

SUBJECT: Authorizing educational representatives for certain special needs students

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Buckley, Allen, Allison, Cunningham, Cody Harris, Harrison, Hinojosa, K. King, Longoria, Talarico

0 nays

3 absent — Dutton, Hefner, Schaefer

WITNESSES: For — Mara LaViola, Texans for Special Education Reform and Texas Parent to Parent; Edgar Pacheco (*Registered, but did not testify*: Jolene Sanders, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; Molly Sprenger, Libertforkids; Alejandro Pena, Texas American Federation of Teachers; Isabel Casas, Texas Council of Community Centers; Linda Litzinger, Texas Parent to Parent; Aaron Gregg, Texas Psychological Association; Suzi Kennon, Texas PTA; Carrie Griffith, Texas State Teachers Association; Quynh-Huong Nguyen, Woori Juntos; and eight individuals)

Against — (*Registered, but did not testify*: Richard Bohnert; Henry Bohnert)

On — Andrea Chevalier, TCASE; Olivia Pacheco, UT Law Disability Rights Clinic (*Registered, but did not testify*: Eric Marin, Justin Porter, and Kristin McGuire, Texas Education Agency)

BACKGROUND: 20 U.S.C., sec. 1401, the Individuals with Disabilities Education Act, defines “parent” as:

- a natural, adoptive, or foster parent of a child;
- a guardian;
- an individual acting in the place of a natural or adoptive parent with whom the child lives or who is legally responsible for the

- child's welfare; or
- an individual assigned to be a surrogate parent.

**DIGEST:**

CSHB 166 would allow a student's parent or, if the parent was unavailable, the person who most recently represented the student's interests, to serve as an educational representative for a student who:

- was 18 years old or older or whose disabilities of minority had been removed;
- had been certified as not having the ability to provide informed consent for the student's educational program; and
- had not been determined to be incompetent.

The bill would allow a qualified professional to certify in writing that a student did not have the ability to provide informed consent for the student's educational program. A certification would be based on the professional's knowledge and expertise and clear and convincing evidence obtained by a personal examination of or interview with the student. A professional under the bill would be a licensed physician, licensed physician assistant, licensed clinical psychologist, licensed clinical social worker, or licensed specialist in school psychology. Such a professional could not be an employee of the school district and could not have conflicting interests with the student or person seeking appointment as the student's educational representative.

Such a certification could not be construed as a finding of the student's incompetence or incapacity for any other purpose or as relevant or precedential evidence in any future court or legal action seeking to remove decision-making authority from the student.

The education commissioner would be required to develop and post on the TEA website model forms that could be used for a certification.

To make the determination that a student did not have the ability to provide informed consent, the qualified professional would be required to consider whether the student was unable to use an alternative to

guardianship and was unable to communicate the student's preferences, decisions, and consent for the student's educational program. The professional could not determine that the student was unable to provide informed consent based solely on whether the student had been voluntarily or involuntarily hospitalized for a mental illness or had an intellectual or developmental disability.

A professional who provided a certification for a student would provide a copy of the certification to the student and the student's parent or guardian. Such a certification would be renewed annually. Certain reevaluations of an adult student could be used to request certification for the student.

On receiving a student's certification accompanied by a written notice from a student's parent, guardian, or prior educational representative dated no earlier than the 91st day before the date the notice was submitted, a school district would be required to notify the student within five days after receipt of the notice. The district also would be required to accept the certification no later than the 15th school day after receipt of the notice. The district would promptly acknowledge and recognize as educational representative:

- the student's parent;
- the person who last cared for the student;
- the person with whom the student lived; or
- another appropriate individual who was preferred by the student, was not employed by the district, and had significant knowledge of the student.

CSHB 166 would require an appointed educational representative to consider the student's interests, preferences, and goals and to consult with the student before providing informed consent or making education decisions. The representative would be required to notify the student when the representative had provided informed consent or made educational decisions. The representative also would have all the rights of a parent under the Education Code. The scope of an educational representative's

appointment would be limited to representing the educational interests of the student under federal regulations on the transfer of parental rights at the age of majority.

The bill would require the school district to include a statement in the student's individualized educational program if the student disagreed with an informed consent or educational decision made by the educational representative.

An educational representative's term would expire on the earliest of:

- the date the student was no longer eligible for special education services;
- the date the student graduated from high school;
- the date a guardian was appointed to the student; or
- the date the student rescinded the representative's appointment.

A student who had not been determined to be incompetent could rescind the appointment of the educational representative at any time.

The bill would require that any documentation relating to the certification of an educational representative be confidential.

The bill would not prohibit the appointment of a guardian for a student who had already been appointed an educational representative.

The bill would use the federal Individuals with Disabilities Education Act definition of "parent."

The Texas Education Agency (TEA) could not regulate the appointment or selection of an educational representative. TEA would have no jurisdiction over issues concerning the capacity of an adult student.

The bill would repeal sec. 29.017(f) of the Education Code pertaining to the adoption of certain rules.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2023.

**SUPPORTERS  
SAY:**

CSHB 166 would help provide better educational services and assistance to adult special needs students. There are more than 20,000 special needs students in the state between the ages of 18 and 21, whose needs and abilities vary. Some do not have or need a guardian but also are not be able to fully understand their rights or provide informed consent. The bill would help these students by allowing educational representatives to represent them for their benefit.

**CRITICS  
SAY:**

No concerns identified.