

BILL ANALYSIS

C.S.H.B. 320
By: VanDeaver
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties suggest that students with disabilities need access to additional services that are not provided by school districts. C.S.H.B. 320 seeks to address this need by providing for an education enhancement program for certain students with disabilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 320 amends the Education Code to require the commissioner of education to establish and administer an education enhancement program for students with disabilities to provide funding for eligible students to obtain educational support services and other resources that supplement the student's public education, promote and improve the student's overall academic performance, and exceed the level of services that the student's committee has determined to be necessary for the student to receive a free appropriate public education.

C.S.H.B. 320 makes a student eligible to participate in the program if the student is enrolled in a public school district and was enrolled in that district during the entire preceding school year; the student has one or more specified disabilities; and, for one or more of the disabilities, an individualized education program has been developed for the student or the student is covered by certain provisions of the federal Rehabilitation Act of 1973. The specified disabilities are dyslexia, autism, speech disability, and learning disability. The bill makes a student placed in a residential facility primarily for noneducational reasons ineligible to participate in the program.

C.S.H.B. 320 sets out provisions relating to the application process for participation in the program. The bill requires the commissioner for each school year to allocate money available for the program to each district in which a student participating in the program is enrolled in amounts determined by the commissioner. The bill caps the total amount of money that may be used for the program for a school year at \$10 million and authorizes the commissioner to only use money appropriated from the general revenue fund for purposes of the program. The bill restricts the use of funds received under the program to specified services or goods provided to a program participant by an education service provider or vendor of educational products approved by the commissioner and sets out related provisions regarding qualified expenses and provisions relating to the approval and accountability of education service providers and vendors of educational products receiving money distributed under the program.

C.S.H.B. 320 establishes that a student's participation in the program does not affect the student's rights or a school district's obligations with respect to the student under the federal Individuals with Disabilities Education Act, certain provisions of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act of 1990 and that the provision of services or goods to a student under the program does not affect the obligations of any state agency with respect to the student. The bill requires an education service provider or vendor of educational products to comply with the specified federal laws in providing services or goods to the student under the program. The bill authorizes the commissioner to adopt rules as necessary to implement the bill's provisions regarding the program.

C.S.H.B. 320 requires the Texas Education Agency (TEA), not later than December 31, 2020, to review the performance of the program and submit to the legislature a report on TEA's conclusions. The bill requires TEA, in conducting the review, to solicit input from program participants, participating school districts, and education service providers and vendors of educational products approved by the commissioner. These provisions relating to the program review expire September 1, 2021.

C.S.H.B. 320 requires TEA to conduct a study on the special education services provided by districts to students with disabilities to determine whether those services satisfy the requirements under the federal Individuals with Disabilities Education Act, certain provisions of the federal Rehabilitation Act of 1973, and the federal Americans with Disabilities Act of 1990. The bill requires TEA, in conducting the study, to survey parents of students with disabilities enrolled in public school districts. The bill requires TEA, not later than September 1, 2018, to submit to the legislature a report on the results of the study and requires the report to include a list of services that parents feel are needed but are not currently being provided and the reasons why the listed services are not being provided. These provisions relating to the study on special education services expire September 1, 2019.

C.S.H.B. 320 requires a district to excuse a student from attending school during lunch, study hall, or an open period to attend an appointment or meeting with an education service provider or vendor of educational products to receive services or goods provided using money distributed under the program. The bill includes a student whose absence is so excused among the students with certain excused absences who may not be penalized for those absences, are required to be counted as if the students attended school for purposes of calculating the average daily attendance of students in the district, and are required to be allowed a reasonable time to make up school work missed on those days.

C.S.H.B. 320, other than its provisions relating to the program review and the study on special education services, applies beginning with the 2018-2019 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 320 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 29, Education Code,

SECTION 1. Chapter 29, Education Code,

is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ENHANCEMENT PROGRAM FOR STUDENTS WITH DISABILITIES

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Child with a disability" means a child who is:

(A) eligible to participate in a school district's special education program under Section 29.003; or

(B) covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(2) "Enhancement services" means a service provided to a program participant that is in addition to the special education services that a school district is required to provide a child with a disability under federal and state law.

(3) "Parent" means a resident who otherwise meets the definition of this term under Section 26.002.

(4) "Agency" means the Texas Education Agency.

(5) "Program participant" means a student with a disability and the parent(s) of a child enrolled in the program.

(6) "Private service provider" means an individual or entity approved by the commissioner of education to provide enhancement services to program participants and that follows all accountability standards outlined in this subchapter.

Sec. 29.352. ESTABLISHMENT OF PROGRAM. (a) The agency shall establish a program, including procedures and criteria in accordance with this subchapter, for the allocation of funds appropriated under this subchapter to school districts for the provision of enhancement services to certain students with disabilities and their families to promote and improve overall academic performance.

is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. EDUCATION ENHANCEMENT PROGRAM FOR STUDENTS WITH DISABILITIES

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Parent" means a resident of this state who is a natural or adoptive parent, managing or possessory conservator, legal guardian, custodian, or other person with legal authority to act on behalf of a child.

(2) "Program" means the education enhancement program for students with disabilities established under this subchapter.

(3) "Program participant" means a student and a parent of a student who has been accepted into the program.

Sec. 29.352. ESTABLISHMENT OF PROGRAM. The commissioner shall establish and administer an education enhancement program for students with disabilities to provide funding for eligible students to obtain educational support services and other resources that:

(1) supplement the student's public education;

(2) promote and improve the student's overall academic performance; and

(3) exceed the level of services that the student's committee has determined to be necessary for the student to receive a free appropriate public education.

(b) The commissioner shall notify program participants, school districts in which the program participant is enrolled, and approved private service providers that approval to participate in this program is for one year. Approval to participate as a program participant or a private service provider does not guarantee approval for subsequent years of participation within this program.

Sec. 29.353. PROGRAM PARTICIPANTS.

(A) A student with a disability is eligible for enhancement services from a private service provider if

(See Sec. 29.353(C) below.)

the child has a Section 504 plan of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) or an individual education plan, and has one or more of the following disabilities:

- (A) dyslexia
- (B) autism
- (C) speech disability; or
- (D) learning disability.

(See Sec. 29.353(C) below.)

(B) A student or parent must apply to the

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

(1) the student is enrolled in a school district and was enrolled in that district during the entire preceding school year;

(2) the student has one or more of the following disabilities:

- (A) dyslexia;
- (B) autism;
- (C) speech disability; or
- (D) learning disability; and

(3) for one or more disabilities listed in Subdivision (2):

- (A) an individualized education program has been developed for the student under Section 29.005; or
- (B) the student is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(b) Notwithstanding Subsection (a), a student placed in a residential facility primarily for noneducational reasons is not eligible to participate in the program.

Sec. 29.354. APPLICATION PROCESS.

(a) On or before the date established by commissioner rule, each school district annually shall provide information regarding the program to a parent of each student enrolled in the district who may be eligible to participate in the program.

(b) On or before the date established by

agency through the school district in which their child is enrolled to participate in the program.

(C) A student must have attended public school in the participating school district in the previous year prior to receiving enhancement services created by Subchapter J. School districts shall notify all eligible students and parents of this program.

(See Sec. 29.356(b) below.)

(See Sec. 29.356 below.)

Sec. 29.354. ENHANCEMENT SERVICES.

(A) Funds provided by this program may be used only for the following services provided by approved private service providers under Section 29.357:

commissioner rule, a parent of an eligible student may apply on behalf of the student to the agency for participation in the program for the school year for which the application is made. The school district in which the student is enrolled shall assist the parent in making the application.

(See Sec. 29.353(a)(1) above and Sec. 29.354(a) above.)

(c) In accepting students into the program, the commissioner shall:

(1) give priority to students who are educationally disadvantaged; and

(2) to the greatest extent possible, ensure that the accepted students reflect the diversity of the state.

(d) The commissioner annually shall notify each program participant and each school district in which a student participating in the program is enrolled that:

(1) a program participant must reapply to participate in the program for each school year in which the participant wishes to participate in the program; and

(2) continued acceptance into the program is not guaranteed.

Sec. 29.355. ALLOCATION OF MONEY; FINANCING.

(a) For each school year, the commissioner shall allocate money available for the program to each school district in which a student participating in the program is enrolled in amounts determined by the commissioner. The total amount of money used for the program for a school year may not exceed \$10 million.

(b) The commissioner may only use money appropriated from the general revenue fund for purposes of the program.

Sec. 29.356. QUALIFIED EXPENSES.

(a) Funds received under the program may be used only for the following services or goods provided to a program participant by an education service provider or vendor of

- (1) costs of transportation for the student to receive educational support services;
- (2) fees for services provided by a commissioner-approved private tutor or teaching service under Section 29.357;
- (3) fees for educational therapies or support services provided by a practitioner or provider under Section 29.357;
- (4) costs of assistive technology;
- (5) in-home and community-based training;
- (6) positive behavioral support strategies;
- (7) parent and family training support;
- (8) communication interventions; and
- (9) social skills, supports, and strategies.

(a-1) Any services not listed in (A) do not qualify as enhancement services and are not eligible for funding under this subchapter.

(B) Enhancement services shall be chosen by the parent in consultation with the school principal's designee. The principal's designee shall advise the parent on the enhancement program. The parent shall choose the enhancement services and the private service provider the program participant uses under this subchapter.

Sec. 29.355. PROTECTION OF RIGHTS.
(a) Students using funds through a school district to access enhancement services from an approved provider under Section 29.357 shall maintain rights awarded to the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) and Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), and the

educational products approved by the commissioner under Section 29.357:

- (1) costs of transportation for the student to receive educational support services;
- (2) fees for services provided by a private tutor or teaching service;
- (3) fees for educational therapies or support services provided by a practitioner or provider;
- (4) costs of assistive technology; and
- (5) costs associated with the provision of:
 - (A) in-home and community-based training;
 - (B) positive behavioral support strategies;
 - (C) family training support;
 - (D) communication interventions; and
 - (E) social skills, supports, and strategies training.

(b) The parent of a student participating in the program, with the assistance of an employee of the school at which the student is enrolled designated for that purpose by the school's principal, shall select the services or goods allowed under Subsection (a) to be provided to the student under the program and the appropriate education service provider or vendor of educational products to provide those services or goods.

(c) On the parent's selection under Subsection (b), the school district in which the parent's student is enrolled shall contract with the selected education service provider or vendor of educational products to provide the selected services or goods to the student.

(d) An education service provider or vendor of educational products may not solicit or provide incentives to any program participant to select the provider or vendor to provide services or goods using money distributed under the program.

(See Sec. 29.358(a) below.)

Americans with Disabilities Act.

Sec. 29.356. ALLOCATION OF PROGRAM FUNDS.

(a) This program shall be funded at \$10 million per year from the state's general revenue fund.

(See Sec. 29.355(a) above.)

(b) The commissioner shall award program funds to fund enhancement services for students that meet the eligibility criteria under Subsection 29.353. In awarding program funds to eligible students, the commissioner shall prioritize students that are economically disadvantaged. The selected students must reflect the diversity of this state.

(See Sec. 29.354(c) above.)

Sec. 29.357. PRIVATE SERVICE PROVIDER REQUIREMENTS.

Sec. 29.357. PROVIDER AND VENDOR ACCOUNTABILITY.

(A) To be a private service provider, an entity or individual:

(a) An education service provider or vendor of educational products must apply to and be approved by the commissioner to receive money distributed under the program.

(1) must be determined and approved by the commissioner;

(b) To be eligible for approval under Subsection (a), an education service provider or vendor of educational products must:

(2) must provide the agency a current financial audit from a certified public accountant;

(1) have operated for at least three consecutive years, including at least one year in this state;

(3) must have operated for at least three or more consecutive years, one of which has been in Texas;

(2) provide to the commissioner:

(4) must provide evidence of having successfully passed a criminal background check;

(A) a current financial audit from a certified public accountant;

(5) must provide the agency a list of state and national certification licensure credentials the provider has achieved;

(B) documentation indicating that the provider or vendor has completed a national criminal history record information review within a period established by commissioner rule; and

(6) must agree to comply with the state's curriculum standards under Section 28.002 (b-3) and (b-4);

(C) a list of any national or state licenses, certifications, or credentials possessed by the provider or vendor; and

(7) may document to the commissioner that it provides one or more of the enhancement services under 29.354 through an existing

(3) agree not to use the national curriculum standards developed by the Common Core State Standards Initiative.

(c) In applying for approval under Subsection (a), an education service provider or vendor of educational products

contract with a school district; and

(8) may not solicit program participants to use their private services with gifts, money, promotions, or any other kind of emollient.

(a-1) A parent, the principal's designee who consults with the parent of a program participant, or a private service provider may appeal to the agency for a specific private service provider to be approved. The commissioner shall develop rules to implement this process.

(B) A private service provider shall deliver enhancement services to a program participant on the basis of a written agreement between the private service provider and the school district in which the program participant is enrolled.

(C) (1) The private service provider must participate in a meeting with the parent and the principal's designee who consults with the parent of a program participant at least one time within a semester of participation in enhancement services to discuss progress and continued use of the private service provider's enhancement services.

(2) A parent, the principal's designee who consults with the parent of a program participant, or a private service provider may request more frequent meetings between these groups to discuss progress and continued use of the private service provider's enhancement services.

(3) At the conclusion of the school year, enhancement services cease. A parent must re-apply in a subsequent school year to receive enhancement services during a subsequent school year.

Sec. 29.357. ACCOUNTABILITY. (a) An approved private service provider shall adhere to the following accountability standards to receive and maintain eligibility:

(1) report to the participating school district at the end of each semester on the services

may submit to the commissioner a statement listing the services or goods allowed under Section 29.356(a) that the provider or vendor provides to a school district under an existing contract.

(d) A parent of a student participating in the program, an employee of the student's school designated under Section 29.356(b), or an education service provider or vendor of educational products may appeal the commissioner's rejection of an application submitted under Subsection (a) in accordance with rules established by the commissioner.

(See Sec. 29.357(f) below.)

(e) To maintain approval under this section, an education service provider or vendor of educational products must, with respect to each student for the benefit of whom the provider or vendor contracts with a school district under Section 29.356(c):

(1) at the end of each semester, report to the school district regarding the services or

the program participant has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter;

(2) conduct pre- and post- measurement evaluations of the program participant, and share this information with the program participant's parent and participating school district;

(3) maintain a written contract with the school district of the program participant to provide enhancement services;

(4) appropriately invoice the school district of the program participant to provide enhancement services.

(See Sec. 29.357(C)(1) above.)

(b) The commissioner shall annually review previously approved private service providers to determine if the private service provider shall remain an approved provider for enhancement services.

(See Sec. 29.355 above.)

goods provided under the contract to the student, including any diagnostic or other evaluative information requested by the district;

(2) conduct pre- and post-measurement evaluations of the student and provide the results of those evaluations to the student's parent and the school district; and

(3) submit to the school district accurate and complete invoices regarding the services or goods provided to the student.

(f) At least once each semester, an education service provider or vendor of educational products selected to provide services or goods to a student participating in the program shall meet with the student's parent and the employee of the student's school designated under Section 29.356(b) at a time and place determined by the school district to discuss the student's progress and to evaluate the continued use of the provider or vendor. The student's parent, designated employee, or provider or vendor may request additional meetings to be held under this subsection.

(g) The commissioner annually shall review each approved education service provider or vendor of educational products and, as appropriate, renew or revoke that approval.

(h) On approving an education service provider or vendor of educational products under this section, the commissioner shall notify the provider or vendor regarding the annual review of approval under Subsection (g). The notice must include a statement that renewed approval under that subsection is not guaranteed.

Sec. 29.359. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Sec. 29.358. PROGRAM PARTICIPANT RIGHTS.

(a) A student's participation in the program does not affect the student's rights or a

school district's obligations with respect to the student under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); or the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) An education service provider or vendor of educational products must comply with the federal laws listed in Subsection (a) in providing services or goods to the student under the program.

(c) The provision of services or goods to a student under this subchapter does not affect the obligations of any state agency with respect to the student.

(See Sec. 29.361 below.)

Sec. 29.358. PROGRAM REVIEW. (a) the agency with input from program participants, parents of program participants, private service providers, and participating school districts shall review the performance of this program as established by Subchapter J, and report to the legislature by December 31, 2020.

Sec. 29.3591. PROGRAM REVIEW. (a) Not later than December 31, 2020, the agency shall review the performance of the program and submit to the legislature a report on the agency's conclusions.

(b) In conducting the review, the agency shall solicit input from program participants, participating school districts, and education service providers and vendors of educational products approved by the commissioner under Section 29.357.

(c) This section expires September 1, 2021.

Sec. 29.359. STUDY. No later than September 1, 2018, the agency shall report its findings to the legislature from a parent survey and study of the special education services received from the local school districts where their child(ren) are enrolled to determine whether those services meet the requirements of IDEA, 504 and ADA or if the provided services are insufficient to meet the needs of the child as stipulated in his or her individualized education plan or 504 plan. The agency will include in its report to the legislature a list of services that parents feel are needed but not being provided along with the reasons for a lack of services being provided.

Sec. 29.3592. STUDY ON SPECIAL EDUCATION SERVICES. (a) The agency shall conduct a study on the special education services provided by school districts to students with disabilities to determine whether those services satisfy the requirements under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); and the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) In conducting the study, the agency shall survey parents of students with disabilities enrolled in school districts.

(c) Not later than September 1, 2018, the agency shall submit to the legislature a report on the results of the study. The report must include a list of services that parents feel are needed but are not currently being provided and the reasons why the listed

Sec. 29.360. EXCUSED ABSENCES.

(a) an appointment or meeting with an approved private service provider for enhancement services provided by the special education enhancement program established under Subchapter J shall be considered excused absences. Services under this subchapter must supplement, not supplant, educational services provided by the school district.

Sec. 29.361. RESPONSIBILITY OF OTHER AGENCIES. (a) The provision of services under this section does not supersede or limit the responsibility of other agencies to provide or pay for costs of enhancement services to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment. Specifically, services provided under this section may not be used for a student with disabilities who is currently placed in a residential facility primarily for non-educational reasons.

No equivalent provision.

SECTION 2. This Act applies beginning with the 2018-2019 school year.

services are not being provided.

(d) This section expires September 1, 2019.

SECTION 2. Section 25.087, Education Code, is amended by adding Subsection (b-7) to read as follows:

(b-7) A school district shall excuse a student from attending school during lunch, study hall, or an open period to attend an appointment or meeting with an education service provider or vendor of educational products to receive services or goods provided using money distributed under the education enhancement program for students with disabilities under Subchapter J, Chapter 29.

(See Sec. 29.358(c) above.)

SECTION 3. Section 25.087(d), Education Code, as amended by S.B. 1152, Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(d) A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), (b-7), or (c) may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), (b-7), or (c) shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

SECTION 4. Section 25.087, Education Code, as amended by this Act, and Sections 29.351-29.359, Education Code, as added by this Act, apply beginning with the 2018-2019 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

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