

1-1 By: Williams, Campbell, Patrick S.B. No. 115
1-2 (In the Senate - Filed November 12, 2012; January 29, 2013,
1-3 read first time and referred to Committee on Education;
1-4 April 17, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 2; April 17, 2013,
1-6 sent to printer.)

1-7	COMMITTEE VOTE				
1-8		Yea	Nay	Absent	PNV
1-9	Patrick	X			
1-10	Lucio	X			
1-11	Campbell	X			
1-12	Duncan			X	
1-13	Paxton	X			
1-14	Seliger			X	
1-15	Taylor	X			
1-16	Van de Putte		X		
1-17	West		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 115 By: Lucio

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to a school choice program for certain students with
1-22 disabilities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 29, Education Code, is amended by adding
1-25 Subchapter J to read as follows:

1-26 SUBCHAPTER J. SCHOOL CHOICE PROGRAM FOR STUDENTS WITH
1-27 DISABILITIES

1-28 Sec. 29.351. DEFINITIONS. In this subchapter:

1-29 (1) "Parent" includes a guardian, custodian, or other
1-30 person with authority to act on behalf of a student.

1-31 (2) "Program" means the school choice program
1-32 described by this subchapter.

1-33 (3) "Qualifying school" means a nongovernmental
1-34 community-based educational establishment that exists for the
1-35 public good and provides for the education needs of elementary and
1-36 secondary students with disabilities. The term does not include a
1-37 school that provides education in a home setting or that limits
1-38 enrollment to relatives of the school's staff.

1-39 Sec. 29.352. PROGRAM. An eligible student under Section
1-40 29.353 may, at the option of the student's parent:

1-41 (1) attend any public school in the school district in
1-42 which the student resides as provided by Subchapter G;

1-43 (2) subject to the limitations of Section 29.203,
1-44 attend a public school in a district other than the district in
1-45 which the student resides as provided by Subchapter G; or

1-46 (3) receive a scholarship as provided by Section
1-47 29.354 to pay the costs of attending a qualifying school.

1-48 Sec. 29.353. ELIGIBLE STUDENT. (a) A student is eligible
1-49 to participate in the program if:

1-50 (1) the student is in kindergarten through grade 12
1-51 and eligible under Section 29.003 to participate in a school
1-52 district's special education program; and

1-53 (2) an individualized education program has been
1-54 developed for the student under Section 29.005.

1-55 (b) A school district shall provide written notice of the
1-56 program to the parent of a student who is eligible to participate in
1-57 the program under Subsection (a). The notice under this subsection
1-58 must inform the parent that a qualifying school is not subject to
1-59 laws regarding the provision of education services in the same
1-60 manner as a public school, and a student with disabilities

attending a qualifying school may not receive the services a student with disabilities attending a public school is entitled to receive under federal and state law. The notice must provide information regarding rights a student with disabilities is entitled to under federal and state law if the student attends a public school, including:

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

(A) an individualized education program;
(B) education services provided in the least restrictive environment;

(C) instruction from certified teachers;
(D) due process hearings to ensure proper and full implementation of an individualized education program;

(E) transition and planning services; and
(F) supplementary aids and services;

(2) rights provided under Subchapter A; and

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

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

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

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

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

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

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

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

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

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

(1) be accredited by or have filed an application for accreditation by an accrediting association recognized by the commissioner to accredit nongovernmental schools in this state;

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

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

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

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

(A) race, ethnicity, or national origin;

(B) income status; or

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

(2) must comply with the requirements of:

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

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

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

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

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

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

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

(b) The school shall provide:

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

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

Sec. 29.358. QUALIFYING SCHOOL AUTONOMY. (a) A qualifying school that accepts a scholarship under this subchapter is not an agent or arm of the state or federal government.

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

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

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

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

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

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

4-1 this subchapter.

4-2 (b) The agency shall enforce this subchapter and any rule
 4-3 adopted under this subchapter and may withhold funds from any
 4-4 school district or qualifying school that violates this subchapter
 4-5 or a rule adopted under this subchapter.

4-6 SECTION 2. Subsection (a), Section 29.202, Education Code,
 4-7 is amended to read as follows:

4-8 (a) A student is eligible to receive a public education
 4-9 grant or to attend another public school in the district in which
 4-10 the student resides under this subchapter if:

4-11 (1) the student is assigned to attend a public school
 4-12 campus:

4-13 (A) [~~1~~] at which 50 percent or more of the
 4-14 students did not perform satisfactorily on an assessment instrument
 4-15 administered under Section 39.023(a) or (c) in any two of the
 4-16 preceding three years; or

4-17 (B) [~~2~~] that, at any time in the preceding
 4-18 three years, failed to satisfy any standard under Section
 4-19 39.054(e); or

4-20 (2) the student is eligible to participate in the
 4-21 school choice program under Subchapter J.

4-22 SECTION 3. (a) The Texas Education Agency shall make the
 4-23 school choice program as provided by Subchapter J, Chapter 29,
 4-24 Education Code, as added by this Act, available for participation
 4-25 beginning with the 2013-2014 academic school year.

4-26 (b) As soon as practicable, the commissioner of education
 4-27 shall adopt and implement rules necessary for the administration of
 4-28 the program.

4-29 SECTION 4. (a) The constitutionality and other validity
 4-30 under the state or federal constitution of all or any part of
 4-31 Subchapter J, Chapter 29, Education Code, as added by this Act, may
 4-32 be determined in an action for declaratory judgment in a district
 4-33 court in Travis County under Chapter 37, Civil Practice and
 4-34 Remedies Code.

4-35 (b) An appeal of a declaratory judgment or order, however
 4-36 characterized, of a district court, including an appeal of the
 4-37 judgment of an appellate court, holding or otherwise determining
 4-38 that all or any part of Subchapter J, Chapter 29, Education Code, as
 4-39 added by this Act, is constitutional or unconstitutional, or
 4-40 otherwise valid or invalid, under the state or federal constitution
 4-41 is an accelerated appeal.

4-42 (c) If the judgment or order is interlocutory, an
 4-43 interlocutory appeal may be taken from the judgment or order and is
 4-44 an accelerated appeal.

4-45 (d) A district court in Travis County may grant or deny a
 4-46 temporary or otherwise interlocutory injunction or a permanent
 4-47 injunction on the grounds of the constitutionality or
 4-48 unconstitutionality, or other validity or invalidity, under the
 4-49 state or federal constitution of all or any part of Subchapter J,
 4-50 Chapter 29, Education Code, as added by this Act.

4-51 (e) There is a direct appeal to the supreme court from an
 4-52 order, however characterized, of a trial court granting or denying
 4-53 a temporary or otherwise interlocutory injunction or a permanent
 4-54 injunction on the grounds of the constitutionality or
 4-55 unconstitutionality, or other validity or invalidity, under the
 4-56 state or federal constitution of all or any part of Subchapter J,
 4-57 Chapter 29, Education Code, as added by this Act.

4-58 (f) The direct appeal is an accelerated appeal.

4-59 (g) This section exercises the authority granted by Section
 4-60 3-b, Article V, Texas Constitution.

4-61 (h) The filing of a direct appeal under this section will
 4-62 automatically stay any temporary or otherwise interlocutory
 4-63 injunction or permanent injunction granted in accordance with this
 4-64 section pending final determination by the supreme court, unless
 4-65 the supreme court makes specific findings that the applicant
 4-66 seeking such injunctive relief has pleaded and proved that:

4-67 (1) the applicant has a probable right to the relief it
 4-68 seeks on final hearing; and

4-69 (2) the applicant will suffer a probable injury that

5-1 is imminent and irreparable, and that the applicant has no other
5-2 adequate legal remedy.

5-3 (i) An appeal under this section, including an
5-4 interlocutory, accelerated, or direct appeal, is governed, as
5-5 applicable, by the Texas Rules of Appellate Procedure, including
5-6 Rules 25.1(d)(6), 26.1(b), 28.1, 32.1(g), 35.3(c), 37.3(a)(1),
5-7 38.6(a) and (b), 40.1(b), and 49.4.

5-8 SECTION 5. This Act takes effect immediately if it receives
5-9 a vote of two-thirds of all the members elected to each house, as
5-10 provided by Section 39, Article III, Texas Constitution. If this
5-11 Act does not receive the vote necessary for immediate effect, this
5-12 Act takes effect September 1, 2013.

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