public through the agency's
6-33 Internet website of the revocation.

6-34 Sec. 29.517. LIABILITY. The agency is not civilly liable
6-35 for any action arising as the result of a student's participation in
6-36 the program.

6-37 Sec. 29.518. EVALUATION OF PROGRAM. (a) The commissioner
6-38 shall designate, subject to available financial resources, an
6-39 impartial organization with experience in evaluating programs
6-40 similar to the program established under this subchapter to conduct
6-41 an annual evaluation of the program.

6-42 (b) An evaluation under this section must compare
6-43 differences between qualifying institutions and public schools and
6-44 may include consideration of:

6-45 (1) student satisfaction;

6-46 (2) parent satisfaction;

6-47 (3) behavioral problems of program students attending
6-48 qualifying institutions as compared with students attending public
6-49 schools;

6-50 (4) class size;

6-51 (5) the fiscal impact to the state and school
6-52 districts;

6-53 (6) academic performance by comparable students as
6-54 measured by an assessment under Section 29.510(b);

6-55 (7) factors resulting in more than 25 percent of
6-56 eligible students in a school district attending a qualifying
6-57 institution or public school in another district under this
6-58 subchapter; and

6-59 (8) the practices of a qualifying institution that
6-60 contribute to a change in student behavior or academic performance.

6-61 (c) The evaluation must apply appropriate analytical and
6-62 behavioral science methodologies to ensure public confidence in the
6-63 evaluation.

6-64 (d) Not later than December 1, 2014, the commissioner shall
6-65 submit to each member of the legislature a copy of an evaluation
6-66 conducted under this section.

6-67 (e) Subject to any other federal or state law, including an
6-68 applicable provision of the Family Educational Rights and Privacy
6-69 Act of 1974 (20 U.S.C. Section 1232g), school districts,

7-1 open-enrollment charter schools, and qualifying institutions shall
7-2 provide to the organization conducting an evaluation student
7-3 assessment instrument results and any other information necessary
7-4 to complete the evaluation.

7-5 (f) The agency may accept grants to assist in funding the
7-6 evaluation.

7-7 Sec. 29.519. APPLICATION OF SUNSET ACT. (a) The
7-8 contracted services program is subject to Chapter 325, Government
7-9 Code (Texas Sunset Act), as if the program were a state agency.
7-10 Unless continued in existence as provided by that chapter, the
7-11 program is abolished and this subchapter expires September 1, 2017.

7-12 (b) To the extent Chapter 325, Government Code (Texas Sunset
7-13 Act), imposes a duty on a state agency under review, the agency
7-14 shall perform that duty as it relates to the program, subject to
7-15 available financial resources.

7-16 SECTION 2. (a) The Texas Education Agency shall make the
7-17 contracted services program under Subchapter M, Chapter 29,
7-18 Education Code, as added by this Act, available for participation
7-19 beginning with the 2012-2013 academic school year.

7-20 (b) As soon as practicable, the commissioner of education
7-21 shall adopt and implement rules necessary for the administration of
7-22 the contracted services program.

7-23 SECTION 3. This Act takes effect September 1, 2011.

7-24 * * * * *