87R2036 MM-F

By:  Zaffirini S.B. No. 2105

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of an educational representative for certain students with disabilities.

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

SECTION 1.  Sections 29.017(a), (b), (c), and (c-2), Education Code, are amended to read as follows:

(a)  A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student or, if applicable, to the educational representative appointed for the student under Section 29.0171.

(b)  All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to a student [~~students~~] who is [~~are~~] incarcerated in an adult or juvenile, state or local correctional institution or, if applicable, to the educational representative appointed for the student under Section 29.0171.

(c)  Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall:

(1)  provide to the student and the student's parents:

(A)  written notice regarding the transfer of rights under this section; and

(B)  information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, the appointment of an educational representative under Section 29.0171, and other supports and services that may enable the student to live independently; and

(2)  ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

(c-2)  If a student with a disability or the student's parent requests information regarding guardianship, [~~or~~] alternatives to guardianship, or the appointment of an educational representative from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code, and on the appointment of an educational representative under Section 29.0171.

SECTION 2.  Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0171 to read as follows:

Sec. 29.0171.  APPOINTMENT OF EDUCATIONAL REPRESENTATIVE. (a) For purposes of compliance with 34 C.F.R. Section 300.520(b), a school district shall appoint an educational representative as provided by this section for a student who:

(1)  is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code;

(2)  has been certified under Subsection (b) as not having the ability to provide informed consent regarding the student's educational program; and

(3)  has not been determined to be incompetent.

(b)  A professional who meets the qualifications under Subsection (d) may certify in writing that a student does not have the ability to provide informed consent with respect to the student's educational program based on the professional's knowledge and expertise and clear and convincing evidence obtained through a personal examination of or interview with the student.

(c)  In making the determination that a student does not have the ability to provide informed consent regarding the student's educational program under Subsection (b), the professional:

(1)  shall consider whether the student is unable to:

(A)  communicate, even with appropriate verbal support, in writing or in the student's most proficient method of communication, the student's preferences, decisions, and consent with respect to the student's educational program; and

(B)  use an alternative to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, or power of attorney, for educational decision-making; and

(2)  may not determine that the student is unable to provide informed consent based solely on the fact that the student has been voluntarily or involuntarily hospitalized for a mental illness or has a diagnosis of an intellectual disability.

(d)  To certify that a student does not have the ability to provide informed consent regarding the student's educational program under Subsection (b), a professional:

(1)  must be a licensed physician, licensed physician assistant, or licensed clinical psychologist; and

(2)  may not:

(A)  be an employee of the school district currently serving the student; and

(B)  have any interests that conflict with the interests of the student or the person seeking appointment as the student's educational representative, including being related by blood or marriage.

(e)  A professional who provides a certification for a student under Subsection (b) must provide a copy of the certification to the student.

(f)  A reevaluation of a student under 34 C.F.R. Section 300.303 may be used to request certification for the student under Subsection (b).

(g)  On receiving a written request from a student's parent, legal guardian, or spouse or another interested adult to appoint an educational representative for the student that is accompanied with the certification for the student made under Subsection (b) dated not earlier than the 91st day before the date the request is submitted, a school district shall:

(1)  not later than:

(A)  the fifth school day following the date the district receives the request, notify the student in the manner appropriate for the student's most proficient method of communication that the district has received the request; and

(B)  the 15th school day following the date the district receives the request, determine whether the certification conforms with Subsection (b); and

(2)  if the district determines that the certification conforms with Subsection (b), appoint one of the following individuals in the order listed as the student's educational representative:

(A)  the student's spouse;

(B)  the student's parent or legal guardian; or

(C)  another appropriate individual who:

(i)  is preferred by the student;

(ii)  is not employed by the district; and

(iii)  has significant knowledge of the student and the student's strengths, opportunities, and post-educational transitional goals.

(h)  The scope of an appointment as an educational representative under this section is limited to representing the educational interests of the student in accordance with 34 C.F.R. Section 300.520(b).

(i)  An educational representative appointed for a student under this section shall:

(1)  in representing the student's educational interests:

(A)  consider the student's interests, preferences, and goals; and

(B)  consult with the student before providing informed consent or making educational decisions on the student's behalf; and

(2)  notify the student when the representative has provided informed consent or made any educational decisions on the student's behalf.

(j)  If a student expresses disagreement with an informed consent or educational decision made by the student's educational representative on the student's behalf, the school district shall include a statement to that effect in the student's individualized education program.

(k)  The term of an educational representative's appointment under this section expires on the earliest of:

(1)  the date the student is no longer eligible for special education services;

(2)  the date the student graduates from high school with a high school diploma under Section 28.025(c)(1);

(3)  the date a guardian is appointed for the student under Chapter 1101, Estates Code; or

(4)  the date the student rescinds the representative's appointment under Subsection (l).

(l)  A student who has not been determined to be incompetent may rescind at any time, in writing or in the student's most proficient method of communication, the appointment of an educational representative for the student under this section. If the student is unable to rescind the appointment in writing, the school district serving the student shall document the student's rescission on the student's behalf. If rescinded, all rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student. The school district shall notify the person who submitted the request for the appointment under Subsection (g) regarding the rescission.

(m)  A certification under Subsection (b) that a student is unable to provide informed consent with respect to the student's educational program or the appointment of an educational representative for the student under this section may not be construed as a finding of the student's incompetence or incapacity for any other purpose or as relevant or precedential evidence in any future court or legal action seeking to remove decision-making authority from the student.

(n)  Any documentation relating to the appointment of an educational representative under this section, including certification under Subsection (b) or a request for the appointment of an educational representative under Subsection (g), is confidential and not subject to disclosure under Chapter 552, Government Code.

(o)  Nothing in this section prohibits the appointment of a guardian under Chapter 1101, Estates Code, for a student for whom an educational representative has been appointed under this section.

(p)  The commissioner shall develop and post on the agency's Internet website model forms that may be used for a certification under Subsection (b) and a request for appointment of an educational representative under Subsection (g).

(q)  The commissioner shall adopt rules to implement this section, including rules to ensure compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

SECTION 3.  Section 29.017(f), Education Code, is repealed.

SECTION 4.  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, 2021.