

By: Zaffirini
(Parker)

S.B. No. 869

A BILL TO BE ENTITLED

AN ACT

1
2 relating to guidelines for policies of school districts and
3 open-enrollment charter schools for the care of certain students at
4 risk for anaphylaxis.

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

6 SECTION 1. Section 38.0151, Education Code, is amended by
7 amending Subsections (a), (b), and (e) and adding Subsections (g),
8 (h), (i), and (j) to read as follows:

9 (a) The board of trustees of each school district and the
10 governing body or an appropriate officer of each open-enrollment
11 charter school shall adopt and administer a policy for the care of
12 students with a diagnosed food allergy at risk for anaphylaxis
13 based on "Guidelines for the Care of Students With Food Allergies
14 At-Risk for Anaphylaxis" ~~[guidelines]~~ developed by the
15 commissioner of state health services under this section and
16 updated by the commissioner of state health services in
17 consultation with an ad hoc committee appointed by the commissioner
18 of state health services as provided by Section 38.0152. The
19 guidelines and any recommendation to update the guidelines
20 regarding medical treatment or therapy must be scientifically
21 valid.

22 (b) A school district or open-enrollment charter school
23 ~~[that implemented a policy for the care of students with a diagnosed~~
24 ~~food allergy at risk for anaphylaxis before the development of the~~

1 ~~guidelines described by Subsection (a)]~~ shall annually review [~~the~~
2 ~~policy]~~ and, as necessary, revise its [~~the]~~ policy for the care of
3 students with a diagnosed food allergy at risk for anaphylaxis [~~as~~
4 ~~necessary]~~ to ensure the policy is consistent with the most current
5 version of the guidelines described by Subsection (a).

6 (e) The agency shall post the guidelines described by
7 Subsection (a) [~~developed by the commissioner of state health~~
8 ~~services under this section]~~ on the agency's website with any other
9 information relating to students with special health needs. The
10 information posted by the agency must include a summary of the
11 guidelines. The agency shall annually review and, as necessary,
12 revise the summary and any other information to reflect the most
13 current version of the guidelines.

14 (g) Each school year, the board of trustees of each school
15 district and the governing body of each open-enrollment charter
16 school shall post a summary of the guidelines on the district's or
17 school's Internet website, including instructions on obtaining
18 access to the complete guidelines document. The district's or
19 school's website must be accessible by each student enrolled in the
20 district or school and a parent or guardian of each student. Any
21 forms used by a district or school requesting information from a
22 parent or guardian enrolling a child with a food allergy in the
23 district or school must include information to access on the
24 district's or school's Internet website a summary of the guidelines
25 and instructions on obtaining access to the complete guidelines
26 document.

27 (h) The guidelines described by Subsection (a) may not:

1 (1) require a school district or open-enrollment
2 charter school to purchase treatments approved by the United States
3 Food and Drug Administration or make any other expenditure that
4 would result in a negative fiscal impact on the district or school;
5 or

6 (2) require the personnel of a district or school to
7 administer treatments approved by the United States Food and Drug
8 Administration to a student unless the medication is prescribed for
9 that student by the student's physician.

10 (i) This section does not:

11 (1) waive any liability or immunity of a school
12 district or open-enrollment charter school or district or school
13 officers or employees; or

14 (2) create any liability for or a cause of action
15 against a school district or open-enrollment charter school or
16 district or school officers or employees.

17 (j) Notwithstanding any other law, this section, including
18 any information or materials developed under this section and the
19 dissemination of information or materials developed under this
20 section, does not create a civil, criminal, or administrative cause
21 of action or liability or create a standard of care, obligation, or
22 duty that provides the basis for a cause of action.

23 SECTION 2. Subchapter A, Chapter 38, Education Code, is
24 amended by adding Section 38.0152 to read as follows:

25 Sec. 38.0152. COMMITTEE TO ASSIST IN UPDATING GUIDELINES
26 FOR CARE OF STUDENTS AT RISK FOR ANAPHYLAXIS. (a) In this section:

27 (1) "Commissioner" means the commissioner of state

1 health services.

2 (2) "Department" means the Department of State Health
3 Services.

4 (3) "Guidelines" means "Guidelines for the Care of
5 Students With Food Allergies At-Risk for Anaphylaxis" on which
6 school district and open-enrollment charter school policies for the
7 care of students with a diagnosed food allergy at risk for
8 anaphylaxis are based as provided by Section 38.0151.

9 (b) The commissioner shall appoint members to an ad hoc
10 committee to consult with the commissioner on updating the current
11 guidelines to incorporate and specifically reference any new
12 food-allergy management best practices and treatments, including
13 new methods, treatments, and therapies to reduce the risk of
14 allergic reactions.

15 (c) The committee must include:

16 (1) not more than one representative from:

17 (A) the department; and

18 (B) the Texas Nurses Association;

19 (2) at least two individuals from one or more national
20 patient advocacy organizations representing the interests of food
21 allergies, anaphylaxis, and related medical issues, including
22 asthma;

23 (3) one principal of a public elementary school campus
24 at which one or more students with a diagnosed food allergy at risk
25 for anaphylaxis are enrolled;

26 (4) one classroom teacher employed at a public
27 elementary school campus at which one or more students with a

- 1 diagnosed food allergy at risk for anaphylaxis are enrolled;
2 (5) one superintendent of a school district;
3 (6) one member of a board of trustees of a school
4 district;
5 (7) one member of a governing body of an
6 open-enrollment charter school;
7 (8) at least two parents of public school students
8 with a diagnosed food allergy at risk for anaphylaxis;
9 (9) at least four physicians board certified in
10 allergy and immunology by the American Board of Allergy and
11 Immunology; and
12 (10) at least one physician board certified in general
13 pediatrics by the American Board of Pediatrics who is a member of a
14 statewide pediatric organization.
- 15 (d) Ad hoc committee members shall serve for a period
16 determined by the commissioner. On the resignation of a member of
17 the committee or the removal of a member from the committee by the
18 commissioner, the commissioner shall appoint a new member to the
19 committee who qualifies for the committee in the same manner that
20 the member who resigned or is removed qualified.
- 21 (e) Section 2110.005, Government Code, does not apply to the
22 ad hoc committee appointed under this section.
- 23 (f) Any recommendations on updating the current guidelines
24 regarding medical treatment or therapies must be submitted by the
25 physicians directly to the commissioner, provided that those
26 recommendations may only be submitted to the commissioner if
27 approved by a majority of the physicians serving on the committee.

1 (g) At least once every three years, the commissioner shall
2 order a meeting of the committee to update the guidelines to
3 incorporate any new food-allergy management best practices and
4 treatments.

5 (h) The commissioner may order a meeting of the committee at
6 any time the commissioner determines necessary for the committee
7 to:

8 (1) discuss the protection of students with food
9 allergies at risk for anaphylaxis; and

10 (2) update the guidelines.

11 SECTION 3. The commissioner of state health services shall:

12 (1) not later than October 1, 2019, appoint the
13 members of the ad hoc committee described by Section 38.0152,
14 Education Code, as added by this Act, to consult with the
15 commissioner on updating and maintaining the "Guidelines for the
16 Care of Students With Food Allergies At-Risk for Anaphylaxis" as
17 provided by that section; and

18 (2) not later than March 1, 2020, in consultation with
19 the ad hoc committee, update the guidelines as necessary.

20 SECTION 4. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2019.