

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

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

4 (B) information and resources regarding  
5 guardianship, alternatives to guardianship, including a supported  
6 decision-making agreement under Chapter 1357, Estates Code, the  
7 appointment of an educational representative under Section  
8 29.0171, and other supports and services that may enable the  
9 student to live independently; and

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

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

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

23 Sec. 29.0171. APPOINTMENT OF EDUCATIONAL REPRESENTATIVE.

24 (a) For purposes of compliance with 34 C.F.R. Section 300.520(b), a  
25 school district shall appoint an educational representative as  
26 provided by this section for a student who:

27 (1) is 18 years of age or older or whose disabilities

1 of minority have been removed for general purposes under Chapter  
2 31, Family Code;

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

6 (3) has not been determined to be incompetent.

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

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

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

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

21 (B) use an alternative to guardianship,  
22 including a supported decision-making agreement under Chapter  
23 1357, Estates Code, or power of attorney, for educational  
24 decision-making; and

25 (2) may not determine that the student is unable to  
26 provide informed consent based solely on the fact that the student  
27 has been voluntarily or involuntarily hospitalized for a mental

1 illness or has a diagnosis of an intellectual disability.

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

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

7 (2) may not:

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

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

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

17 (f) A reevaluation of a student under 34 C.F.R. Section  
18 300.303 may be used to request certification for the student under  
19 Subsection (b).

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

26 (1) not later than:

27 (A) the fifth school day following the date the

1 district receives the request, notify the student in the manner  
2 appropriate for the student's most proficient method of  
3 communication that the district has received the request; and

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

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

11 (A) the student's spouse;

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

13 (C) another appropriate individual who:

14 (i) is preferred by the student;

15 (ii) is not employed by the district; and

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

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

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

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

27 (A) consider the student's interests,

1 preferences, and goals; and

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

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

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

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

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

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

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

21 (4) the date the student rescinds the representative's  
22 appointment under Subsection (1).

23 (l) A student who has not been determined to be incompetent  
24 may rescind at any time, in writing or in the student's most  
25 proficient method of communication, the appointment of an  
26 educational representative for the student under this section. If  
27 the student is unable to rescind the appointment in writing, the

1 school district serving the student shall document the student's  
2 rescission on the student's behalf. If rescinded, all rights  
3 accorded to parents under this subchapter or 20 U.S.C. Section 1415  
4 transfer to the student. The school district shall notify the  
5 person who submitted the request for the appointment under  
6 Subsection (g) regarding the rescission.

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

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

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

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

1       (g) The commissioner shall adopt rules to implement this  
2 section, including rules to ensure compliance with the Family  
3 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section  
4 1232g).

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

6       SECTION 4. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2021.