

By: Williams

S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to a school choice program for certain students with disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 29, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. SCHOOL CHOICE PROGRAM FOR STUDENTS WITH DISABILITIES

Sec. 29.351. 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 school choice program described by this subchapter.

(3) "Qualifying school" means a nongovernmental community-based educational establishment that exists for the public good and provides for the education needs of elementary and secondary students with disabilities. 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. 29.352. PROGRAM. An eligible student under Section 29.353 may, at the option of the student's parent:

(1) attend any public school in the school district in which the student resides as provided by Subchapter G;

(2) subject to the limitations of Section 29.203, attend a public school in a district other than the district in

1 which the student resides as provided by Subchapter G; or

2 (3) receive a scholarship as provided by Section
3 29.354 to pay the costs of attending a qualifying school.

4 Sec. 29.353. ELIGIBLE STUDENT. (a) A student is eligible
5 to participate in the program if:

6 (1) the student is in kindergarten through grade 12
7 and eligible under Section 29.003 to participate in a school
8 district's special education program; and

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

11 (b) A school district shall provide written notice of the
12 program to the parent of a student who is eligible to participate in
13 the program under Subsection (a). The notice under this subsection
14 must inform the parent that a qualifying school is not subject to
15 laws regarding the provision of education services in the same
16 manner as a public school, and a student with disabilities
17 attending a qualifying school may not receive the services a
18 student with disabilities attending a public school is entitled to
19 receive under federal and state law. The notice must provide
20 information regarding rights a student with disabilities is
21 entitled to under federal and state law if the student attends a
22 public school, including:

23 (1) rights provided under the Individuals with
24 Disabilities Education Act (20 U.S.C. Section 1400 et seq.),
25 including:

26 (A) an individualized education program;

27 (B) education services provided in the least

1 restrictive environment;

2 (C) instruction from certified teachers;

3 (D) due process hearings to ensure proper and
4 full implementation of an individualized education program;

5 (E) transition and planning services; and

6 (F) supplementary aids and services;

7 (2) rights provided under Subchapter A; and

8 (3) other rights provided under federal or state law.

9 (c) A student who establishes eligibility under this
10 section may continue participating in the program until the earlier
11 of the date the student graduates from high school or the student's
12 22nd birthday.

13 Sec. 29.354. FINANCING; SCHOLARSHIP. (a) A student who
14 attends a qualifying school under this subchapter is entitled to
15 receive an annual scholarship in an amount equal to the amount of
16 funding to which the school district in which the student resides
17 would be entitled under Chapter 42 for the student. If the cost of
18 attending the qualifying school is less than the amount the student
19 would be entitled to under this subsection, the amount of the
20 scholarship shall be reduced to the amount necessary to pay the
21 costs of attending the qualifying school.

22 (b) On application by the parent of an eligible student, the
23 agency shall determine a student's eligibility in accordance with
24 rules adopted under Section 29.359. If the agency determines that
25 the student is eligible for participation in the program, the
26 agency shall issue a scholarship certificate to the parent. The
27 parent shall endorse and present the certificate to the qualifying

1 school chosen by the parent.

2 (c) The qualifying school the student attends must endorse
3 and present the student's scholarship certificate with
4 documentation relating to the costs for the student to attend the
5 qualifying school to the agency to receive payment. The agency
6 shall distribute to the qualifying school the amount of the
7 student's scholarship under Subsection (a).

8 (d) The agency shall direct the distribution of funds to the
9 qualifying school the student attends on a monthly pro rata basis
10 after educational services have been provided. The agency shall
11 require that the qualifying school submit documentation of the
12 student's attendance before the agency directs funds to the
13 qualifying school. The payment shall be made not later than the 30th
14 day after the date on which the agency receives from the qualifying
15 school a request for payment.

16 (e) The student's scholarship is the entitlement of the
17 student, under the supervision of the student's parent, and not
18 that of any school.

19 (f) A qualifying school may not share a student's
20 scholarship with or refund or rebate a student's scholarship to the
21 parent or the student in any manner.

22 (g) A student's scholarship may not be financed by money
23 appropriated from the available school fund.

24 Sec. 29.355. PARTICIPATION BY QUALIFYING SCHOOLS. To
25 participate in the program, a qualifying school must:

26 (1) be accredited by or have filed an application for
27 accreditation by an accrediting association recognized by the

1 commissioner to accredit nongovernmental schools in this state;

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

5 (3) agree to fully comply with the individualized
6 education program developed for a student under Section 29.005.

7 Sec. 29.356. ADMISSIONS. (a) A qualifying school chosen by
8 an eligible student's parent under this subchapter:

9 (1) may not deny admission by discriminating on the
10 basis of the student's:

11 (A) race, ethnicity, or national origin;

12 (B) income status; or

13 (C) status as a student who qualifies for
14 instruction in English as a second language; and

15 (2) must comply with the requirements of:

16 (A) 42 U.S.C. Section 2000d et seq., with
17 respect to nondiscrimination on the basis of race, color, or
18 national origin; and

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

22 (b) Except as provided by this subsection, a qualifying
23 school that has more qualified scholarship applicants for
24 attendance under this subchapter than available positions must fill
25 the available scholarship positions by a random selection process.
26 To achieve continuity in education, a school may give preference
27 among scholarship applicants to a previously enrolled student and

1 to other students residing in the same household as a previously
2 enrolled student.

3 (c) A qualifying school may submit a written request for
4 student records from the public school previously attended by an
5 eligible student. On receipt of a request submitted under this
6 subsection, the public school shall in a timely manner deliver to
7 the qualifying school a copy of the public school's complete
8 student records for that student, including attendance records,
9 disciplinary records, past results of any assessment instruments
10 administered to the student, the student's individualized
11 education program, and any other comprehensive assessments from
12 each school the student previously attended. A public school that
13 is required to release student records under this subsection shall
14 comply with any applicable provision of the Family Educational
15 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

16 Sec. 29.357. ACCOUNTABILITY. (a) Each qualifying school
17 that enrolls a student under this subchapter shall annually
18 administer in the spring:

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

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

23 (b) The school shall provide:

24 (1) the student's results to the student's parent; and

25 (2) the aggregated results of the assessment
26 instruments to the public.

27 Sec. 29.358. QUALIFYING SCHOOL AUTONOMY. (a) A qualifying

1 school that accepts a scholarship under this subchapter is not an
2 agent or arm of the state or federal government.

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

7 Sec. 29.359. RULES. (a) The commissioner shall adopt rules
8 as necessary to implement, administer, and enforce the program,
9 including rules regarding:

10 (1) the calculation and distribution of payments for
11 qualifying schools; and

12 (2) application and approval procedures for
13 qualifying school and student participation in the program.

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

18 Sec. 29.360. PROGRAM COMPLIANCE. (a) The agency shall
19 respond to and investigate any complaint or dispute arising under
20 this subchapter.

21 (b) The agency shall enforce this subchapter and any rule
22 adopted under this subchapter and may withhold funds from any
23 school district or qualifying school that violates this subchapter
24 or a rule adopted under this subchapter.

25 SECTION 2. Section 29.202(a), Education Code, is amended to
26 read as follows:

27 (a) A student is eligible to receive a public education

1 grant or to attend another public school in the district in which
2 the student resides under this subchapter if:

3 (1) the student is assigned to attend a public school
4 campus:

5 (A) [~~(1)~~] at which 50 percent or more of the
6 students did not perform satisfactorily on an assessment instrument
7 administered under Section 39.023(a) or (c) in any two of the
8 preceding three years; or

9 (B) [~~(2)~~] that, at any time in the preceding
10 three years, failed to satisfy any standard under Section
11 39.054(e); or

12 (2) the student is eligible to participate in the
13 school choice program under Subchapter J.

14 SECTION 3. (a) The Texas Education Agency shall make the
15 school choice program as provided by Subchapter J, Chapter 29,
16 Education Code, as added by this Act, available for participation
17 beginning with the 2013-2014 academic school year.

18 (b) As soon as practicable, the commissioner of education
19 shall adopt and implement rules necessary for the administration of
20 the program.

21 SECTION 4. (a) The constitutionality and other validity
22 under the state or federal constitution of all or any part of
23 Subchapter J, Chapter 29, Education Code, as added by this Act, may
24 be determined in an action for declaratory judgment in a district
25 court in Travis County under Chapter 37, Civil Practice and
26 Remedies Code.

27 (b) An appeal of a declaratory judgment or order, however

1 characterized, of a district court, including an appeal of the
2 judgment of an appellate court, holding or otherwise determining
3 that all or any part of Subchapter J, Chapter 29, Education Code, as
4 added by this Act, is constitutional or unconstitutional, or
5 otherwise valid or invalid, under the state or federal constitution
6 is an accelerated appeal.

7 (c) If the judgment or order is interlocutory, an
8 interlocutory appeal may be taken from the judgment or order and is
9 an accelerated appeal.

10 (d) A district court in Travis County may grant or deny a
11 temporary or otherwise interlocutory injunction or a permanent
12 injunction on the grounds of the constitutionality or
13 unconstitutionality, or other validity or invalidity, under the
14 state or federal constitution of all or any part of Subchapter J,
15 Chapter 29, Education Code, as added by this Act.

16 (e) There is a direct appeal to the supreme court from an
17 order, however characterized, of a trial court granting or denying
18 a temporary or otherwise interlocutory injunction or a permanent
19 injunction on the grounds of the constitutionality or
20 unconstitutionality, or other validity or invalidity, under the
21 state or federal constitution of all or any part of Subchapter J,
22 Chapter 29, Education Code, as added by this Act.

23 (f) The direct appeal is an accelerated appeal.

24 (g) This section exercises the authority granted by Section
25 3-b, Article V, Texas Constitution.

26 (h) The filing of a direct appeal under this section will
27 automatically stay any temporary or otherwise interlocutory

1 injunction or permanent injunction granted in accordance with this
2 section pending final determination by the supreme court, unless
3 the supreme court makes specific findings that the applicant
4 seeking such injunctive relief has pleaded and proved that:

5 (1) the applicant has a probable right to the relief it
6 seeks on final hearing; and

7 (2) the applicant will suffer a probable injury that
8 is imminent and irreparable, and that the applicant has no other
9 adequate legal remedy.

10 (i) An appeal under this section, including an
11 interlocutory, accelerated, or direct appeal, is governed, as
12 applicable, by the Texas Rules of Appellate Procedure, including
13 Rules 25.1(d)(6), 26.1(b), 28.1, 32.1(g), 35.3(c), 37.3(a)(1),
14 38.6(a) and (b), 40.1(b), and 49.4.

15 SECTION 5. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect on the 91st day after the last day of the
20 legislative session.