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H.B. No. 166

A BILL TO BE ENTITLED

AN ACT

relating to policies and procedures regarding certain public school students with disabilities.

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

SECTION 1. Section 29.002, Education Code, is amended to read as follows:

Sec. 29.002. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Parent" has the meaning assigned by Section 602(23), Individuals with Disabilities Education Act (20 U.S.C. Section 1401(23)).

(2) "Special [~~,"special]~~ services" means:

(A) [~~(1)~~] special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 48.102; and

(B) [~~(2)~~] related services, which are developmental, corrective, supportive, or evaluative services [~~not instructional in nature,~~] that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

SECTION 2. Section 29.011(a), Education Code, is amended to read as follows:

(a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition

1 services for students who are enrolled in special education  
2 programs under this subchapter. The procedures must specify the  
3 manner in which a student's admission, review, and dismissal  
4 committee must consider, and if appropriate, address the following  
5 issues in the student's individualized education program:

6 (1) appropriate student involvement in the student's  
7 transition to life outside the public school system;

8 (2) if the student is younger than 18 years of age,  
9 appropriate involvement in the student's transition by the  
10 student's parents and other persons invited to participate by:

11 (A) the student's parents; or

12 (B) the school district in which the student is  
13 enrolled;

14 (3) if the student is at least 18 years of age,  
15 involvement in the student's transition and future by the student's  
16 parents and other persons, if the parent or other person:

17 (A) is invited to participate by the student or  
18 the school district in which the student is enrolled; ~~or~~

19 (B) has the student's consent to participate  
20 pursuant to a supported decision-making agreement under Chapter  
21 [1357](#), Estates Code;

22 (C) is the student's agent under a power of  
23 attorney; or

24 (D) is the student's educational representative  
25 appointed under Section 29.0171;

26 (4) appropriate postsecondary education options,  
27 including preparation for postsecondary-level coursework;

- 1           (5) an appropriate functional vocational evaluation;
- 2           (6) appropriate employment goals and objectives;
- 3           (7) if the student is at least 18 years of age, the  
4 availability of age-appropriate instructional environments,  
5 including community settings or environments that prepare the  
6 student for postsecondary education or training, competitive  
7 integrated employment, or independent living, in coordination with  
8 the student's transition goals and objectives;
- 9           (8) appropriate independent living goals and  
10 objectives;
- 11           (9) appropriate circumstances for facilitating a  
12 referral of a student or the student's parents to a governmental  
13 agency for services or public benefits, including a referral to a  
14 governmental agency to place the student on a waiting list for  
15 public benefits available to the student, such as a waiver program  
16 established under Section 1915(c), Social Security Act (42 U.S.C.  
17 Section 1396n(c)); and
- 18           (10) the use and availability of appropriate:
- 19                 (A) supplementary aids, services, curricula, and  
20 other opportunities to assist the student in developing  
21 decision-making skills; and
- 22                 (B) supports and services to foster the student's  
23 independence and self-determination, including a supported  
24 decision-making agreement under Chapter 1357, Estates Code.
- 25           SECTION 3. Section 29.0162, Education Code, is amended by  
26 amending Subsection (a) and adding Subsection (d-1) to read as  
27 follows:

1 (a) A person in an impartial due process hearing brought  
2 under 20 U.S.C. Section 1415 may be represented by:

3 (1) an attorney who is licensed in this state; ~~[or]~~

4 (2) an individual who is not an attorney licensed in  
5 this state but who has special knowledge or training with respect to  
6 problems of children with disabilities and who satisfies  
7 qualifications under Subsection (b);

8 (3) a parent for a person younger than 18 years of age;

9 (4) an agent under a power of attorney;

10 (5) a supporter under a supported decision-making  
11 agreement under Chapter 1357, Estates Code; or

12 (6) an educational representative appointed under  
13 Section 29.0171.

14 (d-1) The agency:

15 (1) may not regulate the appointment or selection of  
16 an educational representative under Section 29.0171; and

17 (2) has no jurisdiction over any issue concerning the  
18 capacity of an adult student.

19 SECTION 4. Sections 29.017(a), (b), (c), and (c-2),  
20 Education Code, are amended to read as follows:

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

1 under this subchapter or 20 U.S.C. Section 1415 transfer to the  
2 student or, if applicable, to:

- 3           (1) an agent under a power of attorney; or  
4           (2) the educational representative appointed for the  
5 student under Section 29.0171.

6           (b) All rights accorded to parents under this subchapter or  
7 20 U.S.C. Section 1415 transfer to a student [~~students~~] who is [~~are~~]  
8 incarcerated in an adult or juvenile, state or local correctional  
9 institution or, if applicable, to:

- 10           (1) an agent under a power of attorney; or  
11           (2) the educational representative appointed for the  
12 student under Section 29.0171.

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

- 16           (1) provide to the student and the student's parents:  
17               (A) written notice regarding the transfer of  
18 rights under this section; and  
19               (B) information and resources regarding  
20 guardianship, alternatives to guardianship, including a supported  
21 decision-making agreement under Chapter 1357, Estates Code, power  
22 of attorney for educational decision-making, the appointment of an  
23 educational representative under Section 29.0171, and other  
24 supports and services that may enable the student to live  
25 independently; and

26           (2) ensure that the student's individualized education  
27 program includes a statement that the district provided the notice,

1 information, and resources required under Subdivision (1).

2 (c-2) If a student with a disability or the student's parent  
3 requests information regarding guardianship, ~~[or]~~ alternatives to  
4 guardianship, including a supported decision-making agreement  
5 under Chapter 1357, Estates Code, power of attorney for educational  
6 decision-making, or the appointment of an educational  
7 representative from the school district at which the student is  
8 enrolled, the school district shall provide to the student or  
9 parent information and resources on supported decision-making  
10 agreements, power of attorney for educational decision-making, and  
11 the appointment of an educational representative under Section  
12 29.0171 [~~under Chapter 1357, Estates Code~~].

13 SECTION 5. Subchapter A, Chapter 29, Education Code, is  
14 amended by adding Section 29.0171 to read as follows:

15 Sec. 29.0171. APPOINTMENT OF EDUCATIONAL REPRESENTATIVE.

16 (a) For purposes of compliance with 34 C.F.R. Section 300.520(b), a  
17 student's parent or, if unavailable, the person who most recently  
18 represented the student's interests, may serve as an educational  
19 representative as provided by this section for a student who:

20 (1) is 18 years of age or older or whose disabilities  
21 of minority have been removed for general purposes under Chapter  
22 31, Family Code;

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

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

27 (b) A professional who meets the qualifications under

1 Subsection (d) may certify in writing that a student does not have  
2 the ability to provide informed consent with respect to the  
3 student's educational program based on the professional's knowledge  
4 and expertise and clear and convincing evidence obtained through a  
5 personal examination of or interview with the student.

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

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

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

14 (B) use an alternative to guardianship,  
15 including a supported decision-making agreement under Chapter  
16 1357, Estates Code, or power of attorney, for educational  
17 decision-making; and

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

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

26 (1) must be a licensed physician, licensed physician  
27 assistant, licensed clinical psychologist, licensed clinical

1 social worker, or licensed specialist in school psychology; and

2 (2) may not:

3 (A) be an employee of the school district; and

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

8 (e) A professional who provides a certification for a  
9 student under Subsection (b) must provide a copy of the  
10 certification to the student and the student's parent or person  
11 standing in parental relation to the student.

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

15 (g) A certification under Subsection (b) must be renewed  
16 annually.

17 (h) On receiving written notice from a student's parent,  
18 legal guardian, or spouse or another person who recently  
19 represented the student's interests in another matter as the  
20 student's educational representative that is accompanied by the  
21 certification for the student made under Subsection (b) dated not  
22 earlier than the 91st day before the date the notice is submitted, a  
23 school district shall:

24 (1) not later than:

25 (A) the fifth school day following the date the  
26 district receives the notice, notify the student in the manner  
27 appropriate for the student's most proficient method of



1 communication that the district has received the notice; and

2 (B) the 15th school day following the date the  
3 district receives the written notice, accept the certification made  
4 under Subsection (b); and

5 (2) promptly acknowledge and recognize the student's  
6 parent, or, if unavailable, one of the following individuals in the  
7 order listed as the student's educational representative:

8 (A) the person who last cared for the student;

9 (B) the person with whom the student currently  
10 lives; or

11 (C) another appropriate individual who:

12 (i) is preferred by the student;

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

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

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

21 (j) An educational representative appointed for a student  
22 under this section shall:

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

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

27 (B) consult with the student before providing

1 informed consent or making educational decisions on the student's  
2 behalf;

3 (2) notify the student when the representative has  
4 provided informed consent or made any educational decisions on the  
5 student's behalf; and

6 (3) have all the rights of a parent under Chapter 26.

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

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

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

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

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

20 (4) the date the student rescinds the representative's  
21 appointment under Subsection (m).

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

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

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

14 (o) Any documentation relating to the appointment of an  
15 educational representative under this section, including  
16 certification under Subsection (b) or notice regarding the  
17 appointment of an educational representative under Subsection (h),  
18 is confidential and not subject to disclosure under Chapter 552,  
19 Government Code.

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

23 (q) The commissioner shall develop and post on the agency's  
24 Internet website model forms that may be used for a certification  
25 under Subsection (b).

26 (r) The commissioner shall adopt rules to implement this  
27 section, including rules to ensure compliance with the Family

1 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section  
2 1232g).

3 SECTION 6. Section 29.017(f), Education Code, is repealed.

4 SECTION 7. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2023.