By:  Dutton, et al. (Senate Sponsor - Paxton) H.B. No. 3880

(In the Senate - Received from the House May 17, 2021; May 17, 2021, read first time and referred to Committee on Education; May 24, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 3; May 24, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Taylor            X

Lucio                          X

Bettencourt              X

Hall                 X

Hughes               X

Menéndez             X

Paxton               X

Perry                    X

Powell               X

Schwertner               X

West                           X

COMMITTEE SUBSTITUTE FOR H.B. No. 3880 By:  Paxton

A BILL TO BE ENTITLED

AN ACT

relating to a student's eligibility for special education services provided by a school district, including services for dyslexia and related disorders.

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

SECTION 1.  This Act may be cited as the Beckley Wilson Act.

SECTION 2.  Section 7.028(a), Education Code, is amended to read as follows:

(a)  Except as provided by Section 21.006(k), 22.093(l), 22.096, 28.006, 29.001(5), 29.010(a), [~~38.003,~~] or 39.057, the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, or Subchapter A, Chapter 37, only as necessary to ensure:

(1)  compliance with federal law and regulations;

(2)  financial accountability, including compliance with grant requirements;

(3)  data integrity for purposes of:

(A)  the Public Education Information Management System (PEIMS); and

(B)  accountability under Chapters 39 and 39A; and

(4)  qualification for funding under Chapter 48.

SECTION 3.  Section 7.102(c)(28), Education Code, is amended to read as follows:

(28)  The board shall develop and update, as necessary, guidance information for school districts on evidence-based practices for intervention and instruction of students with [~~approve a program for testing students for~~] dyslexia and related disorders and incorporate in the information input from a broad-based dialogue with educators and experts in the field of reading and dyslexia and related disorders from across the state. The guidance information may not address:

(A)  the evaluation and identification of students with dyslexia or a related disorder; or

(B)  how intervention and instruction are to be accessed by a student [~~as provided by Section 38.003~~].

SECTION 4.  Section 11.252(a), Education Code, is amended to read as follows:

(a)  Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the achievement indicators adopted under Section 39.053(c). The district improvement plan must include provisions for:

(1)  a comprehensive needs assessment addressing district student performance on the achievement indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29;

(2)  measurable district performance objectives for all appropriate achievement indicators for all student populations, including students in special education programs under Subchapter A, Chapter 29, and other measures of student performance that may be identified through the comprehensive needs assessment;

(3)  strategies for improvement of student performance that include:

(A)  instructional methods for addressing the needs of student groups not achieving their full potential;

(B)  evidence-based practices that address the needs of students for special programs, including:

(i)  suicide prevention programs, in accordance with Subchapter G, Chapter 38, which include a parental or guardian notification procedure;

(ii)  conflict resolution programs;

(iii)  violence prevention programs; and

(iv)  special education [~~dyslexia treatment~~] programs;

(C)  dropout reduction;

(D)  integration of technology in instructional and administrative programs;

(E)  positive behavior interventions and support, including interventions and support that integrate best practices on grief-informed and trauma-informed care;

(F)  staff development for professional staff of the district;

(G)  career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities;

(H)  accelerated education; and

(I)  implementation of a comprehensive school counseling program under Section 33.005;

(4)  strategies for providing to elementary school, middle school, junior high school, and high school students, those students' teachers and school counselors, and those students' parents information about:

(A)  higher education admissions and financial aid opportunities, including state financial aid opportunities such as the TEXAS grant program and the Teach for Texas grant program established under Chapter 56;

(B)  the need for students to make informed curriculum choices to be prepared for success beyond high school; and

(C)  sources of information on higher education admissions and financial aid;

(5)  resources needed to implement identified strategies;

(6)  staff responsible for ensuring the accomplishment of each strategy;

(7)  timelines for ongoing monitoring of the implementation of each improvement strategy;

(8)  formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance;

(9)  the policy under Section 38.0041 addressing sexual abuse and other maltreatment of children; and

(10)  the trauma-informed care policy required under Section 38.036.

SECTION 5.  Section 21.003, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  A school district shall employ a person to provide services to students with dyslexia and related disorders who may be a therapist, practitioner, specialist, or interventionist. The person hired under this subsection is not required to hold a certificate or permit issued under Subchapter B in special education but must:

(1)  hold an appropriate license, including a license issued under Chapter 403, Occupations Code;

(2)  hold a certification issued by an appropriate association or have received training from an appropriate training provider, including an academic language practitioner or therapist certified by the Academic Language Therapy Association; or

(3)  if a person qualified under Subdivision (1) or (2) is not available, meet the applicable training requirements for the position adopted by the commissioner by rule.

SECTION 6.  Section 28.006(g-2), Education Code, is amended to read as follows:

(g-2)  In accordance with a notification program developed by the commissioner by rule, a school district shall notify the parent or guardian of each student determined, on the basis of a screening under Section 29.0031 [~~38.003~~] or other basis, to be at risk for [~~have~~] dyslexia or a related disorder, or determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties, of the program maintained by the Texas State Library and Archives Commission providing students with reading disabilities the ability to borrow audiobooks free of charge.

SECTION 7.  Section 29.001, Education Code, is amended to read as follows:

Sec. 29.001.  STATEWIDE PLAN. The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

(1)  ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;

(2)  facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;

(3)  periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;

(4)  ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;

(5)  allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section and Section 29.0031 are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Sections 48.008 and 48.009 are accurate and complete;

(6)  ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;

(7)  ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;

(8)  ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;

(9)  ensure that each student with a disability is provided necessary related services;

(10)  ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to:

(A)  complete a training program that complies with minimum standards established by agency rule;

(B)  visit the child and the child's school;

(C)  consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;

(D)  review the child's educational records;

(E)  attend meetings of the child's admission, review, and dismissal committee;

(F)  exercise independent judgment in pursuing the child's interests; and

(G)  exercise the child's due process rights under applicable state and federal law; [~~and~~]

(11)  ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

(A)  to request a review of the student's individualized education program;

(B)  to provide input in the development of the student's individualized education program;

(C)  that provides for a timely district response to the teacher's request; and

(D)  that provides for notification to the student's parent or legal guardian of that response;

(12)  ensure the integration of technology to accommodate students with dyslexia and related disorders; and

(13)  ensure that training opportunities, including continuing education that satisfies the requirements of Section 21.054(b):

(A)  are accessible to school districts by developing a list of training opportunities regarding dyslexia and related disorders that comply with the knowledge and practice standards of an international organization on dyslexia; and

(B)  assist an educator or dyslexia service provider in understanding and recognizing dyslexia and providing multisensory, structured instruction that is systematic, explicit, and evidence-based to meet the educational needs of students with dyslexia.

SECTION 8.  Section 29.002, Education Code, is amended to read as follows:

Sec. 29.002.  DEFINITIONS [~~DEFINITION~~]. In this subchapter[~~, "special services" means~~]:

(1)  "Special [~~special~~] education" means specially designed instruction that is provided at no cost to the parent or person standing in parental relation to meet the unique needs of a student with a disability.[~~, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 48.102; and~~]

(2)  "Student with a disability" means a student evaluated in accordance with Section 29.004 and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) as having:

(A)  an intellectual disability, a hearing impairment including deafness, a visual impairment including blindness, a serious emotional disturbance, an orthopedic impairment, autism, a traumatic brain injury, a speech or language impairment, deaf-blindness, multiple disabilities, any other health impairment, or a specific learning disability and who, as a result of the disability, needs special education;

(B)  noncategorical early childhood developmental delays that prevent the student from being adequately or safely educated in a public school without receiving special education; or

(C)  dyslexia or a related disorder and who, as a result of the dyslexia or the related disorder, needs special education [~~related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program~~].

SECTION 9.  Section 29.003(b), Education Code, is amended to read as follows:

(b)  A student is eligible to participate in a school district's special education program if the student:

(1)  is not more than 21 years of age and is identified as a student with [~~and has~~] a visual or hearing [~~auditory~~] impairment [~~that prevents the student from being adequately or safely educated in public school without the provision of special services~~]; [~~or~~]

(2)  is at least three years of age but not more than 21 years of age and has been identified as a student with a disability other than a visual or hearing impairment; [~~and has one~~] or

(3)  is at least three years of age but not more than five years of age and the [~~following disabilities that prevents the~~] student is a student evaluated as having noncategorical early childhood developmental delays as described by Section 29.002(2)(B) [~~from being adequately or safely educated in public school without the provision of special services:~~

[~~(A)  physical disability;~~

[~~(B)  intellectual or developmental disability;~~

[~~(C)  emotional disturbance;~~

[~~(D)  learning disability;~~

[~~(E)  autism;~~

[~~(F)  speech disability; or~~

[~~(G)  traumatic brain injury~~].

SECTION 10.  Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0031 to read as follows:

Sec. 29.0031.  DYSLEXIA AND RELATED DISORDERS. (a) A school district shall:

(1)  screen students for dyslexia and related disorders;

(2)  notify the parent of or person standing in parental relation to each student who is determined to be at risk for dyslexia or a related disorder that the student is at risk; and

(3)  make a good faith effort to ensure that the notice provided under Subdivision (2):

(A)  is clear and easy to understand;

(B)  is in the recipient's native language; and

(C)  includes information about the student's data and measurements that led to the determination that the student is at risk for dyslexia or a related disorder.

(b)  On determining that a student is at risk for dyslexia or a related disorder, the school district shall implement a multisensory, structured reading instruction program as an intervention as part of the district's multi-tiered systems of support under Section 26.0081 that, to the extent possible, incorporates training provided to teachers under Section 21.4552. The district shall determine the form, content, and timing of a program provided under this subsection, subject to requirements for the program established by the commissioner by rule. The program adopted under this subsection may not be used to delay an evaluation for special education services under Section 29.004.

(c)  Only a person who meets the qualifications for employment by a school district to provide services to students with dyslexia and related disorders under Section 21.003(b-1) may perform screenings for dyslexia and related disorders and implement reading instruction programs as required by this section.

(d)  The commissioner shall adopt rules as necessary to implement this section. The rules must:

(1)  require a universal screening for each student for dyslexia and related disorders:

(A)  at the end of the school year in kindergarten; and

(B)  before the end of the school year in first grade;

(2)  establish, in coordination with experts and educators in the field of reading and dyslexia and related disorders from across the state, the screening requirements under Subsection (a);

(3)  establish the requirements for reading instruction programs provided under Subsection (b); and

(4)  establish the personnel required to deliver dyslexia intervention in accordance with Section 21.003(b-1).

SECTION 11.  Section 30.001(b), Education Code, is amended to read as follows:

(b)  The commissioner, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to children with disabilities in each region served by a regional education service center. The plan must include procedures for:

(1)  identifying existing public or private educational and related services for children with disabilities in each region;

(2)  identifying and referring children with disabilities who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(3)  assisting school districts to individually or cooperatively develop programs to identify and provide appropriate services for children with disabilities;

(4)  expanding and coordinating services provided by regional education service centers for children with disabilities; [~~and~~]

(5)  providing for special education [~~services~~], including special seats, books, instructional media, and other supplemental supplies and services required for proper instruction; and

(6)  ensuring services provided for students with dyslexia and related disorders align with guidance on evidence-based practices developed by the State Board of Education under Section 7.102(c)(28).

SECTION 12.  Section 30.002(g), Education Code, is amended to read as follows:

(g)  To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special education [~~services~~] uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

SECTION 13.  Section 37.146(a), Education Code, is amended to read as follows:

(a)  A complaint alleging the commission of a school offense must, in addition to the requirements imposed by Article 45.019, Code of Criminal Procedure:

(1)  be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and

(2)  be accompanied by a statement from a school employee stating:

(A)  whether the child is eligible for or receives special education [~~services~~] under Subchapter A, Chapter 29; and

(B)  the graduated sanctions, if required under Section 37.144, that were imposed on the child before the complaint was filed.

SECTION 14.  Section 48.103, Education Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b)  A school district is entitled to an allotment under Subsection (a) only for a student who:

(1)  is receiving services for dyslexia or a related disorder in accordance with:

(A)  an individualized education program developed for the student under Section 29.005; or

(B)  a plan developed for the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794);

(2)  is receiving instruction that:

(A)  meets applicable dyslexia intervention components [~~program criteria~~] established by the State Board of Education or agency; and

(B)  is provided by a person with specific training in providing that instruction; or

(3)  is permitted, on the basis of having dyslexia or a related disorder, to use modifications in the classroom or accommodations in the administration of assessment instruments under Section 39.023.

(c)  A school district shall:

(1)  [~~may~~] receive funding for a student under this section and Section 48.102 if the student satisfies the requirements of both sections;

(2)  allocate money received under Subdivision (1) to the district's special education budget; and

(3)  prioritize the use of money received under Subdivision (1) for the employment and retention of district employees who are specially trained to evaluate, identify, and provide services for dyslexia and related disorders, including a person described by Section 21.003(b-1).

(c-1)  A school district may only use funding received under this section to supplement the district's special education budget and not to offset or deduct from the district's special education budget.

SECTION 15.  (a) A joint interim committee is established to study methods for screening and testing students for dyslexia and the appropriate instruction for students with dyslexia and related disorders.

(b)  The committee shall assess:

(1)  the method and efficiency with which dyslexia programs are delivered to students;

(2)  whether the dyslexia screening process used by school districts correctly identifies students with dyslexia and provides the intervention and curriculum necessary for those students;

(3)  whether the implementation of recommended methodologies for students with dyslexia in the elementary grades is successful and appropriate;

(4)  methods to properly enforce and provide oversight of dyslexia programs;

(5)  parental rights related to dyslexia screening and programs;

(6)  methods to ensure federal funds received to support special education instruction for students with dyslexia are used to provide students with the best evidence-based multisensory systematic language therapy intervention available; and

(7)  the effectiveness of educator incentives for dyslexia programs.

(c)  The committee consists of the following eight members:

(1)  four members of the house of representatives appointed by the speaker of the house of representatives; and

(2)  four members of the senate appointed by the lieutenant governor.

(d)  The speaker of the house of representatives and the lieutenant governor shall each designate a co-chair from among the committee members.

(e)  The joint interim committee has all other powers and duties provided to a special or select committee by the rules of the senate and house of representatives by Subchapter B, Chapter 301, Government Code, and by policies of the senate and house committees on administration.

(f)  Not later than December 1, 2022, the joint interim committee shall report the committee's findings and recommendations to the governor and the members of the legislature.

(g)  The joint interim committee established under this section is abolished and this section expires December 10, 2022.

SECTION 16.  The following provisions of the Education Code are repealed:

(1)  Section 38.003;

(2)  Section 38.0031; and

(3)  Section 38.0032.

SECTION 17.  (a) This Act applies beginning with the 2022-2023 school year.

(b)  As soon as is practicable after the effective date of this Act, the commissioner of education shall adopt rules necessary to implement this Act using a negotiated rulemaking process under Chapter 2008, Government Code.

(c)  As soon as is practicable after the effective date of this Act, each school district shall notify the parent or person standing in parental relation to a student who has been identified as having dyslexia or a related disorder and who received dyslexia intervention and instructional support in accordance with Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), during the 2021-2022 school year of the parent's or person's rights to have the student continue that support and to request a full individual evaluation under Section 29.004, Education Code. The commissioner of education shall develop and make available a model notice that a school district shall use to provide the notice required by this subsection.

(d)  Not later than September 1, 2022, the Texas Education Agency shall provide informal guidance to school districts on the evaluation and identification of students with dyslexia or a related disorder in accordance with this Act.

SECTION 18.  This Act takes effect September 1, 2021.

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