By:  Frank H.B. No. 5261

A BILL TO BE ENTITLED

AN ACT

relating to public education, including parental rights and public school responsibilities regarding instructional materials and the establishment of an education savings account program.

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

ARTICLE 1. PARENTAL RIGHTS, SCHOOL LIBRARIES, AND CURRICULUM

SECTION 1.001.  Chapter 1, Education Code, is amended by adding Section 1.009 to read as follows:

Sec. 1.009.  INFRINGEMENT OF PARENTAL RIGHTS PROHIBITED. 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, Family Code, may not be 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 student; and

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

SECTION 1.002.  Section 7.057(a), Education Code, is amended to read as follows:

(a)  Except as provided by Subsection (e), a person may appeal in writing to the commissioner if the person is aggrieved by:

(1)  the school laws of this state; or

(2)  actions or decisions of any school district board of trustees that violate:

(A)  the school laws of this state; [~~or~~]

(B)  a provision of a written employment contract between the school district and a school district employee, if a violation causes or would cause monetary harm to the employee; or

(C)  the grievance procedure adopted by the school district under Section 26.011.

SECTION 1.003.  Section 11.161, Education Code, is amended to read as follows:

Sec. 11.161.  FRIVOLOUS SUIT OR PROCEEDING. 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, the court or another person authorized to make decisions regarding the proceeding may award costs and reasonable attorney's fees if:

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

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

SECTION 1.004.  Section 25.035, Education Code, is amended to read as follows:

Sec. 25.035.  TRANSFERS BETWEEN DISTRICTS OR COUNTIES. (a) The boards of trustees of two or more [~~adjoining~~] school districts or the boards of county school trustees of two or more [~~adjoining~~] counties may, [~~by agreement and~~] in accordance with Sections 25.032, 25.033, and 25.034, arrange for the transfer and assignment of any student from the jurisdiction of one board to that of another. [~~In the case of the transfer and assignment of a student under this section, the participating governing boards shall also agree to the transfer of school funds or other payments proportionate to the transfer of attendance.~~]

(b)  A school district may 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;

(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.

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

(1)  students who are dependents of an employee of the receiving district; and

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

(3)  students who are dependents of military personnel;

(4)  students who are dependents of law enforcement personnel;

(5)  students in foster care;

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

(7)  students who are siblings of a student who is enrolled in the receiving district at the time the student seeks to transfer;

(8)  students residing in the receiving district.

(d)  A student who transfers to another school district under this section may not be charged tuition. 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)  A receiving school district may, but is not required to, provide transportation to a student who transfers to the receiving district under this section.

(f)  A receiving school district may 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);

(B)  a condition specified in the student code of conduct under Section 37.001(a)(2);

(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; or

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

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

SECTION 1.005.  Section 26.001, Education Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a)  As provided under Section 151.001, Family Code, a parent 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)  Parents are partners with educators, administrators, and school district boards of trustees in their children's education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children.

(c)  Unless otherwise provided by law, a board of trustees, administrator, educator, or other person shall comply with Section 1.009 and may not limit parental rights or withhold information from a parent regarding the parent's child.

(d)  Each board of trustees shall:

(1)  provide for procedures to consider complaints that a parent's right has been denied; [~~.~~]

(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)  [~~(e) Each board of trustees shall~~] cooperate in the establishment of ongoing operations of at least one parent-teacher organization at each school in the district to promote parental involvement in school activities; and

(4)  provide 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;

(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;

(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.

SECTION 1.006.  Chapter 26, Education Code, is amended by adding Sections 26.0012, 26.0026, 26.0061, and 26.0083 to read as follows:

Sec. 26.0012.  RIGHT TO INFORMATION REGARDING PARENTAL RIGHTS. (a) A parent may request in writing from a school district superintendent information regarding a parental right under Title 1 or this title.

(b)  If the superintendent denies a request made under Subsection (a) or does not respond to the request within 10 days, the parent may appeal to the district's board of trustees.

(c)  The board of trustees must include an appeal made under Subsection (b) in the business of the next board meeting after the date the appeal is received.

Sec. 26.0026.  RIGHT TO SELECT EDUCATIONAL SETTING. 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) The board of trustees of each school district shall establish a process by which a parent of a student, as indicated on the student registration form at the student's campus, may request an instructional material review under Section 31.0236 for a subject area in the grade level in which the student is enrolled.

(b)  A process established under Subsection (a):

(1)  may not require more than one parent of a student to make the request;

(2)  must 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)  may permit the requesting parent to review the instructional material directly before the district conducts an instructional material review under Section 31.0236.

(c)  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, the board shall conduct the review, unless, by a majority vote, the board denies the request. A review conducted under this subsection shall include a review of instructional materials for each subject area or grade level specified in the petition.

(d)  The commissioner may adopt rules to implement this section.

Sec. 26.0083.  RIGHT TO INFORMATION REGARDING MENTAL, EMOTIONAL, AND PHYSICAL HEALTH AND HEALTH-RELATED SERVICES. (a) The agency shall adopt a procedure for school districts to notify the parent of a student enrolled in the district regarding any change in:

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

(2)  the district's ability to provide a safe and supportive learning environment for the student.

(b)  A procedure adopted under Subsection (a) must 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)  A school district may not adopt 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)  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, Family Code.

(e)  A school district employee may not discourage or prohibit parental knowledge of or involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

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

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

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

(i)  This section may not be construed to:

(1)  limit or alter the requirements of Section 38.004 of this code or Chapter 261, Family Code; or

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

(j)  Not later than June 30, 2024, the agency, the State Board of Education, and the State Board for Educator Certification, as appropriate, shall review and revise as necessary the following to ensure compliance with this section:

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

SECTION 1.007.  Section 26.004(b), Education Code, is amended to read as follows:

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

(1)  attendance records;

(2)  test scores;

(3)  grades;

(4)  disciplinary records;

(5)  counseling records;

(6)  psychological records;

(7)  applications for admission;

(8)  medical records in accordance with Section 38.0095, including health and immunization information;

(9)  teacher and school counselor evaluations;

(10)  reports of behavioral patterns; and

(11)  records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child.

SECTION 1.009.  Section 26.008, Education Code, is amended to read as follows:

Sec. 26.008.  RIGHT TO FULL INFORMATION CONCERNING STUDENT. (a) Except as provided by Section 38.004, a [~~A~~] parent is entitled to:

(1)  full information regarding the school activities of a parent's child; and

(2)  prompt notification if a school district employee suspects that an offense has been committed against the parent's child [~~except as provided by Section 38.004~~].

(b)  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, 21.156, or 21.211, as applicable, or by the State Board for Educator Certification, if applicable.

SECTION 1.010.  Section 26.009, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (c), (d), and (e) to read as follows:

(a)  An employee of a school district must obtain the written consent of a child's parent in the manner required by Subsection (a-2) before the employee may:

(1)  conduct a psychological examination, test, or treatment, unless the examination, test, or treatment is required under Section 38.004 or state or federal law regarding requirements for special education; [~~or~~]

(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, collect, use, store, or disclose a child's private or identifying information, including data, health and medical information, and biometric identifiers; or

(4)  provide health care services or medication or conduct a medical procedure.

(a-1)  For purposes of Subsection (a), "biometric identifier" means a blood sample, hair sample, skin sample, DNA sample, body scan, retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(a-2)  Written consent for a parent's child to participate in a district activity described by Subsection (a) must be signed by the parent and returned to the district. A child may not participate in the activity unless the district receives the parent's signed written consent to that activity.

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

(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)  A school district shall 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 1.011.  Section 26.011, Education Code, is amended to read as follows:

Sec. 26.011.  LOCAL GRIEVANCE PROCEDURE [~~COMPLAINTS~~]. (a) The board of trustees of each school district shall adopt a grievance procedure under which the board shall:

(1)  address each grievance [~~complaint~~] that the board receives concerning a violation of a right guaranteed by Section 1.009 or this chapter:

(A)  if the grievance is filed before the later of:

(i)  the 90th day after the date on which the parent received notice of an incident giving rise to the grievance; or

(ii)  the first day of the school year following the school year in which an incident giving rise to the grievance occurred; or

(B)  regardless of whether the grievance was filed during the period described by Paragraph (A) if the grievance was informally brought to the attention of school district personnel during the school year in which an incident giving rise to the grievance occurred; and

(2)  allow a parent at any time before a final decision by the board to amend the parent's grievance.

(b)  The board of trustees of a school district is not required by Subsection (a) or Section 11.1511(b)(13) to address a grievance [~~complaint~~] that the board receives concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by this chapter. This subsection does not affect a claim brought by a parent under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) or a successor federal statute addressing special education services for a child with a disability.

(c)  The board of trustees of each school district shall ensure that each parent of a student enrolled in the district receives notice of:

(1)  the parent's rights under this title;

(2)  the board's grievance procedure under Subsection (a); and

(3)  the requirement to appeal to the commissioner in writing under Section 7.057 if aggrieved by the school laws of this state or certain actions or decisions of any school district board of trustees.

(d)  The board of trustees of a school district shall ensure a grievance procedure adopted under Subsection (a):

(1)  authorizes a parent to notify the principal, or the principal's designee, of the district campus the parent's child attends regarding concerns related to:

(A)  rights guaranteed under Section 1.009 or this chapter;

(B)  a violation of Section 28.0022, 28.004, 28.0043, or 33.023 or Chapter 38, or the implementation of those provisions by the district; or

(C)  a violation of Chapter 551, Government Code;

(2)  requires that a principal or the principal's designee:

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

(B)  not later than the 14th day after receipt of a grievance described by Subdivision (1):

(i)  resolve the issue that gave rise to the grievance to the satisfaction of the parent who submitted the grievance; or

(ii)  provide to the parent who submitted the grievance a written explanation of the principal's reason for not resolving the issue to the parent's satisfaction;

(3)  requires that, not later than the 30th day after receipt of a grievance described by Subdivision (1), if the principal fails to resolve the issue to the parent's satisfaction, the superintendent or the superintendent's designee:

(A)  resolve the issue that gave rise to the grievance to the satisfaction of the parent who submitted the grievance; or

(B)  provide to the parent who submitted the grievance a written explanation of the district's reason for not resolving the issue to the parent's satisfaction; and

(4)  requires that, not later than the earlier of the 30th day after receipt of a grievance described by Subdivision (1) or the next meeting of the board, if the superintendent fails to resolve the issue to the parent's satisfaction, the board, in closed session:

(A)  resolve the issue that gave rise to the grievance to the satisfaction of the parent who submitted the grievance; or

(B)  provide to the parent who submitted the grievance a written explanation of the board's reason for not resolving the issue to the parent's satisfaction.

(e)  The parties may mutually agree to adjust the timeline for the procedure under this section.

SECTION 1.012.  Chapter 26, Education Code, is amended by adding Sections 26.0111, 26.0112, and 26.0113 to read as follows:

Sec. 26.0111.  GRIEVANCE HEARING BEFORE HEARING EXAMINER. (a) If a grievance filed with the board of trustees of a school district under Section 26.011 is not resolved to a parent's satisfaction, the parent may request that the commissioner appoint a hearing examiner with the same powers and qualifications of a hearing examiner under Subchapter F, Chapter 21, to review the grievance and make recommendations to the State Board of Education regarding its resolution.

(b)  A parent must file a written request for a hearing under this section with the commissioner not later than the 15th day after the date on which the board of trustees of the district resolved the parent's grievance under Section 26.011. The parent must provide the district with a copy of the request and must provide the commissioner with a copy of the district's resolution of the grievance. The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.

(c)  The commissioner shall assign a hearing examiner to review the grievance in the manner provided by Section 21.254. The hearing examiner has the powers described by Sections 21.255 and 21.256 and shall conduct the hearing in the manner provided by those sections as if the parent were a teacher.

(d)  Not later than the 60th day after the date on which the commissioner receives a parent's written request for a hearing, the hearing examiner shall complete the hearing and make a written recommendation to the State Board of Education that includes proposed findings of fact and conclusions of law.

(e)  Sections 21.257(c), (d), and (e) apply to a hearing under this section in the same manner as a hearing conducted under Subchapter F, Chapter 21.

(f)  Section 21.258 applies to the State Board of Education in the same manner as if the board were the board of trustees of the school district or board subcommittee.

(g)  Chapter 2001, Government Code, does not apply to the State Board of Education's actions regarding the recommendation of the hearing examiner.

(h)  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, shall be paid by the school district.

Sec. 26.0112.  DISCIPLINARY MEASURES. If at least five grievances involving a certain school district are reviewed by a hearing examiner under Section 26.0111 during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the hearing examiner's findings and the frequency of grievances against the district.

Sec. 26.0113.  INVESTIGATION BY ATTORNEY GENERAL. The attorney general may receive and investigate a parent's complaint related to an immediate threat to the mental, emotional, or physical bodily integrity, safety, or individual liberty of the parent's child at a school district, including complaints regarding:

(1)  the district's failure to notify the parent regarding the provision of a medical, counseling, or mental health service or change in the status of services provided to the child in accordance with Section 26.0083;

(2)  a district employee conducting a psychological screening, survey, or other method of obtaining written or electronic documentation on the mental status of the child without the parent's consent;

(3)  exposure of the parent's child to harmful material, as defined by Section 43.24, Penal Code;

(4)  the district's failure to notify a parent regarding a physical or sexual assault against the parent's child or to protect the child from such an assault; and

(5)  the district's failure to report to the proper agency an incident that is required to be reported by law.

SECTION 1.013.  Section 28.002, Education Code, is amended by adding Subsection (c-4) to read as follows:

(c-4)  The State Board of Education may not adopt standards in violation of Section 28.0043.

SECTION 1.014.  Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.0043 to read as follows:

Sec. 28.0043.  RESTRICTION ON INSTRUCTION REGARDING SEXUAL ORIENTATION AND GENDER IDENTITY. A school district, open-enrollment charter school, or district or charter school employee may not provide or allow a third party to provide instruction, guidance, activities, or programming regarding sexual orientation or gender identity:

(1)  to students enrolled in prekindergarten through twelfth grade; and

(2)  in a manner that is not age-appropriate or developmentally appropriate.

SECTION 1.015.  Subchapter B, Chapter 31, Education Code, is amended by adding Section 31.0236 to read as follows:

Sec. 31.0236.  LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL MATERIAL. (a) The agency shall adopt rules developing a process by which a school district may 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)  A review conducted under this section may only be conducted using a rubric developed by the agency and approved by the State Board of Education.

(c)  The agency, in developing a review process under Subsection (a):

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

(2)  may not, unless unavoidable, require a teacher to spend more than 30 minutes on a single review conducted under this section; and

(3)  shall permit a regional education service center or a private educational service provider approved by the agency to conduct the review for a school district, if the center or provider has completed the training offered by the agency under Subsection (d).

(d)  The agency shall provide to regional education service centers and other private educational service providers approved by the agency training relating to appropriately conducting a review under this section.

(e)  The agency shall adopt rules establishing a method for providing grants or other funding for the purpose of conducting reviews under this section.

SECTION 1.016.  Subchapter D, Chapter 31, Education Code, is amended by adding Section 31.154 to read as follows:

Sec. 31.154.  INSTRUCTIONAL MATERIALS PARENT PORTAL. (a) The agency shall adopt rules requiring each school district to develop and maintain an instructional materials parent portal.

(b)  Rules adopted by the agency under Subsection (a) must require a school district's instructional materials parent portal to:

(1)  provide to each parent of a student enrolled in the district access to all instructional material adopted or used by the district for the subject and grade level in which the student is enrolled, including open education resource instructional material;

(2)  organize instructional material chronologically by the date on which the material is planned to be used in the classroom;

(3)  be capable of being searched by subject and grade level;

(4)  for instructional material not available in a digital format, contain sufficient information to allow a parent to locate a physical copy of the material; and

(5)  for graded tests, quizzes, or other assessments, provide information detailing the process by which a parent may contact the appropriate classroom teacher and review the material in person under Section 26.006.

(c)  To comply with an intellectual property license or other restrictions placed on an instructional material and to maintain security of the information contained in an instructional materials parent portal under this section, a school district may require a parent, before accessing the portal, to:

(1)  enter a password;

(2)  comply with other user access verification procedures; and

(3)  accept user terms and conditions, including a condition that the instructional material cannot be shared.

(d)  A parent's access to an instructional materials parent portal under this section may be denied if the parent fails or refuses to comply with a restriction under Subsection (c).

(e)  A school district that denies a parent access under Subsection (d) must permit the parent to appeal the denial to the board of trustees of the school district.

(f)  The commissioner may adopt rules as necessary to implement this section and to ensure parental access to instructional materials under Section 26.006 and this section.

SECTION 1.017.  Section 33.004(b), Education Code, is amended to read as follows:

(b)  Each school, before implementing a comprehensive school counseling program under Section 33.005, shall annually conduct a preview of the program for parents and guardians. All materials, including curriculum to be used during the year that is not available digitally through an instructional materials parent portal under Section 31.154, must be available for a parent or guardian to preview during school hours. Materials or curriculum not included in the materials on the instructional materials parent portal or available on the campus for preview may not be used.

SECTION 1.019.  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, is reenacted and amended to read as follows:

(b)  An open-enrollment charter school is subject to:

(1)  a provision of this title establishing a criminal offense;

(2)  the provisions in Chapter 554, Government Code; and

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

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  reading instruments and accelerated reading instruction programs under Section 28.006;

(D)  accelerated instruction under Section 28.0211;

(E)  high school graduation requirements under Section 28.025;

(F)  special education programs under Subchapter A, Chapter 29;

(G)  bilingual education under Subchapter B, Chapter 29;

(H)  prekindergarten programs under Subchapter E or E-1, Chapter 29, except class size limits for prekindergarten classes imposed under Section 25.112, which do not apply;

(I)  extracurricular activities under Section 33.081;

(J)  discipline management practices or behavior management techniques under Section 37.0021;

(K)  health and safety under Chapter 38;

(L)  the provisions of Subchapter A, Chapter 39;

(M)  public school accountability and special investigations under Subchapters A, B, C, D, F, G, and J, Chapter 39, and Chapter 39A;

(N)  the requirement under Section 21.006 to report an educator's misconduct;

(O)  intensive programs of instruction under Section 28.0213;

(P)  the right of a school employee to report a crime, as provided by Section 37.148;

(Q)  bullying prevention policies and procedures under Section 37.0832;

(R)  the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student;

(S)  the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment;

(T)  a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

(U)  establishment of residency under Section 25.001;

(V)  school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115, 37.207, and 37.2071;

(W)  the early childhood literacy and mathematics proficiency plans under Section 11.185;

(X)  the college, career, and military readiness plans under Section 11.186; [~~and~~]

(Y) [~~(X)~~]  parental options to retain a student under Section 28.02124;

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

(BB)  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.

SECTION 1.021.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

ARTICLE 2. EDUCATION SAVINGS ACCOUNT PROGRAM

SECTION 2.001.  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.  Chapter 29, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351.  DEFINITIONS. In this subchapter:

(1)  "Account" means an education savings account established under the program.

(2)  "Certified educational assistance organization" means an organization certified under Section 29.354 to support the administration of the program.

(3)  "Child with a disability" means a child who is eligible to participate in a school district's special education program under Section 29.003.

(4)  "Higher education provider" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.

(5)  "Parent" means a resident of this state who is a natural or adoptive parent, managing or possessory conservator, legal guardian, custodian, or other person with legal authority to act on behalf of a child.

(6)  "Program" means the program established under this subchapter.

(7)  "Program participant" means a child and a parent of a child enrolled in the program.

Sec. 29.352.  ESTABLISHMENT OF PROGRAM. The comptroller shall establish a program to provide funding for approved education-related expenses of children participating in the program.

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

(b)  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)  Money in the fund may be appropriated only for the uses specified by this subchapter.

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

(b)  To be eligible for certification, an organization must:

(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)  The comptroller may certify one or more 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) 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; or

(B)  enroll in a public school's prekindergarten program under Section 29.153; and

(2)  either:

(A)  is enrolled for the current school year in a public school;

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

(C)  is enrolling in prekindergarten or kindergarten for the first time.

(b)  A child who establishes eligibility under this section may 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) A parent of an eligible child may apply to a certified educational assistance organization to enroll the child in the program for the following school year. The comptroller shall establish monthly deadlines by which an applicant must complete and submit an application form to participate in the program.

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

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

(d)  A certified educational assistance organization shall 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)  A certified educational assistance organization shall annually provide to each program participant the information described by Subsection (d). The organization may provide the information electronically.

(f)  A certified educational assistance organization:

(1)  may 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)  may not require a program participant in good standing to annually resubmit an application for continued participation in the program.

Sec. 29.357.  PARTICIPATION IN PROGRAM. To receive funding under the program, a parent of an eligible child must 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 in accordance with Section 29.359(a)(2) until the end of the 12th month after the date the item is purchased; 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) The comptroller shall by rule establish a process for the preapproval of education service providers and vendors of educational products for participation in the program. The comptroller shall allow for the submission of applications on a rolling basis.

(b)  The comptroller shall 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)  the agency; and

(B)  annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Subchapter B, Chapter 39;

(2)  for a public school, demonstrates:

(A)  accreditation by the agency; 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 the agency, an organization recognized by the agency, 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;

(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)  The comptroller shall 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. The tutor, therapist, or service must provide the comptroller with any information requested by the comptroller to enable the comptroller to complete the review.

(d)  An education service provider or vendor of educational products shall provide information requested by the comptroller to verify the provider's or vendor's eligibility for preapproval under Subsection (b). The comptroller may not approve a provider or vendor if the comptroller cannot verify the provider's or vendor's eligibility for preapproval.

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

(f)  This section may not be construed to allow a learning pod, as defined by Section 27.001, 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) Subject to Subsection (b), money received under the program may 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, as defined by Sec. 111.001, Education Code;

(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;

(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)  Money received under the program may not be 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, Government Code.

(c)  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) The comptroller shall disburse from the program fund to each certified educational assistance organization the amount specified under Section 29.361(a) for each program participant for whom the organization administers an account.

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

(c)  Subject to Subsection (d) and Sections 29.362(g) and 29.364, on receiving a request under Subsection (b), a certified educational assistance organization shall 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.

(d)  A disbursement under this section may not exceed the program participant's account balance.

(e)  A certified educational assistance organization shall 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) Regardless of the monthly deadline by which the parent applies for enrollment in the program under Section 29.356(a), a parent of an eligible child shall 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.

(b)  This subsection applies only to a school district with a student enrollment of less than 20,000. For the first two school years during which a child residing in the district participates in the program, a school district to which this subsection applies is entitled to receive $10,000.

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

(e)  A payment under Subsection (a) may not be financed using federal money or money from the available school fund or instructional materials fund.

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

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

Sec. 29.362.  ADMINISTRATION OF ACCOUNTS. (a) The comptroller shall 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)  The comptroller may deduct an amount from each quarterly payment to a program participant's account to cover the comptroller's cost of administering the program. The amount deducted may not exceed three percent of the payment.

(c)  Each quarter, the comptroller shall disburse to each certified educational assistance organization an amount from the total amount of money appropriated for purposes of this subchapter to cover the organization's cost of administering the program. The total amount disbursed to a certified educational assistance organization under this subsection for a fiscal year may not exceed five percent of the amount appropriated for purposes of this subchapter for that fiscal year.

(d)  The comptroller shall 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)  On or before the first day of September and March, a certified educational assistance organization shall:

(1)  verify with the agency 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)  The comptroller by rule shall establish a process by which a program participant may 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)  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, the child's account is closed and any remaining money is returned to the state for deposit in the program fund.

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

(b)  In conducting an audit, the private entity may 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)  The private entity shall 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. The comptroller shall 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) The comptroller shall 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)  On suspension of an account under Subsection (a), the comptroller shall notify the program participant in writing that the account has been suspended and that no additional payments may be made from the account. The notification must 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)  On the expiration of the 30-day period under Subsection (b), the comptroller shall:

(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)  The comptroller may 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) An education service provider or vendor of educational products may not charge 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)  An education service provider or vendor of educational products receiving money distributed under the program may not in any manner rebate, refund, or credit to or share 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. If the comptroller or a certified educational assistance organization obtains evidence of fraudulent use of an account, the comptroller or organization shall notify the appropriate local county or district attorney with jurisdiction over the residence of the program participant.

Sec. 29.367.  SPECIAL EDUCATION NOTICE. (a) A certified educational assistance organization shall 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)  A private school in which a child with a disability who is a program participant enrolls shall 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) 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)  A rule adopted or action taken related to the program by an individual, governmental entity, court of law, or program administrator may not:

(1)  consider 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)  limit:

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

(4)  impose 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)  require 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)  In a proceeding challenging a rule adopted by a state agency or officer under this subchapter, the agency or officer 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) On request by the parent of a child participating or seeking to participate in the program, the school district or open-enrollment charter school that the child would otherwise attend shall 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)  As necessary to verify a child's eligibility for the program, the agency, a school district, or an open-enrollment charter school shall provide to a certified educational assistance organization any information available to the agency, 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. The organization may not retain 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. The comptroller and a certified educational assistance organization may 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) The comptroller shall contract with a higher education provider to 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 the higher education provider, 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, 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)  In producing the report, the higher education provider shall:

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

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

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

Sec. 29.373.  APPEAL; JUDICIAL REVIEW. (a) A program participant may 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)  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 may 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) A program participant, education service provider, or vendor of educational products may intervene in any civil action challenging the constitutionality of the program.

(b)  A court in which a civil action described by Subsection (a) is filed may require that all program participants, education service providers, and vendors of educational products wishing to intervene in the action file a joint brief. A program participant, education service provider, or vendor of educational products may not be required to join a brief filed on behalf of the state or a state agency.

SECTION 2.003.  Section 22.092(d), Education Code, is amended to read as follows:

(d)  The agency shall provide equivalent access to the registry maintained under this section to:

(1)  private schools;

(2)  public schools; [~~and~~]

(3)  nonprofit teacher organizations approved by the commissioner for the purpose of participating in the tutoring program established under Section 33.913; 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.  Section 411.109, Government Code, is amended by adding Subsection (c) to read as follows:

(c)  The comptroller is entitled to obtain criminal history record information maintained by the department 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.  Subchapter J, Chapter 29, Education Code, as added by this article, applies beginning with the 2024-2025 school year.

SECTION 2.006.  (a) Not later than November 15, 2023, the comptroller of public accounts shall adopt rules as provided by Section 29.372, Education Code, as added by this article.

(b)  The comptroller of public accounts may identify rules required by the passage of Subchapter J, Chapter 29, Education Code, as added by this article, that must be adopted on an emergency basis for purposes of the 2024-2025 school year and may use the procedures established under Section 2001.034, Government Code, for adopting those rules. The comptroller of public accounts is not required to make the finding described by Section 2001.034(a), Government Code, to adopt emergency rules under this subsection.

SECTION 2.007.  (a) 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, may be determined in an action for declaratory judgment under Chapter 37, 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)  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, may be reviewed only by direct appeal to the Texas Supreme Court filed not later than the 15th day after the date on which the order was entered. The Texas Supreme Court shall give precedence to appeals under this section over other matters.

(c)  The direct appeal is an accelerated appeal.

(d)  This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

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

(h)  This section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller of public accounts.

SECTION 2.008.  It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this article, and every application of the provisions in this article to each person or entity, are severable from each other. If any application of any provision in this article to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.001.  (a) Except as provided by Subsection (b) of this section, 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, 2023.

(b)  Article 2 of this Act takes effect September 1, 2023.