

## **BILL ANALYSIS**

Senate Research Center  
88R20419 MM-F

C.S.S.B. 8  
By: Creighton et al.  
Education  
3/28/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Local schools have long been referred to as "community schools," because the community, particularly the parents of local school children, are an integral part of the school experience. In recent years, many parents have become less trusting of school districts and charter schools because they do not feel as if they have been granted appropriate opportunities to direct their children's educational experience. The Parents Bill of Rights, S.B. 8, seeks to provide a course correction to put parents back in the center of the community of the school.

Research has demonstrated that parental involvement in their child's education is one of the key contributing factors for academic success. S.B. 8 ensures parents remain a central component of a child's education by clearly enumerating their rights to direct the moral and religious training of their children in the Education Code and empowering them with the tools to stay aware and involved.

S.B. 8 includes several revisions to the school district grievance process such as clear timelines to reduce delays and ensure the concerns of parents are addressed in a fair and timely manner. If a school board is unable to satisfactorily resolve a parental grievance, an independent hearing examiner may be appointed to ensure concerns are fairly addressed at the local level.

School districts are prohibited from withholding information from children's parents, and are required to receive parental consent for the administration of any medical, psychiatric, and psychological treatments or tests. Parents are also given the right to request reviews of instructional material to verify lesson content is age-appropriate and on-grade-level. Instruction concerning sexual orientation and gender identity is prohibited at all grade levels.

Parents have the right to choose the educational setting of their children. As such, S.B. 8 gives parents the ability to exercise their freedom of educational choice by allowing free transfer between school districts as well as giving public school students the opportunity to attend private school with an Education Savings Account (ESA).

S.B. 8's ESA program provides families who leave the public school system or are enrolling in prekindergarten or kindergarten for the first time with \$8,000 to be spent on tuition and fees at an accredited private school and other approved educational expenses such as textbooks, uniforms, tutoring, transportation, and academic assessment fees. Various safeguards are put in place for the responsible use of funds and prevent fraud, including random audits of ESAs.

S.B. 8's ESA program is not designed to harm public schools. No funds allocated for public schools are to be used for the ESA program, which is funded through general revenue. School districts with fewer than 20,000 students will receive \$10,000 for two years for each student that leaves the district for the ESA program.

C.S.S.B. 8:

First, the bill contains various timelines defined in "days." To prevent confusion, clarity is added as to whether we are referring to operational school days or calendar school days in each instance.

Second, the current window for submitting grievances, as specified in C.S.S.B. 8, is 30 business days after a parent has received notice, or 15 business days if there is a grievance form on the school's website. This proposes standardizing this to 6 school weeks from the time a parent receives notice.

Third, if a parent fails to appear at a hearing examiner hearing which they requested, the hearing examiner is not required to complete the hearing and may not make a recommendation in favor of the parent.

Fourth, further clarify that school districts must accept transfers using the priority list in the bill if they have additional capacity

Fifth, clarify that school districts cannot use equity considerations in their decision-making process related to facilities capacity when determining transfer policies.

Sixth, expand the allowable uses of education savings account funds to include third-party purchasing of textbooks or instructional materials as required by a direct, approved educational provider.

C.S.S.B. 8 amends current law relating to public education, including parental rights and public school responsibilities regarding instructional materials and the establishment of an education savings account program.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in Section 1.005 (Section 26.0061, Education Code) of this bill.

Rulemaking authority is expressly granted to the Texas Education Agency in SECTION 1.013 (Section 31.0236, Education Code) of this bill.

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 2.002 (Sections 29.358, 29.362, and 29.372, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. PARENTAL RIGHTS AND CURRICULUM**

SECTION 1.001. Amends Chapter 1, Education Code, by adding Section 1.009, as follows:

Sec. 1.009. INFRINGEMENT OF PARENTAL RIGHTS PROHIBITED. Prohibits the rights granted to parents under the laws of this state, including the right to direct the moral and religious training of the parent's child, make decisions concerning the child's education, and consent to medical, psychiatric, and psychological treatment of the parent's child under Section 151.001 (Rights and Duties of Parents), Family Code, from being infringed on by any public elementary or secondary school or state governmental entity, including the state or a political subdivision of the state, unless the infringement is:

(1) necessary to further a compelling state interest, such as providing life-saving care to a child; and

(2) narrowly tailored using the least restrictive means to achieve that compelling state interest.

SECTION 1.002. Amends Section 11.161, Education Code, as follows:

Sec. 11.161. New heading: FRIVOLOUS SUIT OR PROCEEDING. Authorizes the court or another person authorized to make decisions regarding the proceeding to award costs and reasonable attorney's fees in a civil suit or administrative proceeding brought under

state law or rules against an independent school district or an officer of an independent school district acting under color of office if:

(1) the court or other authorized person finds that the suit or proceeding is frivolous, unreasonable, and without foundation; and

(2) the suit or proceeding is dismissed or judgment is for the defendant.

SECTION 1.003. Amends Section 25.035, Education Code, as follows:

Sec. 25.035. TRANSFERS BETWEEN DISTRICTS OR COUNTIES. (a) Creates this subsection from existing text. Authorizes the boards of trustees of two more school districts or boards of county school trustees of two or more counties, in accordance with Sections 25.032 (Basis for Assignment or Transfer), 25.033 (Assignment or Transfer on Petition of Parent), and 25.034 (Hearing; Action on Petition; Appeal), to arrange for the transfer and assignment of any student from the jurisdiction of one board to that of another. Deletes existing text authorizing the board of trustees of two or more adjoining school districts or the boards of county school trustees of two or more adjoining counties by agreement and in accordance with certain sections, to arrange for the transfer and assignment of any student from the jurisdiction of one board to that of another. Deletes existing text requiring the participating governing boards to also agree to the transfer of school funds or other payments proportionate to the transfer of attendance in the case of the transfer and assignment of a student under this section.

(b) Authorizes a school district to deny approval of a transfer under this section if:

(1) the district or a school in the district to which a student seeks to transfer is at full student capacity or has more requests for transfers than available positions in accordance with Subsection (c);

(2) at the time a student seeks to transfer, the student is suspended or expelled by the district in which the student is enrolled; or

(3) approving the transfer would supersede a court-ordered desegregation plan.

(b-1) Prohibits the district, for the purpose of determining whether a school in a school district is at full student capacity under Subsection (b)(1), from considering equity as a factor in the district's decision-making process.

(c) Requires a school district that has more applicants for transfer under this section than available positions to fill the available positions by lottery and to give priority to applicants in the following order:

(1) students who:

(A) do not reside in the district but were enrolled in the district in the preceding school year; or

(B) are dependents of an employee of the receiving district; and

(2) students:

(A) receiving special education services under Subchapter A, Chapter 29;

(B) who are dependents of military personnel;

(C) who are dependents of law enforcement personnel;

(D) in foster care;

(E) who are the subject of court-ordered modification of an order establishing conservatorship or possession and access; or

(F) who are siblings of a student who is enrolled in the receiving district at the time the student seeks to transfer.

(d) Prohibits a student who transfers to another school district under this section from being charged tuition. Provides that the student is included in the average daily attendance of the district to which the student transfers, beginning on the date the student begins attending classes at that district.

(e) Authorizes, but does not require, a receiving school district to provide transportation to a student who transfers to the receiving district under this section.

(f) Authorizes a receiving school district to revoke, at any time during the school year, the approval of the student's transfer if the student:

(1) fails to comply with a condition specified in the agreement that is:

(A) a circumstance specified in the student code of conduct under Section 37.001(a)(1) (relating to requiring the student code of conduct to specify the circumstances under which a student is authorized to be removed from a classroom, campus, disciplinary alternative education program, or vehicle operated by the district);

(B) a condition specified in the student code of conduct under Section 37.001(a)(2) (relating to requiring the student code of conduct to specify conditions that authorize or require a principle or other appropriate administrator to transfer a student to a disciplinary alternative education program);

(C) conduct for which a student is required or permitted to be removed from class and placed in a disciplinary alternative education program under Section 37.006 (Removal for Certain Conduct); or

(D) conduct for which a student is required or permitted to be expelled from school under Section 37.007 (Expulsion for Serious Offenses); or

(2) fails to maintain a specified school attendance rate.

SECTION 1.004. Amends Section 26.001, Education Code, by amending Subsections (a), (c), (d), and (e) and adding Subsections (a-1) and (c-1), as follows:

(a) Provides that a parent, as provided under Section 151.001, Family Code, has the right to direct the moral and religious training of the parent's child, make decisions concerning the child's education, and consent to medical, psychiatric, and psychological treatment of the child without obstruction or interference from this state, any political subdivision of this state, a school district or open-enrollment charter school, or any other governmental entity.

(a-1) Creates this subsection from existing text.

(c) Provides that a board of trustees, administrator, educator, or other person, unless otherwise provided by law, is required to comply with Section 1.009 and is prohibited

from limiting parental rights or withholding information from a parent regarding the parent's child.

(c-1) Prohibits a school district from being considered to have withheld information from a parent regarding the parent's child if the district's actions are in accordance with other law, including the Family Education Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(d) Requires each board of trustees to:

(1) creates this subdivision from existing text;

(2) develop a plan for parental participation in the district to improve parent and teacher cooperation, including in the areas of homework, school attendance, and discipline;

(3) creates this subdivision from existing text and makes nonsubstantive changes; and

(4) provide to a parent of a child on the child's enrollment in the district for the first time and to the parent of each child enrolled in the district at the beginning of each school year information about parental rights and options, including the right to withhold consent for or exempt the parent's child from certain activities and instruction, that addresses the parent's rights and options concerning:

(A) the child's course of study and supplemental services;

(B) instructional materials and library materials;

(C) health education instruction under Section 28.004 (Local School Health Advisory Council and Health Education Instruction);

(D) instruction regarding sexual orientation and gender identity under Section 28.0043;

(E) school options, including virtual and remote schooling options;

(F) immunizations under Section 38.001 (Immunization; Requirements; Exceptions);

(G) gifted and talented programs;

(H) promotion, retention, and graduation policies;

(I) grade, class rank, and attendance information;

(J) state standards and requirements;

(K) data collection practices;

(L) health care services, including notice and consent under Section 26.0083(g); and

(M) the local grievance procedure under Section 26.011.

(e) Requires the Texas Education Agency (TEA) to develop a form for use by school districts in providing information about parental rights and options under Subsection (d)(4). Requires each school district to post the form in a prominent location on the district's Internet website.

SECTION 1.005. Amends Chapter 26, Education Code, by adding Sections 26.0026, 26.0061, and 26.0083, as follows:

Sec. 26.0026. **RIGHT TO SELECT EDUCATIONAL SETTING.** Provides that a parent is entitled to choose the educational setting for the parent's child, including public school, private school, or home school.

Sec. 26.0061. **RIGHT TO REQUEST INSTRUCTIONAL MATERIAL REVIEW.** (a) Requires the board of trustees of each school district to establish a process by which a parent of a student, as indicated on the student registration form at the student's campus, is authorized to request an instructional material review under Section 31.0236 for a subject area in the grade level in which the student is enrolled.

(b) Provides that a process established under Subsection (a):

(1) is prohibited from requiring more than one parent of a student to make the request;

(2) is required to provide for the board of trustees of the school district to determine if the request will be granted, either originally or through an appeal process; and

(3) is authorized to permit the requesting parent to review the instructional material directly before the district conducts an instructional material review under Section 31.0236.

(c) Requires the board to conduct the review if the parents of at least 25 percent of the students enrolled at a campus present to the board of trustees of the school district in which the campus is located a petition for the board to conduct an instructional material review under Section 31.0236, unless, by a majority vote, the board denies the request.

(d) Requires the board to conduct the review, notwithstanding Subsection (c), if the parents of at least 50 percent of the students enrolled at a school district campus present to the board of trustees of the district a petition to conduct an instructional material review under Section 31.0236.

(e) Requires that a review conducted under Subsection (c) or (d) include a review of instructional materials for each subject area or grade level specified in the petition.

(f) Authorizes the commissioner to adopt rules to implement this section.

Sec. 26.0083. **RIGHT TO INFORMATION REGARDING MENTAL, EMOTIONAL, AND PHYSICAL HEALTH AND HEALTH-RELATED SERVICES.** (a) Requires TEA to adopt a procedure for school districts to notify the parent of a student enrolled in the district regarding any change in services provided to or monitoring of the student related to the student's mental, emotional, or physical health or well-being.

(b) Requires a procedure adopted under Subsection (a) to reinforce the fundamental right of a parent to make decisions regarding the upbringing and control of the parent's child by requiring school district personnel to:

(1) encourage a student to discuss issues relating to the student's well-being with the student's parent; or

(2) facilitate a discussion described under Subdivision (1).

(c) Prohibits a school district from adopting a procedure that:

(1) prohibits a district employee from notifying the parent of a student regarding:

(A) information about the student's mental, emotional, or physical health or well-being; or

(B) a change in services provided to or monitoring of the student related to the student's mental, emotional, or physical health or well-being;

(2) encourages or has the effect of encouraging a student to withhold from the student's parent information described by Subdivision (1)(A); or

(3) prevents a parent from accessing education or health records concerning the parent's child.

(d) Provides that Subsections (a) and (c) do not require the disclosure of information to a parent if a reasonably prudent person would believe the disclosure is likely to result in the student suffering abuse or neglect, as those terms are defined by Section 261.001 (Definitions), Family Code.

(e) Prohibits a school district employee from discouraging or prohibiting parental knowledge of or involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

(f) Requires any student support services training developed or provided by a school district to district employees to comply with any student services guidelines, standards, and frameworks established by the State Board of Education (SBOE) and TEA.

(g) Requires a school district to provide to the parent of each student enrolled in the district, before the first instructional day of each school year, written notice of each health-related service offered at the district campus the student attends. Requires that the notice include a statement of the parent's right to withhold consent for or decline a health-related service. Provides that a parent's consent to a health-related service does not waive a requirement of Subsection (a), (c), or (e).

(h) Requires a school district to provide a copy of a student well-being questionnaire or health screening form to the student's parent and obtain the parent's consent to administer the questionnaire or form before administering to the questionnaire or form a student enrolled in prekindergarten through 12th grade

(i) Prohibits this section from being construed to:

(1) limit or alter the requirements of Section 38.004 (Child Abuse Reporting and Programs) of this code or Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code; or

(2) limit a school district employee's ability to inquire about a student's daily well-being without parental consent.

(j) Requires TEA, SBOE, and the State Board for Educator Certification (SBEC) as appropriate, to review and revise as necessary the following to ensure compliance with this section, not later than June 30, 2024:

(1) school counseling frameworks and standards;

(2) educator practices and professional conduct principles; and

(3) any other student services personnel guidelines, standards, or frameworks.

(k) Provides that Subsection (j) and this subsection expire September 1, 2025.

SECTION 1.006. Amends Section 26.004(b), Education Code, as follows:

(b) Provides that a parent is entitled to access all written records of a school district concerning the parent's child, including:

(1)-(7) makes no changes to these subdivisions;

(8) medical records in accordance with Section 38.0095 (Parental Access to Medical Records), including health and immunization information; and

(9)-(11) makes no changes to these subdivisions.

SECTION 1.007. Amends Section 26.008, Education Code, as follows:

Sec. 26.008. RIGHT TO FULL INFORMATION CONCERNING STUDENT. (a) Provides that a parent, except as provided by Section 38.004, is entitled to:

(1) creates this subdivision from existing text and makes nonsubstantive changes; and

(2) notification not later than one school business day after the date a school district employee first suspects that a criminal offense has been committed against the parent's child.

(b) Provides that an attempt by any school district employee to encourage or coerce a child to withhold information from the child's parent is grounds for discipline under Section 21.104 (Discharge During Year or Suspension Without Pay Under Probationary Contract), 21.156 (Discharge or Suspension Without Pay Under Continuing Contract), or 21.211 (Termination or Suspension), as applicable, or by SBEC, if applicable.

SECTION 1.008. Amends Section 26.009, Education Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (c), and (d), as follows:

(a) Requires an employee of a school district to obtain the written consent of a child's parent in the manner required by Subsection (a-2) before the employee is authorized to:

(1) makes a nonsubstantive change to this subdivision;

(2) subject to Subsection (b), make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice;

(3) unless authorized by other law:

(1) disclose a child's health or medical information to any person other than the child's parent; or

(2) collect, use, store, or disclose to any person other than the child's parent a child's biometric identifiers; or

(4) subject to Subsection (a-3), provide health care services or medication or conduct a medical procedure.

(a-1) Defines "biometric identifier."



(a-2) Requires that written consent for a parent's child to participate in a district activity described by Subsection (a) be signed by the parent and returned to the district. Prohibits a child from participating in the activity unless the district receives the parent's signed written consent to that activity.

(a-3) Authorizes the district, for the purpose of obtaining written consent for actions described by Subsection (a)(4) that are determined by a school district to be routine care provided by a person who is authorized by the district to provide physical or mental health-related services, to obtain consent at the beginning of the school year or at the time of the child's enrollment in the district. Provides that written consent obtained in accordance with this subsection, unless otherwise provided by a child's parent, is effective until the end of the school year in which the consent was obtained.

(c) Requires a school district to provide to the parent of each student enrolled in the district, before the first instructional day of each school year, written notice of any actions the district is authorized to take involving the authorized collection, use, or storage of information as described by Subsection (a)(3). Requires that the notice:

(1) include a plain language explanation for the district's collection, use, or storage of the child's information and the district's legal authority to engage in that collection, use, or storage; and

(2) be signed by the parent and returned to the district.

(d) Requires a school district to take disciplinary action against an employee responsible for allowing a child to participate in an activity described by Subsection (a)(4) if the district did not obtain a parent's consent for the child's participation in that activity.

SECTION 1.009. Amends Section 26.011, Education Code, as follows:

Sec. 26.011. New heading: LOCAL GRIEVANCE PROCEDURE. (a) Requires the board of trustees of each school district to adopt a grievance procedure under which the board is required to:

(1) address each grievance, rather than each complaint, that the board receives concerning a violation of a right guaranteed by Section 1.009 or Chapter 26 (Parental Rights and Responsibilities):

(A) if the grievance is filed not later than six school weeks after the date on which the parent received notice of an incident giving rise to the grievance; or

(B) regardless of whether the grievance was filed during the period prescribed by Paragraph (A) if the grievance was informally brought to the attention of school district personnel during that period;

(2) allow a parent at any time before a final decision by the board to provide additional evidence regarding the parent's grievance; and

(3) allow a parent to file more than one grievance at the same time.

(b) Makes a conforming change to this subsection.

(c) Requires the board of trustees of a school district to ensure a grievance procedure adopted under Subsection (a):

(1) authorizes a parent to file a grievance with the principal of the district campus the parent's child attends or the person designated by the district to receive grievances for that campus;

(2) requires that a principal or the person designated by the district to receive grievances for a campus:

(A) acknowledge receipt of a grievance under Subdivision (1) not later than two school business days after receipt of the grievance; and

(B) not later than the 14th school business day after receipt of a grievance described by Subdivision (1), provide to the parent who submitted the grievance written documentation of the decision regarding the issue that gave rise to the grievance, including an explanation of the findings that contributed to the decision, notification regarding the parent's right to appeal the decision, and the timeline for appealing the decision;

(3) requires that, if a parent appeals a decision under Subdivision (2) not later than the 14th school business day after receiving notice of the decision, the superintendent or the superintendent's designee provide to the parent not later than the 14th school business day after receipt of the appeal written documentation of the decision regarding the issue that gave rise to the grievance, including an explanation of the findings that contributed to the decision, notification regarding the parent's right to appeal the decision, and the timeline for appealing the decision;

(4) requires that, if a parent appeals a decision under Subdivision (3) not later than the 14th school business day after receiving notice of the decision, the board hear the grievance in a closed session at the board's next regular meeting that occurs on or after the 14th school business day after the date the board receives notice of the appeal; and

(5) requires that, not later than the 10th school business day after the date of a board meeting described by Subdivision (4), the board provide to the parent written documentation of the board's decision regarding the issue that gave rise to the grievance, including notice that the parent is authorized to appeal to the commissioner in writing under Section 7.057 (Appeals), if applicable.

(d) Authorizes the parties to mutually agree to adjust the timeline for the procedure under this section.

(e) Authorizes the district, notwithstanding Subsection (d), if a grievance submitted under this section involves an employee who is on documented leave that is scheduled to begin or has begun before the grievance is submitted, to alter the timeline for the procedure under this section to make a reasonable accommodation for the employee's leave. Requires the district to provide notice of the change to the parent who submitted the grievance.

SECTION 1.010. Amends Chapter 26, Education Code by adding Sections 26.0111 and 26.0112, as follows:

Sec. 26.0111. GRIEVANCE HEARING BEFORE HEARING EXAMINER. (a) Provides that this section applies only to a grievance regarding a violation of:

(1) Section 28.0022 (Certain Instructional Requirements and Prohibitions), 28.004, or 28.0043 or Chapter 38 (Health and Safety) or the implementation of those provisions by a school district; or

(2) Chapter 551 (Open Meetings), Government Code, involving school district personnel.

(b) Authorizes a parent, if the parent has exhausted the parent's options under the local grievance procedure established by the board of trustees of a school district under Section 26.011 regarding a grievance to which this section applies, and the grievance is not resolved to a parent's satisfaction, to file a written request with the commissioner for a hearing before a hearing examiner under this section not later than the 15th school business day after the date on which the board of trustees of the district resolved the parent's grievance under Section 26.011. Requires the parent to provide the district with a copy of the request and to provide the commissioner with a copy of the district's resolution of the grievance. Authorizes the parties to agree in writing to extend by not more than 10 school business days the deadline for requesting a hearing.

(c) Requires the commissioner to assign a hearing examiner to review the grievance in the manner provided by Section 21.254 (Assignment of Hearing Examiner). Provides that the hearing examiner has the powers described by Sections 21.255 (Hearings Before Hearing Examiner) and 21.256 (Conduct of Hearing) and to conduct the hearing in the manner provided by those sections as if the parent were a teacher.

(d) Requires the hearing examiner to complete the hearing and make a written recommendation to SBOE that includes proposing findings of fact and conclusions of law, not later than the 60th day after the date on which the commissioner receives a parent's written request for a hearing.

(e) Provides that Sections 21.257(c) (relating to authorizing parties to agree in writing to extend by not more than 45 days to right to a recommendation), (d) (relating to requiring a hearing examiner to send a copy of the recommendation to each party, the president of the board of trustees, and the commissioner), and (e) (relating to prohibiting a hearing examiner who fails to timely issue a written recommendation or decision from being assigned by the commissioner to conduct additional hearings) apply to a hearing under this section in the same manner as a hearing conducted under Subchapter F, Chapter 21.

(f) Provides that Section 21.258 (Consideration of Recommendation by Board of Trustees or Board Subcommittee) applies to SBOE in the same manner as if the board were the board of trustees of the school district or board subcommittee.

(g) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to SBOE's actions regarding the recommendation of the hearing examiner.

(h) Requires that the costs of the hearing examiner, the court reporter, the original hearing transcript, and any hearing room costs, if the hearing room is not provided by the school district, be paid by the school district if the hearing examiner finds in favor of the parent.

(i) Provides that the hearing examiner, notwithstanding Subsection (d), if a parent fails to appear at a hearing under this section, is not required to complete the hearing and is prohibited from making a recommendation in favor of the parent.

Sec. 26.0112. TESTIMONY BEFORE STATE BOARD OF EDUCATION. Requires the superintendent of the school district, if a hearing examiner reviews and finds against a school district under Section 26.0111 in at least five grievances to which that section applies involving the district during a school year, to appear before SBOE to testify regarding the hearing examiner's findings and the frequency of grievances against the district.

SECTION 1.011. Amends Section 28.002, Education Code, by adding Subsection (c-4), to prohibit SBOE from adopting standards in violation of Section 28.0043.

SECTION 1.012. Amends Subchapter A, Chapter 28, Education Code, by adding Section 28.0043, as follows:

Sec. 28.0043. RESTRICTION ON INSTRUCTION REGARDING SEXUAL ORIENTATION AND GENDER IDENTITY. Prohibits a school district, open-enrollment charter school, or district or charter school employee from providing or allowing a third party to provide instruction, guidance, activities, or programming regarding sexual orientation or gender identity to students enrolled in prekindergarten through 12th grade.

(b) Prohibits this section from being construed to limit:

(1) a student's ability to engage in speech or expressive conduct protected by the First Amendment to the United States Constitution or by Section 8 (Freedom of Speech and Press; Libel), Article I (Bill of Rights), Texas Constitution, that does not result in material disruption to school activities; or

(2) the ability of a person who is authorized by the district to provide physical or mental health-related services to provide the services to a student, subject to any required parental consent.

SECTION 1.013. Amends Subchapter B, Chapter 31, Education Code, by adding Section 31.0236, as follows:

Sec. 31.0236. LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL MATERIAL.

(a) Requires TEA to adopt rules developing a process by which a school district is authorized to conduct a review of instructional materials used by a classroom teacher in a foundation curriculum course under Section 28.002(a)(1) to determine the degree to which the material:

(1) complies with the instructional materials adopted by the school district; and

(2) is appropriately rigorous for the grade level in which it is being used.

(b) Authorizes a review conducted under this section to be conducted using only a rubric developed by TEA and approved by SBOE.

(c) Provides that TEA, in developing a review process under Subsection (a):

(1) is required to minimize, to the extent possible, the time a classroom teacher is required to spend complying with a review conducted under this section;

(2) is prohibited from requiring a teacher to spend more than 30 minutes on a single review conducted under this section unless the teacher determines that spending more than 30 minutes on the review is necessary; and

(3) is required to permit a regional education service center to conduct the review for a school district, if the center has completed the training offered by TEA under Subsection (d).

(d) Requires TEA to provide to regional education service centers training relating to appropriately conducting a review under this section.

SECTION 1.014. Reenacts Section 12.104(b), Education Code, as amended by Chapters 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B. 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular Session, 2021, and amends it, as follows:

(b) Provides that an open-enrollment charter school is subject to:

(1)-(2) makes no changes to these subdivisions;

(3) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)-(W) makes no changes to these paragraphs;

(X)-(Y) makes nonsubstantive changes to these paragraphs;

(Z) parental access to instructional materials and curricula under Section 26.0061; and

(AA) parental rights to information regarding a student's mental, emotional, and physical health-related needs and related services offered by the school as provided by Section 26.0083.

## ARTICLE 2. EDUCATION SAVINGS ACCOUNT PROGRAM

SECTION 2.001. Provides that the purpose of this article is to:

(1) provide additional educational options to assist families in this state in exercising the right to direct the educational needs of their children; and

(2) achieve a general diffusion of knowledge.

SECTION 2.002. Amends Chapter 29, Education Code, by adding Subchapter J, as follows:

### SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351. DEFINITIONS. Defines "account," "certified educational assistance organization," "child with a disability," "higher education provider," "parent," "program," and "program participant."

Sec. 29.352. ESTABLISHMENT OF PROGRAM. Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to establish a program to provide funding for approved education-related expenses of children participating in the Education Savings Account Program (program).

Sec. 29.353. PROGRAM FUND. (a) Provides that the program fund (fund) is an account in the general revenue fund to be administered by the comptroller.

(b) Provides that the fund is composed of:

(1) general revenue transferred to the fund;

(2) money appropriated to the fund;

(3) gifts, grants, and donations received under Section 29.370; and

(4) any other money available for purposes of the program.

(c) Authorizes money in the fund to be appropriated only for the uses specified by this subchapter.

Sec. 29.354. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATIONS. (a) Authorizes an organization to apply to the comptroller for certification as a certified educational assistance organization during an application period established by the comptroller.

(b) Requires an organization, to be eligible for certification, to:

(1) have the ability to perform the duties and functions required of a certified educational assistance organization under this subchapter;

(2) be in good standing with the state; and

(3) be able to assist the comptroller in administering the program, including the ability to:

(A) accept, process, and track applications for the program;

(B) assist prospective applicants, applicants, and program participants with finding preapproved education service providers and vendors of educational products; and

(C) verify that program funding is used only for approved education-related expenses.

(c) Authorizes the comptroller to certify not more than five educational assistance organizations to support the administration of the program, including by:

(1) administering:

(A) the application process under Section 29.356; and

(B) the program expenditures process under Section 29.360; and

(2) assisting prospective applicants, applicants, and program participants with understanding approved education-related expenses and finding preapproved education service providers and vendors of educational products.

Sec. 29.355. ELIGIBLE CHILD. (a) Provides that a child is eligible to participate in the program if the child:

(1) is eligible to:

(A) attend a public school under Section 25.001 (Admission); or

(B) enroll in a public school's prekindergarten program under Section 29.153 (Free Prekindergarten for Certain Children); and

(2) either:

(A) attended any public school for at least 90 percent of the preceding school year; or

(B) is enrolling in prekindergarten or kindergarten for the first time, including a child who was homeschooled before enrollment.

(b) Authorizes a child who establishes eligibility under this section to participate in the program until the earliest of the following dates:

(1) the date on which the child graduates from high school;

(2) the date on which the child is no longer eligible to attend a public school under Section 25.001;

(3) the date on which the child enrolls in a public school, including an open-enrollment charter school, in a manner in which the child will be counted toward the school's average daily attendance for purposes of the allocation of funding under the foundation school program; or

(4) the date on which the child is declared ineligible for the program by the comptroller under this subchapter.

Sec. 29.356. APPLICATION TO PROGRAM. (a) Authorizes a parent of an eligible child to apply to a certified educational assistance organization to enroll the child in the program for the following school year. Requires the comptroller to establish monthly deadlines by which an applicant is required to complete and submit an application form to participate in the program.

(b) Requires a certified educational assistance organization, on receipt of more acceptable applications for admission under this section than available positions in the program due to insufficient funding, to:

(1) for two-thirds of the available positions, prioritize applicants who would otherwise attend a campus with an overall performance rating under Section 39.054 (Methods and Standards for Evaluating Performance) of C, D, or F;

(2) fill the remaining one-third of available positions with applicants who would otherwise attend a campus with an overall performance rating under Section 39.054 of A or B; and

(3) subject to Subdivisions (1) and (2), consider applications in the order received.

(c) Requires a certified educational assistance organization to create an application form for the program and make the application form readily available through various sources, including the organization's Internet website. Requires that the application form state the monthly application deadlines established by the comptroller under Subsection (a). Requires each organization to ensure that the application form, including any required supporting document, is capable of being submitted to the organization electronically.

(d) Requires a certified educational assistance organization to post on the organization's Internet website an applicant and participant handbook with a description of the program, including:

(1) expenses allowed under the program under Section 29.359;

(2) a list of preapproved education service providers and vendors of educational products under Section 29.358;

(3) a description of the application process under this section and the program expenditures process under Section 29.360; and

(4) a description of the responsibilities of program participants.

(e) Requires a certified educational assistance organization to annually provide to each program participant the information described by Subsection (d). Authorizes the organization to provide the information electronically.

(f) Provides that a certified educational assistance organization:

- (1) is authorized to require a program participant to submit annual notice regarding the participant's intent to continue participating in the program for the next school year; and
- (2) is prohibited from requiring a program participant in good standing to annually resubmit an application for continued participation in the program.

Sec. 29.357. PARTICIPATION IN PROGRAM. Requires a parent of an eligible child, to receive funding under the program, to agree to:

- (1) spend money received through the program only for expenses allowed under Section 29.359;
- (2) share or authorize the administrator of an assessment instrument to share with the program participant's certified educational assistance organization the results of any assessment instrument required to be administered to the child under Section 29.358(b)(1)(B) or other law;
- (3) refrain from selling an item purchased with program money; and
- (4) notify the program participant's certified educational assistance organization not later than 30 days after the date on which the child:
  - (A) enrolls in a public school, including an open-enrollment charter school;
  - (B) graduates from high school; or
  - (C) is no longer eligible to either:
    - (i) enroll in a public school under Section 25.001; or
    - (ii) enroll in a public school's prekindergarten program under Section 29.153.

Sec. 29.358. PREAPPROVED PROVIDERS. (a) Requires the comptroller by rule to establish a process for the preapproval of education service providers and vendors of educational products for participation in the program. Requires the comptroller to allow for the submission of applications on a rolling basis.

(b) Requires the comptroller to approve an education service provider or vendor of educational products for participation in the program if the provider or vendor:

- (1) for a private school, demonstrates:
  - (A) accreditation by an organization recognized by:
    - (i) the Texas Private School Accreditation Commission; or
    - (ii) TEA; and
  - (B) annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Subchapter B (Assessment of Academic Skills), Chapter 39;
- (2) for a public school, demonstrates:



(A) accreditation by TEA; and

(B) the ability to provide services or products to program participants in a manner in which the participants are not counted toward the school's average daily attendance;

(3) for a private tutor, therapist, or teaching service:

(A) demonstrates that the tutor or therapist or each employee of the teaching service who intends to provide educational services to a program participant:

(i) is an educator employed by or a retired educator formerly employed by a school accredited by TEA, an organization recognized by TEA, or an organization recognized by the Texas Private School Accreditation Commission;

(ii) holds a relevant license or accreditation issued by a state, regional, or national certification or accreditation organization; or

(iii) is employed in or retired from a teaching or tutoring capacity at a higher education provider;

(B) the tutor or therapist or each employee of the teaching service who intends to provide educational services to a program participant either:

(i) completes a national criminal history record information review; or

(ii) provides to the comptroller documentation indicating that the tutor, therapist, or employee, as applicable, has completed a national criminal history record information review within a period established by comptroller rule; and

(C) the tutor or therapist or each employee of the teaching service who intends to provide educational services to a program participant is not included in the registry under Section 22.092 (Registry of Persons Not Eligible for Employment in Public Schools);

(4) for a higher education provider, demonstrates nationally recognized postsecondary accreditation; or

(5) for any provider or vendor not described by Subdivision (1), (2), (3), or (4), presents any necessary supporting documents concerning the provider's or vendor's qualification to serve program participants.

(c) Requires the comptroller to review the national criminal history record information or documentation for each private tutor, therapist, or teaching service employee who submits information or documentation under this section and verify that the individual is not included in the registry under Section 22.092. Requires the tutor, therapist, or service to provide the comptroller with any information requested by the comptroller to enable the comptroller to complete the review.

(d) Requires an education service provider or vendor of educational products to provide information requested by the comptroller to verify the provider's or vendor's eligibility for preapproval under Subsection (b). Prohibits the comptroller from approving a provider or vendor if the comptroller cannot verify the provider's or vendor's eligibility for preapproval.

(e) Requires an education service provider or vendor of educational products that no longer satisfies the requirements of this section to notify the comptroller not later than the 30th day after the date that the provider or vendor no longer meets the requirements.

(f) Prohibits this section from being construed to allow a learning pod, as defined by Section 27.001 (Definitions), or a home school to qualify as an approved education service provider or vendor of educational products.

**Sec. 29.359. APPROVED EDUCATION-RELATED EXPENSES.** (a) Authorizes money received under the program, subject to Subsection (b), to be used only for the following education-related expenses incurred by a child participating in the program at a preapproved education service provider or vendor of educational products:

(1) tuition and fees for a private school;

(2) the purchase of textbooks or other instructional materials or uniforms required by a school, higher education provider, or course in which the child is enrolled, including purchases made through a third-party vendor of educational products;

(3) costs related to academic assessments;

(4) fees for services provided by a private tutor or teaching service;

(5) fees for transportation provided by a fee-for-service transportation provider for the child to travel to and from a preapproved education service provider or vendor of educational products; and

(6) fees for educational therapies or services provided by a practitioner or provider, only for fees that are not covered by any federal, state, or local government benefits such as Medicaid or the Children's Health Insurance Program (CHIP) or by any private insurance that the child is enrolled in at the time of receiving the therapies or services.

(b) Prohibits money received under the program from being used to pay any person who is related to the program participant within the third degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

(c) Provides that a finding that a program participant used money distributed under the program to pay for an expense not allowed under Subsection (a) does not affect the validity of any payment made by the participant for an approved education-related expense that is allowed under that subsection.

**Sec. 29.360. PROGRAM EXPENDITURES.** (a) Requires the comptroller to disburse from the fund to each certified educational assistance organization the amount specified under Section 29.361(a) for each program participant.

(b) Requires the program participant to submit a request to the participant's certified educational assistance organization to initiate payment to an education service provider or vendor of educational products for an expense approved under Section 29.359.

(c) Requires a certified educational assistance organization to verify that the request is for an expense approved under Section 29.359 and, not later than the 15th business day after the date the organization verifies the request, send payment to the education service provider or vendor of educational products, subject to Subsection (d) and Sections 29.362(g) and 29.364.

(d) Prohibits a disbursement under this section from exceeding the program participant's account balance.

(e) Requires a certified educational assistance organization to provide program participants with electronic access to:

(1) the program participant's current account balance;

(2) the payment initiation process under Subsection (b); and

(3) a summary of the program participant's past activity, including expenditures and selected education service providers or vendors of educational products.

Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) Requires a parent of an eligible child to receive each year that the child participates in the program an annual payment from the state from funds available under Section 29.353 to the child's account in the amount of \$8,000 regardless of the monthly deadline by which the parent applies for enrollment in the program under Section 29.356(a).

(b) Provides that this subsection applies only to a school district with a student enrollment of less than 20,000. Entitles a school district to which this subsection applies to receive \$10,000 for the first two school years during which a child residing in the district participates in the program.

(c) Provides that any money remaining in a child's account at the end of a fiscal year is carried forward to the next fiscal year unless another provision of this subchapter mandates the closure of the account.

(d) Authorizes the parent of a child participating in the program to make payments for the expenses of educational programs, services, and products not covered by money in the child's account.

(e) Prohibits a payment under Subsection (a) from being financed using federal money or money from the available school fund or instructional materials fund.

(f) Provides that payments received under this subchapter do not constitute taxable income to the eligible child's parent, unless otherwise provided by federal law.

(g) Requires TEA to submit to the comptroller, not later than May 1 of each year, the data necessary to calculate the amount specified under Subsection (a).

Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) Requires the comptroller to make quarterly payments to each program participant's account in equal amounts on or before the first day of July, October, January, and April.

(b) Authorizes the comptroller, each year, to deduct from the total amount of money appropriated for purposes of this subchapter an amount, not to exceed three percent of that total amount, to cover the comptroller's cost of administering the program.

(c) Requires the comptroller to disburse to each certified educational assistance organization, each quarter, an amount from the total amount of money

appropriated for purposes of this subchapter to cover the organization's cost of administering the program. Prohibits the total amount disbursed to a certified educational assistance organization under this subsection for a fiscal year from exceeding five percent of the amount appropriated for purposes of this subchapter for that fiscal year.

(d) Requires the comptroller to calculate each certified educational assistance organization's disbursement under Subsection (c) by multiplying the total amount to be disbursed by the average percentage of the program participants served by the organization during the preceding three months.

(e) Requires a certified educational assistance organization, on or before the first day of September and March, to:

(1) verify with TEA that each child participating in the program is not enrolled in a public school, including an open-enrollment charter school, in a manner in which the child is counted toward the school's average daily attendance for purposes of the allocation of state funding under the foundation school program; and

(2) notify the comptroller if the organization determines that a child participating in the program is enrolled in a public school, including an open-enrollment charter school, in a manner in which the child is counted toward the school's average daily attendance for purposes of the allocation of state funding under the foundation school program.

(f) Requires the comptroller by rule to establish a process by which a program participant is authorized to authorize the comptroller to make a payment directly from the participant's account to a preapproved education service provider or vendor of educational products for an expense allowed under Section 29.359.

(g) Provides that the child's account is closed and any remaining money is returned to the state for deposit in the program fund on the date on which a child who participated in the program is no longer eligible to participate in the program under Section 29.355 and payments for any expenses allowed under Section 29.359 from the child's account have been completed.

Sec. 29.363. RANDOM AUDITING. (a) Requires each certified educational assistance organization, each biennium, to contract with a private entity to randomly audit accounts and student eligibility data to ensure compliance with applicable law and program requirements.

(b) Authorizes the private entity, in conducting an audit, to require a program participant or the certified educational assistance organization with which the entity contracts under Subsection (a) to provide additional information and documentation regarding any payment made under the program.

(c) Requires the private entity to report to the comptroller and the certified educational assistance organization with which the entity contracts under Subsection (a) any violation of this subchapter or other relevant law found by the entity during an audit conducted under this section. Requires the comptroller to report the violation to:

(1) the education service provider or vendor of educational products, as applicable; and

(2) the parent of each child participating in the program who is affected by the violation.

Sec. 29.364. SUSPENSION OF ACCOUNT. (a) Requires the comptroller to suspend the account of a program participant who fails to remain in good standing by complying with applicable law or a requirement of the program.

(b) Requires the comptroller to notify the program participant in writing that the account has been suspended and that no additional payments are authorized to be made from the account on suspension of an account under Subsection (a). Requires that the notification specify the grounds for the suspension and state that the participant has 30 business days to respond and take any corrective action required by the comptroller.

(c) Requires the comptroller, on the expiration of the 30-day period under Subsection (b), to:

(1) order closure of the suspended account;

(2) order temporary reinstatement of the account, conditioned on the performance of a specified action by the program participant; or

(3) order full reinstatement of the account.

(d) Authorizes the comptroller to recover money distributed under the program that was used for expenses not allowed under Section 29.359 from the program participant or the entity that received the money if the program participant's account is suspended or closed under this section.

Sec. 29.365. TUITION AND FEES; REFUND PROHIBITED. (a) Prohibits an education service provider or vendor of educational products from charging a child participating in the program an amount greater than the standard amount charged for that service or product by the provider or vendor.

(b) Prohibits an education service provider or vendor of educational products receiving money distributed under the program from in any manner rebating, refunding, or crediting to or sharing with a program participant, or any person on behalf of a participant, any program money paid or owed by the participant to the provider or vendor.

Sec. 29.366. REFERRAL TO DISTRICT ATTORNEY. Requires the comptroller or organization to notify the appropriate local county or district attorney with jurisdiction over the residence of the program participant if the comptroller or a certified educational assistance organization obtains evidence of fraudulent use of an account.

Sec. 29.367. SPECIAL EDUCATION NOTICE. (a) Requires a certified educational assistance organization to post on the organization's Internet website and provide to each parent who submits an application for the program a notice that:

(1) states that a private school is not subject to federal and state laws regarding the provision of educational services to a child with a disability in the same manner as a public school; and

(2) provides information regarding rights to which a child with a disability is entitled under federal and state law if the child attends a public school, including:

(A) rights provided under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); and

(B) rights provided under Subchapter A.

(b) Requires a private school in which a child with a disability who is a program participant enrolls to provide to the child's parent a copy of the notice required under Subsection (a).

Sec. 29.368. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR AUTONOMY.

(a) Provides that an education service provider or vendor of educational products that receives money distributed under the program is not a recipient of federal financial assistance on the basis of receiving that money.

(b) Prohibits a rule adopted or action taken related to the program by an individual, governmental entity, court of law, or program administrator from:

(1) considering the actions of an education service provider, vendor of educational products, or program participant to be the actions of an agent of state government;

(2) limiting:

(A) an education service provider's ability to determine the methods used to educate the provider's students or to exercise the provider's religious or institutional values; or

(B) a program participant's ability to determine the participant's educational content or to exercise the participant's religious values;

(3) obligating an education service provider or program participant to act contrary to the provider's or participant's religious or institutional values, as applicable;

(4) imposing any regulation on an education service provider, vendor of educational products, or program participant beyond those regulations necessary to enforce the requirements of the program; or

(5) requiring as a condition of receiving money distributed under the program:

(A) an education service provider to modify the provider's creed, practices, admissions policies, curriculum, performance standards, employment policies, or assessments; or

(B) a program participant to modify the participant's creed, practices, curriculum, performance standards, or assessments.

(c) Provides that a state agency or officer, in a proceeding challenging a rule adopted by the agency or officer under this subchapter, has the burden of proof to establish by clear and convincing evidence that the rule:

(1) is necessary to implement or enforce the program as provided by this subchapter;

(2) does not violate this section;

(3) does not impose an undue burden on a program participant or an education service provider or vendor of educational products that participates or applies to participate in the program; and

(4) is the least restrictive means of accomplishing the purpose of the program while recognizing the independence of an education service provider to meet the educational needs of students in accordance with the provider's religious or institutional values.

Sec. 29.369. STUDENT RECORDS AND INFORMATION. (a) Requires the school district or open-enrollment charter school that the child would otherwise attend, on request by the parent of a child participating or seeking to participate in the program, to provide a copy of the child's school records possessed by the district or school, if any, to the child's parent or, if applicable, the private school the child attends.

(b) Requires TEA, a school district, or an open-enrollment charter school, as necessary to verify a child's eligibility for the program, to provide to a certified educational assistance organization any information available to TEA, the district, or school requested by the organization regarding a child who participates or seeks to participate in the program, including information regarding the child's public school enrollment status and whether the child can be counted toward a public school's average daily attendance for purposes of the allocation of funding under the foundation school program. Prohibits the organization from retaining information provided under this subsection beyond the period necessary to determine a child's eligibility to participate in the program.

Sec. 29.370. GIFTS, GRANTS, AND DONATIONS. Authorizes the comptroller and a certified educational assistance organization to solicit and accept gifts, grants, and donations from any public or private source for any expenses related to the administration of the program, including establishing the program and contracting for the report required under Section 29.371.

Sec. 29.371. ANNUAL REPORT. (a) Requires the comptroller to require that each certified educational assistance organization compile program data and produce an annual longitudinal report regarding:

- (1) the number of program applications received, accepted, and waitlisted, disaggregated by age;
- (2) program participant satisfaction;
- (3) the results of assessment instruments shared in accordance with Section 29.357(2);
- (4) the effect of the program on public and private school capacity, availability, and quality;
- (5) the amount of cost savings accruing to the state as a result of the program;
- (6) in a report submitted in an even-numbered year only, an estimate of the total amount of funding required for the program for the next state fiscal biennium;
- (7) the amount of gifts, grants, and donations received under Section 29.370; and
- (8) based on surveys of former program participants or other sources available to an organization, the number and percentage of program participants who, within one year after graduating from high school, are:
  - (A) college ready, as indicated by earning a minimum of 12 non-remedial semester credit hours or the equivalent or an associate degree from a postsecondary educational institution;
  - (B) career ready, as indicated by:

(i) earning a credential of value included in the library of credentials established under Section 2308A.007 (Credential Library), Government Code; or

(ii) employment at or above the median wage in the participant's region; or

(C) military ready, as indicated by achieving a passing score set by the applicable military branch on the Armed Services Vocational Aptitude Battery and enlisting in the armed forces of the United States or the Texas National Guard.

(b) Requires each certified education assistance organization, in producing the report, to:

(1) use appropriate analytical and behavioral science methodologies to ensure public confidence in the report; and

(2) comply with the requirements regarding the confidentiality of student educational information under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c) Requires that the report cover a period of not less than five years and include, subject to Subsection (b)(2), the data analyzed and methodology used.

(d) Requires the comptroller and each certified educational assistance organization to post the report on the comptroller's and organization's respective Internet websites.

Sec. 29.372. RULES; PROCEDURES. Requires the comptroller to adopt rules and procedures as necessary to implement, administer, and enforce this subchapter.

Sec. 29.373. APPEAL; JUDICIAL REVIEW. (a) Authorizes a program participant to appeal to the comptroller an administrative decision made by the comptroller or a certified educational assistance organization under this subchapter, including a decision regarding eligibility, allowable expenses, or the participant's removal from the program.

(b) Authorizes a program participant, education service provider, or vendor of educational products who is adversely affected or aggrieved by a decision made by the comptroller or a certified educational assistance organization under this subchapter to file a suit challenging the decision in a district court in the county in which the program participant resides or the provider or vendor has its principal place of business, as applicable.

Sec. 29.374. RIGHT TO INTERVENE IN CIVIL ACTION. (a) Authorizes a program participant, education service provider, or vendor of educational products to intervene in any civil action challenging the constitutionality of the program.

(b) Authorizes a court in which a civil action described by Subsection (a) is filed to require that all program participants, education service providers, and vendors of educational products wishing to intervene in the action file a joint brief. Prohibits a program participant, education service provider, or vendor of educational products from being required to join a brief filed on behalf of the state or a state agency.

SECTION 2.003. Amends Section 22.092(d), Education Code, as follows:

(d) Requires TEA to provide equivalent access to the registry maintained under this section to:



(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions; and

(4) the comptroller for the purpose of preapproving education service providers and vendors of educational products under Section 29.358 for participation in the program established under Subchapter J, Chapter 29.

SECTION 2.004. Amends Section 411.109, Government Code, by adding Subsection (c), as follows:

(c) Entitles the comptroller to obtain criminal history record information maintained by the Department of Public Safety of the State of Texas about a person who is a private tutor, a therapist, or an employee of a teaching service or school who intends to provide educational services to a child participating in the program established under Subchapter J, Chapter 29, Education Code, and is seeking approval to receive money distributed under that program.

SECTION 2.005. Provides that Subchapter J, Chapter 29, Education Code, as added by this article, applies beginning with the 2024–2025 school year.

SECTION 2.006. (a) Requires the comptroller to adopt rules as provided by Section 29.372, Education Code, as added by this article, not later than November 15, 2023.

(b) Authorizes the comptroller to identify rules required by the passage of Subchapter J, Chapter 29, Education Code, as added by this article, that are required to be adopted on an emergency basis for purposes of the 2024–2025 school year and to use the procedures established under Section 2001.034 (Emergency Rulemaking), Government Code, for adopting those rules. Provides that the comptroller is not required to make the finding described by Section 2001.034(a) (relating to authorizing a state agency to adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable), Government Code, to adopt emergency rules under this subsection.

SECTION 2.007. (a) Authorizes the constitutionality and other validity under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this article, to be determined in an action for declaratory judgment under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, in a district court in the county in which the violation is alleged to have occurred or where the plaintiff resides or has its principal place of business.

(b) Authorizes an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this article, to be reviewed only by direct appeal to the Supreme Court of Texas (supreme court) filed not later than the 15th day after the date on which the order was entered. Requires the supreme court to give precedence to appeals under this section over other matters.

(c) Provides that the direct appeal is an accelerated appeal.

(d) Provides that this section exercises the authority granted by Section 3-b (Direct Appeal from Order Granting or Denying Injunction), Article V (Judicial Department), Texas Constitution.

(e) Provides that the filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the supreme court, unless the

supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that:

(1) the applicant has a probable right to the relief it seeks on final hearing;

(2) the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy; and

(3) maintaining the injunction is in the public interest.

(f) Provides that an appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 28.1, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

(g) Provides that this section does not authorize an award of attorney's fees against this state, and Section 37.009 (Costs), Civil Practice and Remedies Code, does not apply to an action filed under this section.

(h) Provides that this section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller.

SECTION 2.008. Severability clause.

### ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.001. Provides that this Act, to the extent of any conflict, prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.002. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2023.

(b) Effective date, Article 2 of this Act: September 1, 2023.