

BILL ANALYSIS

C.S.H.B. 3437
By: Moody
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties suggest that steps must be taken to address the loss of educational opportunities borne by certain students as a result of the recently eliminated cap on special education enrollment. C.S.H.B. 3437 seeks to achieve that by requiring the distribution of a notice of educational rights and providing for recovery by public school districts and open-enrollment charter schools of costs for certain student evaluations.

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. 3437 amends the Education Code to require the Texas Education Agency (TEA) to develop a notice for distribution and posting on the TEA website that indicates the change made from 2016 to 2017 in reporting requirements for public school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual and, in plain language, the rights of a child under both federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation to determine the child's eligibility for special education services. The bill requires a district or charter school to include in the notice developed by TEA information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation may be found; to provide the notice by a date established by the commissioner of education to the parent of each child who attends school in the district or at the school at any time during the 2017-2018 school year; to make the notice available in English and Spanish and to any person on request; and to make a good faith effort to provide the notice in the parent's native language if the parent's native language is a language other than English or Spanish. The bill establishes that the notice required by the bill is in addition to certain documents TEA is required to produce and provide to districts under statutory provisions relating to the parental right to information concerning special education and education of students with learning difficulties.

C.S.H.B. 3437 requires TEA, beginning with the 2017-2018 school year and from federal funds available for this purpose, to establish a reimbursement fund from which districts and charter schools may apply and receive cost reimbursement if the district or school experiences a significant increase from the preceding school year in the number of full individual and initial evaluations of students conducted for purposes of special education services. The bill establishes

that a decision by the commissioner to provide reimbursement from the fund is final and may not be appealed. The bill authorizes the commissioner to adopt rules necessary to implement the bill's provisions, which expire September 1, 2021.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3437 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

SECTION 1. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.023 to read as follows:

Sec. 29.023. SPECIAL EDUCATION RECOVERY PROGRAM. (a) The agency shall develop and operate a special education recovery program for the benefit of students who may have been negatively affected by the agency's use of a performance indicator under the performance-based monitoring analysis system that evaluated the percentage of the total number of enrolled students of a school district who received special education services.

(b) In operating the program, the agency shall:

(1) identify each student who, during the 2004-2005 through 2016-2017 school years, was denied special education services by a school district designated for the program in accordance with Subsection (c);

(2) subject to Subsection (d), provide notice to the parent of each identified student that the student is entitled to reevaluation of eligibility for special education services if requested by the parent; and

(3) make arrangements for:

(A) the reevaluation of each student whose parent requests reevaluation; and

(B) the provision of special education services to a student determined to be eligible for services.

(c) The agency shall designate for participation in the program each school district in which the participation of students in the district's special education program declined as follows:

(1) the number of district students receiving

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.023 to read as follows:

Sec. 29.023. NOTICE OF RIGHTS; COST RECOVERY PROGRAM.

special education services during the 2016-2017 school year was at least 200 fewer than the number of district students receiving special education services during the 2004-2005 school year; or

(2) the district's enrollment rate of students receiving special education services during the 2016-2017 school year was at least 75 percent less than the district's enrollment rate of students receiving special education services during the 2004-2005 school year.

(d) The agency is not required to provide notification under Subsection (b)(2) or take further action in accordance with this section if the identified student is 21 years of age or older.

(a) The agency shall develop a notice for distribution as provided by Subsection (c) and posting on the agency's Internet website that indicates:

(1) the change made from 2016 to 2017 in reporting requirements for school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual; and

(2) in plain language, the rights of a child under both federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation under Section 29.004 to determine the child's eligibility for special education services.

(b) A school district or open-enrollment charter school shall include in the notice developed by the agency under Subsection (a) information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation may be found.

(c) By a date established by the commissioner, each school district or open-enrollment charter school shall provide the notice to the parent of each child who attends school in the district or at the school at any time during the 2017-2018 school year. A school district or open-enrollment charter school shall also make the notice available on request to any person. The notice must be available in English and Spanish, and a school district or open-enrollment charter school shall make a good faith effort to provide the notice in the parent's native language if the parent's native

(e) The agency shall operate the program using federal funds available to the agency for statewide special education activities.

(f) The commissioner may adopt rules necessary to implement this section.

(g) This section expires September 1, 2021.

SECTION 2. 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.

language is a language other than English or Spanish.

(d) The notice is in addition to requirements imposed by Section 26.0081.

(e) Beginning with the 2017-2018 school year, from federal funds available for this purpose, the agency shall establish a reimbursement fund from which school districts and open-enrollment charter schools may apply and receive cost reimbursement if the district or school experiences a significant increase from the preceding school year in the number of full individual and initial evaluations conducted under Section 29.004. A decision by the commissioner to provide reimbursement from the fund is final and may not be appealed.

(f) The commissioner may adopt rules necessary to implement this section.

(g) This section expires September 1, 2021.

SECTION 2. Same as introduced version.