

By: Paxton

S.B. No. 2114

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the office of independent
ombudsman for the Texas Education Agency.

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

SECTION 1. Section 7.057(e), Education Code, is amended to
read as follows:

(e) This section does not apply to:

(1) a case to which Subchapter G, Chapter 21, applies;

(2) a complaint authorized to be filed with the
independent ombudsman under Chapter 26A; or

(3) [~~2~~] a student disciplinary action under Chapter
37.

SECTION 2. Section 26.002, Education Code, is amended to
read as follows:

Sec. 26.002. DEFINITION. In this chapter, "parent" means a
person 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 [~~includes a person standing in
parental relation~~]. The term does not include a person as to whom
the parent-child relationship has been terminated or a person not
entitled to possession of or access to a child under a court order.
Except as provided by federal law, all rights of a parent under
Title 2 of this code and all educational rights under Section
151.001(a)(10), Family Code, shall be exercised by a student who is

1 18 years of age or older or whose disabilities of minority have been
2 removed for general purposes under Chapter 31, Family Code, unless
3 the student has been determined to be incompetent or the student's
4 rights have been otherwise restricted by a court order.

5 SECTION 3. Section 26.011, Education Code, is amended to
6 read as follows:

7 Sec. 26.011. COMPLAINTS. A [~~(a) The board of trustees of~~
8 ~~each school district shall adopt a grievance procedure under which~~
9 ~~the board shall address each~~] complaint [~~that the board receives~~]
10 concerning violation of a right guaranteed by this chapter must be
11 filed with the independent ombudsman under Chapter 26A.

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

21 SECTION 4. Subtitle E, Title 2, Education Code, is amended
22 by adding Chapter 26A to read as follows:

23 CHAPTER 26A. INDEPENDENT OMBUDSMAN

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 26A.001. DEFINITIONS. In this chapter:

26 (1) "Independent ombudsman" means the individual who
27 has been appointed under this chapter to the office of independent

1 ombudsman.

2 (2) "Office" means the office of independent ombudsman
3 established under this chapter.

4 (3) "Parent" has the meaning assigned by Section
5 26.002.

6 Sec. 26A.002. ESTABLISHMENT; PURPOSE. The office of
7 independent ombudsman is established for the purpose of securing
8 the rights of parents guaranteed by Chapter 26.

9 Sec. 26A.003. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET.

10 (a) The office is administratively attached to the agency and may
11 collaborate with the agency for the purpose of sharing subject
12 matter expertise.

13 (b) The agency shall provide administrative support and
14 resources, including administrative personnel, to the office as
15 necessary for the office to perform its duties.

16 (c) The office, in accordance with the rules and procedures
17 of the Legislative Budget Board, shall prepare, approve, and submit
18 a legislative appropriations request that is separate from the
19 legislative appropriations request for the agency and is used to
20 develop the office's budget structure. The office shall maintain
21 the legislative appropriations request and budget structure
22 separately from those of the agency.

23 Sec. 26A.004. INDEPENDENCE. The independent ombudsman in
24 the performance of its duties and powers under this chapter acts
25 independently of the agency.

26 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

27 Sec. 26A.051. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a)

1 The governor shall appoint the independent ombudsman for a term of
2 two years, expiring February 1 of odd-numbered years.

3 (b) A person appointed as independent ombudsman is eligible
4 for reappointment.

5 Sec. 26A.052. ASSISTANTS. The independent ombudsman may
6 hire assistants to perform, under the direction of the independent
7 ombudsman, the same duties and exercise the same powers as the
8 independent ombudsman.

9 Sec. 26A.053. CONFLICT OF INTEREST. (a) A person may not
10 serve as independent ombudsman or as an assistant to the
11 independent ombudsman if the person or the person's spouse:

12 (1) is employed by or participates in the management
13 of a business entity or other organization receiving funds from the
14 agency or a school district;

15 (2) owns or controls, directly or indirectly, any
16 interest in a business entity or other organization receiving funds
17 from the agency or a school district; or

18 (3) uses or receives any amount of tangible goods,
19 services, or funds from a school district.

20 (b) A person may not serve as independent ombudsman or as an
21 assistant to the independent ombudsman if the person or the
22 person's spouse is required to register as a lobbyist under Chapter
23 305, Government Code, because of the person's activities for
24 compensation on behalf of a profession related to the operation of
25 the agency or a school district.

26 (c) A person may not serve as independent ombudsman or as an
27 assistant to the independent ombudsman if the person or the

1 person's spouse is an officer, employee, manager, or paid
2 consultant of a school district.

3 Sec. 26A.054. COMPLAINTS. (a) The office shall maintain a
4 system to promptly and efficiently act on complaints filed with the
5 office that relate to the operations or staff of the office. The
6 office shall maintain information about parties to the complaint,
7 the subject matter of the complaint, a summary of the results of the
8 review or investigation of the complaint, and the disposition of
9 the complaint.

10 (b) The office shall make information available describing
11 its procedures for complaint investigation and resolution.

12 (c) The office shall periodically notify the complaint
13 parties of the status of the complaint until final disposition.

14 Sec. 26A.055. REPORT. (a) The independent ombudsman shall
15 submit on a quarterly basis to the commissioner, the governor, the
16 lieutenant governor, the state auditor, and each member of the
17 legislature a report that describes:

18 (1) the work of the independent ombudsman;

19 (2) the results of any review or investigation
20 undertaken by the independent ombudsman; and

21 (3) any recommendations that the independent
22 ombudsman has in relation to the duties of the independent
23 ombudsman.

24 (b) The independent ombudsman shall immediately report to
25 the commissioner, the governor, the lieutenant governor, the
26 speaker of the house of representatives, and the state auditor any
27 particularly serious or flagrant:

1 (1) violation of parental rights under Chapter 26; or
2 (2) interference by the agency with an investigation
3 conducted by the office.

4 Sec. 26A.056. REVIEW AND FORMAT OF REPORTS. (a) The office
5 shall accept, both before and after publication, comments from the
6 commissioner concerning the following types of reports published by
7 the office under this chapter:

8 (1) the office's quarterly report under Section
9 26A.055(a);

10 (2) reports concerning serious or flagrant
11 circumstances under Section 26A.055(b); and

12 (3) any other formal reports containing findings and
13 making recommendations concerning systemic issues that affect the
14 agency.

15 (b) The commissioner may not submit comments under
16 Subsection (a) after the 30th day after the date the report on which
17 the commissioner is commenting is published.

18 (c) The office shall ensure that reports described by
19 Subsection (a) are in a format to which the commissioner can easily
20 respond.

21 (d) After receipt of comments under this section, the office
22 is not obligated to change any report or change the manner in which
23 the office performs the duties of the office.

24 Sec. 26A.057. RULEMAKING AUTHORITY. (a) The office by rule
25 shall establish policies and procedures for the operations of the
26 office.

27 (b) The office and the commissioner shall adopt rules

1 necessary to implement Section 26A.056 including rules that
2 establish procedures for the agency to review and comment on
3 reports of the office and for the agency to expedite or eliminate
4 review of and comment on a report due to an emergency or a serious or
5 flagrant circumstance described by Section 26A.055(b).

6 Sec. 26A.058. CONFIDENTIALITY. (a) The records of the
7 independent ombudsman are confidential.

8 (b) The independent ombudsman may make reports relating to
9 an investigation public after the investigation is complete but
10 only if the names of all children, parents, and employees are
11 redacted from the report and remain confidential.

12 (c) During the pendency of an investigation under this
13 chapter, the office is not required to disclose the identity of any
14 witness.

15 (d) Unless otherwise provided by law, all evidence
16 collected by the office in connection with an investigation,
17 including witness statements and videos of interviews, are
18 confidential and not subject to disclosure under Chapter 552,
19 Government Code, except that evidence described by this section may
20 be disclosed:

21 (1) to a person with a legitimate interest in the
22 investigation; or

23 (2) in connection with an administrative or other
24 legal proceeding brought under this title.

25 Sec. 26A.059. SUNSET PROVISION. The office is subject to
26 review under Chapter 325, Government Code (Texas Sunset Act), but
27 is not abolished under that chapter. The office shall be reviewed

1 during the periods in which the agency or its successor agency is
2 reviewed.

3 Sec. 26A.060. AUTHORITY OF STATE AUDITOR. The office is
4 subject to audit by the state auditor in accordance with Chapter
5 321, Government Code.

6 Sec. 26A.061. PROMOTION OF AWARENESS OF OFFICE. The
7 independent ombudsman shall promote awareness among the public and
8 parents of children enrolled in a school district regarding:

- 9 (1) how the office may be contacted;
10 (2) the purpose of the office; and
11 (3) the services the office provides.

12 SUBCHAPTER C. DUTIES AND POWERS

13 Sec. 26A.101. DUTIES AND POWERS. (a) The independent
14 ombudsman shall:

- 15 (1) review and, if necessary, investigate:
16 (A) complaints alleging a violation of parental
17 rights under Chapter 26; and
18 (B) any other complaints authorized under other
19 law to be filed with the independent ombudsman; and
20 (2) for any complaint received other than a complaint
21 described by Subdivision (1), refer the complainant to the
22 appropriate entity.

23 (b) To assess if a parent's rights under Chapter 26 have
24 been violated, the independent ombudsman, in the course of its
25 investigation or to secure information, may contact or consult
26 with:

- 27 (1) the board of trustees, an administrator, or an

1 employee of a school district;

2 (2) a child;

3 (3) a parent;

4 (4) an expert; or

5 (5) any other individual.

6 Sec. 26A.102. HEARING FOLLOWING DISPOSITION OF COMPLAINT.

7 (a) Not later than the 15th day after the date on which the
8 independent ombudsman finally disposes of a complaint alleging a
9 violation of parental rights under Chapter 26, the school district
10 or the person who filed the complaint may request a hearing if the
11 district or person disagrees with the disposition of the complaint.

12 (b) If a hearing is requested under Subsection (a), the
13 hearing shall be conducted by the State Office of Administrative
14 Hearings.

15 (c) A hearing conducted under this section is a contested
16 case under Chapter 2001, Government Code.

17 (d) The administrative law judge who conducts a hearing
18 under this section shall enter the final decision on the complaint
19 after completion of the hearing.

20 Sec. 26A.103. SCHOOL DISTRICT ACTION FOLLOWING DISPOSITION
21 OF COMPLAINT. Following the independent ombudsman's final
22 disposition of a complaint alleging a violation of parental rights
23 under Chapter 26, the school district against which the complaint
24 was filed shall take any action:

25 (1) if the district did not request a hearing under
26 Section 26A.102, required by the independent ombudsman in relation
27 to the complaint; or

1 (2) if the district requested a hearing under Section
2 26A.102, necessary to comply with the administrative law judge's
3 final decision on the complaint.

4 Sec. 26A.104. TREATMENT OF EMPLOYEES WHO COOPERATE WITH
5 INDEPENDENT OMBUDSMAN. The agency or a school district may not
6 discriminate or retaliate against an employee who in good faith
7 cooperates with the office in an investigation.

8 Sec. 26A.105. TRAINING. The independent ombudsman may
9 participate in any appropriate professional training.

10 SUBCHAPTER D. ACCESS TO INFORMATION

11 Sec. 26A.151. ACCESS TO INFORMATION OF GOVERNMENTAL
12 ENTITIES. (a) The independent ombudsman has access to the agency's
13 records relating to a parent, a child, or a complaint filed with the
14 independent ombudsman under this chapter.

15 (b) A school district shall allow the independent ombudsman
16 access to the district's records relating to a complaint with the
17 independent ombudsman under this chapter.

18 Sec. 26A.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES. A
19 private entity that possesses records relating to a complaint filed
20 with the independent ombudsman under this chapter shall provide
21 access to those records to the independent ombudsman.

22 SECTION 5. Section 28.004(i-1), Education Code, is amended
23 to read as follows:

24 (i-1) A parent may file [use the grievance procedure adopted
25 under Section 26.011 concerning] a complaint concerning [of] a
26 violation of this section with the independent ombudsman under
27 Chapter 26A.

1 SECTION 6. Section 28.017(d), Education Code, is amended to
2 read as follows:

3 (d) If a school district does not comply with the
4 requirements of Subsection (c), a parent of a student enrolled in
5 the district may file a complaint with the independent ombudsman
6 ~~[in accordance with the district's grievance procedure developed]~~
7 under Chapter 26A ~~[Section 26.011]~~.

8 SECTION 7. Section 28.0211(f-3), Education Code, is amended
9 to read as follows:

10 (f-3) A ~~[The board of trustees of each school district shall~~
11 ~~adopt a policy consistent with the grievance procedure adopted~~
12 ~~under Section 26.011 to allow a]~~ parent may file a complaint with
13 the independent ombudsman under Chapter 26A to contest the content
14 or implementation of an educational plan developed under Subsection
15 (f).

16 SECTION 8. As soon as practicable after the effective date
17 of this Act, the governor shall appoint an initial independent
18 ombudsman under Chapter 26A, Education Code, as added by this Act,
19 to a term expiring February 1, 2025.

20 SECTION 9. The changes in law made by this Act apply only to
21 a complaint filed with a school district or an appeal filed with the
22 commissioner of education on or after January 1, 2024. A complaint
23 or appeal filed before January 1, 2024, is governed by the law in
24 effect on the date the complaint or appeal was filed, and the former
25 law is continued in effect for that purpose.

26 SECTION 10. This Act takes effect September 1, 2023.