

By: Simmons

H.B. No. 52

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of an individualized education plan
3 account program for certain children with disabilities.

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

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

7 SUBCHAPTER J. INDIVIDUALIZED EDUCATION PLAN ACCOUNT PROGRAM

8 Sec. 29.351. DEFINITIONS. In this subchapter:

9 (1) "Account" means an individualized education plan
10 account established under the program.

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

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

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

16 (3) "Curriculum" means a complete course of study for
17 a particular content area or grade level.

18 (4) "Financial institution" means a bank, credit
19 union, savings bank, or savings and loan association organized
20 under the laws of this state, the laws of another state, or federal
21 law that has its main office or a branch office in this state. The
22 term does not include any institution the deposits of which are not
23 insured by the Federal Deposit Insurance Corporation or the
24 National Credit Union Administration.

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

5 (6) "Postsecondary educational institution" means:

6 (A) an institution of higher education or a
7 private or independent institution of higher education as defined
8 by Section 61.003; or

9 (B) a career school or college as defined by
10 Section 132.001.

11 (7) "Program" means the individualized education plan
12 account program established under this subchapter.

13 (8) "Program participant" means a child and a parent
14 of a child enrolled in the program.

15 Sec. 29.352. PURPOSES. The purposes of the individualized
16 education plan account program are to:

17 (1) improve public schools and overall academic
18 performance;

19 (2) promote efficiency;

20 (3) promote and preserve the liberties and rights of
21 the people; and

22 (4) increase parental options.

23 Sec. 29.353. ESTABLISHMENT OF PROGRAM. (a) The
24 comptroller shall establish and administer an individualized
25 education plan account program to provide funding for certain
26 education-related expenses of eligible children.

27 (b) The comptroller, with cooperation from the agency,

1 shall ensure that information about the program is readily
2 available to the public through various sources, including the
3 comptroller's Internet website.

4 Sec. 29.354. ELIGIBLE CHILD. (a) A child is eligible to
5 participate in the program if the child is:

6 (1) eligible to attend a public school under Section
7 25.001; and

8 (2) a child with a disability.

9 (b) A child who establishes eligibility under this section
10 may participate in the program until the earliest of the following
11 dates:

12 (1) the date on which the child no longer meets the
13 eligibility requirements under Subsection (a);

14 (2) the date that is three months after the date on
15 which the child:

16 (A) graduates from high school; or

17 (B) receives a high school equivalency
18 certificate under Section 7.111;

19 (3) the date on which the child enrolls in a public
20 school, including an open-enrollment charter school; or

21 (4) the date on which the child is declared ineligible
22 for the program by the comptroller under this subchapter.

23 (c) Notwithstanding Subsection (b), the comptroller shall
24 establish guidelines for, in the least disruptive manner possible:

25 (1) a child participating in the program to cease
26 participation and enroll in a public school, including an
27 open-enrollment charter school; and

1 (2) a child who previously participated in the program
2 and subsequently enrolled in a public school, including an
3 open-enrollment charter school, to resume participation in the
4 program.

5 Sec. 29.355. ENROLLMENT IN PROGRAM. (a) A parent of an
6 eligible child may enroll the child in the program for the following
7 school year.

8 (b) The comptroller, in consultation with the agency, shall
9 by rule create an enrollment form for the program and make the
10 enrollment form readily available to interested parents through
11 various sources, including the comptroller's Internet website. The
12 enrollment form must include spaces to provide the following
13 information:

14 (1) the name of the school district the child would
15 otherwise have attended;

16 (2) the name of the last public school in which the
17 child was enrolled, if any; and

18 (3) any other information necessary to determine
19 whether the child is eligible to participate in the program or the
20 amount of the payment the child, if eligible, would be entitled to
21 receive under the program.

22 (c) The comptroller shall provide to each parent who submits
23 an enrollment form a publication that describes the operation of
24 the program, including:

25 (1) expenses allowed under the program under Section
26 29.357;

27 (2) expense reporting requirements; and

1 (3) a description of the responsibilities of program
2 participants and the duties of the comptroller under this
3 subchapter.

4 (d) For each submitted enrollment form, the agency shall
5 determine whether the child is eligible to participate in the
6 program and report that determination to the comptroller.

7 Sec. 29.356. PARTICIPATION IN PROGRAM. (a) To receive
8 funding under the program, a parent of an eligible child must agree
9 to:

10 (1) spend funds received through the program only for
11 expenses allowed under Section 29.357;

12 (2) notify the comptroller if the child enrolls in a
13 public school, including an open-enrollment charter school, not
14 later than the 30th day after the date of enrollment; and

15 (3) inform the comptroller if the child graduates from
16 high school or receives a high school equivalency certificate under
17 Section 7.111.

18 (b) The parent of a child participating in the program is
19 the trustee of the child's account.

20 (c) The comptroller shall provide annually to each program
21 participant the publication provided under Section 29.355(c).

22 Sec. 29.357. APPROVED EDUCATION-RELATED EXPENSES. (a)
23 Funds received under the program may be used only for the following
24 expenses incurred by a program participant:

25 (1) tuition and fees:

26 (A) at a private school accredited by an
27 organization that is recognized by the Texas Private School

- 1 Accreditation Commission;
2 (B) at a postsecondary educational institution
3 for a course described by Section 28.009 for which the child may
4 receive high school credit based on an agreement between the
5 institution and the school in which the child is enrolled; or
6 (C) for an online educational course or program
7 offered through the state virtual school network under Chapter 30A
8 or otherwise approved by the agency for public school students;
9 (2) the purchase of textbooks or other instructional
10 materials;
11 (3) payments for the purchase of a curriculum;
12 (4) fees for classes or other educational services
13 provided by a public school, if the classes or services do not
14 qualify the child to be included in the school's average daily
15 attendance;
16 (5) fees for services provided by a private tutor or
17 teaching service;
18 (6) fees for educational therapies or services
19 provided by a practitioner or provider, other than fees covered by
20 any federal, state, or local government benefit program, including
21 Medicaid or the children's health insurance program, or any
22 applicable private insurance;
23 (7) costs of computer hardware and software and other
24 technological devices that clearly may be used for educational
25 purposes, not to exceed in any year 10 percent of the total amount
26 paid to the program participant's account that year;
27 (8) fees for a nationally norm-referenced achievement

1 test or examination, an assessment instrument adopted by the agency
2 under Section 39.023, an advanced placement test or similar
3 examination, or any examination related to college or university
4 admission; and

5 (9) contributions to a qualified tuition program
6 established for the child that meets the requirements of Section
7 529 or 530, Internal Revenue Code of 1986, not to exceed in any year
8 25 percent of the total amount paid to the program participant's
9 account that year.

10 (b) Expenses allowed under Subsection (a) do not include
11 expenses for:

12 (1) consumable supplies, including paper, pens,
13 pencils, folders, and notebooks;

14 (2) food; or

15 (3) before-school or after-school child care and child
16 care during school holidays and vacations.

17 (c) An education service provider or vendor of educational
18 products must provide a program participant with a receipt for each
19 expense allowed under Subsection (a) charged by the provider or
20 vendor to the participant.

21 (d) The content or religious nature of a product or service
22 may not be considered in determining whether a payment for the
23 product or service is an expense allowed under Subsection (a).

24 (e) A finding that a program participant used funds
25 distributed under the program to pay for an expense not allowed
26 under Subsection (a) does not affect the validity of any payment
27 made by the participant for an expense that is allowed under that

1 subsection.

2 Sec. 29.358. AMOUNT OF PAYMENT; FINANCING. (a) A parent of
3 an eligible child shall receive each year that the child
4 participates in the program a payment from the Foundation School
5 Program to the child's account in an amount that is equal to 90
6 percent of the state and local maintenance and operations revenue
7 to which the school district the child would otherwise attend would
8 be entitled for the child if the child enrolled in the district,
9 excluding any revenue under Subchapter C, Chapter 42, other than
10 revenue to which the district would be entitled as a result of the
11 special allotments under Sections 42.151, 42.152, and 42.160. The
12 comptroller shall base the calculation on a 100 percent attendance
13 rate.

14 (b) For purposes of Subsection (a), in calculating the
15 amount of any special allotments to which the school district would
16 be entitled for the child under Section 42.151 or 42.152, the
17 comptroller shall use the following weights or amounts that result
18 in the greatest amount of revenue:

19 (1) the weights for which the child qualifies under
20 the applicable section, including, if applicable, a weight for the
21 child's instructional arrangement if the child's instructional
22 arrangement can be determined; or

23 (2) the average amount per student received by the
24 district for the preceding school year for each special allotment
25 for which the child qualifies, regardless of the applicable
26 instructional arrangement, if any.

27 (c) In administering the program, the comptroller may use

1 funds from any public or private source that are available for that
2 purpose.

3 (d) Any funds remaining in a child's account at the end of a
4 fiscal year are carried forward to the next fiscal year unless
5 another provision of this subchapter mandates the closure of the
6 account.

7 (e) The parent of a child participating in the program may
8 make payments for the expenses of educational programs, services,
9 and products not covered by funds in the child's account.

10 (f) A payment under the program may not be financed using
11 federal funds or money appropriated from the available school fund.

12 Sec. 29.359. ADMINISTRATION OF ACCOUNTS. (a) The
13 comptroller may contract with one or more financial institutions to
14 establish and manage an account for each child participating in the
15 program. A program participant must be able to access the
16 participant's account by using an online or electronic transfer
17 payment service.

18 (b) The comptroller shall make quarterly payments to each
19 program participant's account in equal amounts on or before the
20 15th days of August, November, February, and May.

21 (c) The comptroller may deduct an amount from each quarterly
22 payment to a program participant's account to cover the
23 comptroller's cost of administering the program. The amount
24 deducted may not exceed three percent of the payment.

25 (d) Within the first month following the end of each fiscal
26 year, the comptroller shall reconcile payments made to and from all
27 accounts under the program.

1 (e) The comptroller shall coordinate as necessary to
2 calculate annually the savings to the state from the implementation
3 of the program.

4 (f) On the date on which a child ceases to participate in the
5 program for any reason, the child's account is closed and any
6 remaining funds are returned to the state for deposit in the
7 foundation school fund. This subsection does not affect a child's
8 eligibility to resume participation in the program.

9 (g) The comptroller may contract with a private entity to
10 administer all or any part of the program.

11 Sec. 29.360. RANDOM AUDITING. (a) The comptroller shall
12 randomly audit or contract with a private entity to randomly audit:

13 (1) accounts as necessary to ensure compliance with
14 applicable law and the requirements of the program; and

15 (2) education service providers and vendors of
16 educational products that accept funds distributed under the
17 program as necessary to ensure compliance with this subchapter.

18 (b) In auditing an account, provider, or vendor, the
19 comptroller or private entity may require that a program
20 participant, provider, or vendor provide further information and
21 documentation regarding any payment from the participant's
22 account.

23 (c) The private entity shall report to the comptroller any
24 violation of this subchapter or other relevant law found by the
25 entity during an audit conducted under this section.

26 Sec. 29.361. SUSPENSION OF ACCOUNT. (a) The comptroller
27 shall suspend the account of a program participant who fails to

1 comply with applicable law or a requirement of the program,
2 including a requirement under Section 29.356(a), or who
3 substantially misuses funds received under the program.

4 (b) On suspension of an account under Subsection (a), the
5 comptroller shall notify the participant in writing that the
6 account has been suspended and that no further payments may be made
7 from the account. The notification must specify the grounds for the
8 suspension and state that the participant has 10 business days to
9 respond and take any corrective action required by the comptroller.

10 (c) On the expiration of the 10-day period under Subsection
11 (b), the comptroller shall:

12 (1) order permanent closure of the suspended account
13 and declare the participant ineligible for the program;

14 (2) order temporary reinstatement of the account,
15 conditioned on the performance of a specified action by the
16 participant; or

17 (3) order full reinstatement of the account.

18 (d) If a program participant's account is suspended or
19 closed under this section, the comptroller may recover funds that
20 were used for expenses not allowed under Section 29.357(a) from the
21 participant or the entity that received the funds.

22 Sec. 29.362. TUITION AND FEES; REFUND PROHIBITED. (a) An
23 education service provider may not charge a child participating in
24 the program an amount greater than the standard amount charged for
25 that service by the provider.

26 (b) An education service provider or a vendor of educational
27 products receiving funds distributed under the program may not in

1 any manner rebate, refund, or credit to or share with a program
2 participant, or any person on behalf of a participant, any program
3 funds paid or owed by the participant to the provider or vendor.

4 Sec. 29.363. REFERRAL TO ATTORNEY GENERAL. (a) If the
5 comptroller obtains evidence of fraudulent use of an account, the
6 comptroller may refer the case to the attorney general for
7 investigation.

8 (b) With the consent of the appropriate local county or
9 district attorney, the attorney general has concurrent
10 jurisdiction with the consenting local prosecutor to prosecute an
11 offense referred to the attorney general under Subsection (a).

12 Sec. 29.364. PROVIDER ACCOUNTABILITY. (a) A private
13 school must be accredited by an organization that is recognized by
14 the Texas Private School Accreditation Commission to receive funds
15 distributed under the program.

16 (b) A private tutor or teaching service and a practitioner
17 or provider who provides educational therapies or services must be
18 licensed or accredited by a regional or national accrediting
19 organization to receive funds distributed under the program.

20 Sec. 29.365. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR
21 AUTONOMY. (a) An education service provider or vendor of
22 educational products that receives funds distributed under the
23 program is not an agent of the state or federal government.

24 (b) Except as provided by this subchapter, the comptroller,
25 the agency, the State Board of Education, any other state agency, or
26 any school district may not:

27 (1) regulate the educational program of an education

1 service provider or vendor of educational products that receives
2 funds distributed under the program; or

3 (2) exercise control or supervision over a program
4 participant or an education service provider or vendor of
5 educational products that receives funds distributed under the
6 program.

7 (c) The program does not expand the regulatory authority of
8 the state or any school district to impose any additional
9 regulation on an education service provider or vendor of
10 educational products except those reasonably necessary to enforce
11 the program as provided by this subchapter.

12 (d) A private school may not be required to modify the
13 school's creed, practices, admissions policies, curriculum,
14 performance standards, or assessments to receive funds distributed
15 under the program.

16 (e) A private school voluntarily selected by a parent for
17 the parent's child to attend or a parent who homeschools the
18 parent's child, with or without governmental assistance, may not be
19 required to comply with any state law or rule governing the
20 applicable educational program that was not in effect on January 1,
21 2017.

22 (f) In any proceeding challenging a rule adopted by a state
23 agency or officer under this subchapter, the agency or officer has
24 the burden of proof to establish that the rule:

25 (1) is necessary to implement or enforce the program
26 as provided by this subchapter; and

27 (2) does not impose an undue burden on a program

1 participant or an education service provider or vendor of
2 educational products that receives or seeks to receive funds
3 distributed under the program.

4 Sec. 29.366. STUDENT RECORDS. On request by the parent of a
5 child participating in the program, the school district or
6 open-enrollment charter school that the child would otherwise
7 attend shall provide a copy of the child's school records possessed
8 by the district or school, if any, to the child's parent or, if
9 applicable, the private school the child attends.

10 Sec. 29.367. REPORTING NUMBER OF PARTICIPANTS. (a) Not
11 later than October 1 of each year, the commissioner shall notify the
12 comptroller and the Legislative Budget Board of the number of
13 eligible children likely to participate in the program,
14 disaggregated by the school district or open-enrollment charter
15 school the eligible children would otherwise attend.

16 (b) Not later than March 1 of each year, the commissioner
17 shall provide final information to the comptroller and the
18 Legislative Budget Board regarding the number of children
19 participating in the program, disaggregated in the same manner as
20 the initial information under Subsection (a).

21 Sec. 29.368. ANNUAL SURVEY. The comptroller may conduct an
22 annual parental satisfaction survey that asks each parent of a
23 child participating in the program to express:

24 (1) the parent's overall level of satisfaction with
25 the program; and

26 (2) the parent's opinion on specified topics and
27 issues relevant to the effectiveness of the program.

1 Sec. 29.369. DISTRICTS WITH HIGH PARTICIPATION RATE.

2 Notwithstanding any other law, a school district in which at least
3 one percent of resident children eligible to attend public school
4 under Section 25.001 are participating in the program shall receive
5 the following benefits:

6 (1) the district may elect to administer assessment
7 instruments only as necessary to comply with the Every Student
8 Succeeds Act (20 U.S.C. Section 6301 et seq.) and may be evaluated
9 for accountability purposes related to assessment only based on the
10 results of those assessment instruments;

11 (2) the district may create a local innovation plan
12 and be designated as a district of innovation under Chapter 12A
13 without complying with the requirements under Section 12A.001 or
14 12A.002;

15 (3) teachers employed by the district are entitled to
16 receive a stipend for attending a mathematics achievement academy
17 under Section 21.4553 or a reading-to-learn academy under Section
18 21.4554 in an amount equal to twice the amount established by the
19 commissioner for the applicable stipend;

20 (4) the agency shall award the district an additional
21 five percentage points toward the district's overall performance
22 rating under Section 39.054;

23 (5) the district is entitled to reimbursement from the
24 state for the cost of locating, identifying, and evaluating
25 children with disabilities who are enrolled in private schools in
26 the district in compliance with 20 U.S.C. Section 1412; and

27 (6) in addition to any funding the district receives

1 under Chapter 42, for each resident child participating in the
2 program, the district is entitled to receive for the first year in
3 which the child participates in the program an amount equal to the
4 difference between:

5 (A) the state and local maintenance and
6 operations revenue to which the district would be entitled for the
7 child if the child enrolled in the district, excluding any revenue
8 under Subchapter C, Chapter 42, other than revenue to which the
9 district would be entitled as a result of the special allotments
10 under Sections 42.151, 42.152, and 42.160, calculated in accordance
11 with Sections 29.358(a) and (b); and

12 (B) the amount the child's parent receives under
13 Section 29.358(a) for the year.

14 Sec. 29.370. GIFTS, GRANTS, AND DONATIONS. The comptroller
15 may solicit and accept gifts, grants, and donations from any public
16 or private source for any expenses related to the initial
17 implementation or administration of the program.

18 Sec. 29.371. RULES. The comptroller shall adopt rules as
19 necessary to implement this subchapter, including:

20 (1) rules regarding expense reporting requirements
21 for program participants; and

22 (2) rules for implementing this subchapter in a manner
23 that ensures compliance with federal law regarding confidentiality
24 of student educational information, including the Family
25 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
26 1232g).

27 SECTION 2. Section 42.253, Education Code, is amended by

1 adding Subsection (b-1) to read as follows:

2 (b-1) Notwithstanding Subsection (b), the commissioner
3 shall adjust enrollment estimates and entitlement for each school
4 district for each school year based on information collected in
5 accordance with Section 29.367. This subsection expires September
6 1, 2020.

7 SECTION 3. This Act applies beginning with the 2017-2018
8 school year.

9 SECTION 4. Not later than 45 days after the effective date
10 of this Act, the comptroller of public accounts shall adopt rules
11 necessary to implement the individualized education plan account
12 program under Subchapter J, Chapter 29, Education Code, as added by
13 this Act.

14 SECTION 5. Notwithstanding Section 29.367(a), Education
15 Code, as added by this Act, the commissioner of education shall
16 provide the information described by that subsection as soon as
17 practicable after the effective date of this Act.

18 SECTION 6. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect on the 91st day after the last day of the
23 legislative session.