

SUBJECT: Revising provisions on virtual public education courses and campuses

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Buckley, Allison, Cunningham, Dutton, Cody Harris, Harrison, Hefner, Hinojosa, K. King, Longoria, Schaefer, Talarico
1 nay — Allen

SENATE VOTE: On final passage (April 18) — 28 - 3

WITNESSES: None

BACKGROUND: Some have suggested that implementing recommendations regarding the delivery of virtual education in public schools made by the Texas Commission of Virtual Education would help to ensure the state's education system is built for the future of learning and work.

DIGEST: CSSB 1861 would establish provisions governing virtual courses and full-time hybrid and virtual campuses.

Definitions. CSSB 1861 would define "full-time hybrid campus" as an authorized full-time educational program in which a student was in attendance in person for less than 90 percent of provided instruction minutes, and instruction and content could be delivered over the internet, in person, or through other means.

A "full-time virtual campus" would mean an authorized full-time educational program in which a student was in attendance in person minimally or not at all and instruction and content were delivered primarily over the internet.

A "whole campus virtual instruction provider" would mean a private or third-party service that provided oversight and management of virtual instruction services or otherwise provided a preponderance of those services for a full-time virtual or full-time hybrid campus.

Virtual courses. Under the bill, the following entities could deliver virtual course instruction in the same manner provided for a school district or open-enrollment charter school:

- a consortium of school districts or open-enrollment charter schools;
- a higher education institution; or
- a regional education service center.

A school district or open-enrollment charter school that delivered instruction through a virtual course would be required to develop written information describing each virtual course available for enrollment and comply with any other requirements regarding rights concerning state virtual school networks. The district or charter school would be required to make this information available to students and parents.

The bill would require the Texas Education Agency (TEA) to publish a list of offered virtual courses that included:

- whether the course was available to a student who was not otherwise enrolled in the offering district or school;
- the cost of the course; and
- information regarding any third-party provider involved in course delivery.

A school district or open-enrollment charter school would be required to provide TEA with information required to publish the list.

Quality requirements. A school district or open-enrollment charter school that offered a virtual course would be required to certify to the education commissioner that the virtual course:

- included the appropriate essential knowledge and skills;
- provided instruction at the appropriate level of rigor for the grade level at which the course was offered and would prepare a student enrolled in the course for the student's next grade level or a

- subsequent course in a similar subject matter; and
- met standards for virtual courses adopted by the education commissioner, with certain exceptions.

An assessment instrument administered to a student enrolled in a virtual course would have to be administered to the student in the same manner in which the assessment instrument was administered to a student enrolled in an in-person course. A school district or charter school would be required to establish the participation necessary to earn credit or a grade for a virtual course.

Full-time hybrid and virtual campuses. A school district or open-enrollment charter school could operate a full-time virtual campus or a full-time hybrid campus if authorized by the education commissioner. The commissioner would be required to adopt rules that could require certain written application materials and interviews and would have to require a school district or charter school to develop certain plans related to academics and operations.

A full-time virtual campus or full-time hybrid campus would be required to include:

- at least one grade level in which an assessment instrument was required to be administered;
- sufficient grade levels, as determined by the education commissioner, to allow for the annual evaluation of the performance of students who completed the courses; or
- for a campus that did not include grade levels described above, another performance evaluation measure approved by the commissioner during the authorization process.

An approved campus could only apply for and receive authorization to operate as a full-time virtual campus or a full-time hybrid campus. A campus could not change its operation designation. The education commissioner could only authorize a school district or open-enrollment charter school to operate a full-time virtual or hybrid campus if the

commissioner determined that the authorization of the campus was likely to result in improved student learning opportunities. If a district or school would use a private or third party in operating the campus, the commissioner would be required to consider the historical performance of the other party in making a determination. Decisions made by the commissioner would be final and not subject to appeal.

The education commissioner would be required, to the extent feasible, to evaluate the performance of a private or third party acting as a whole campus virtual instruction provider for a school district or open-enrollment charter school. The commissioner would be required to establish a standard to determine if a private or third party was ineligible to act as a whole campus virtual education provider. A private or third party determined to be ineligible would remain ineligible until five years after that determination.

Student eligibility. A student enrolled in prekindergarten through third grade could not enroll in a virtual course. A student would be eligible to enroll in a full-time virtual campus if the student was eligible to enroll in fourth through twelfth grade and:

- attended a Texas public school for a minimum of six weeks in the current school year or in the preceding school year;
- was not required to attend public school in the state due to non residency during the preceding school year;
- was a dependent of a U.S. military member who had been deployed; or
- had been placed in substitute care in the state.

A school district or charter school that denied a request to enroll a student in a virtual course would be required to provide a written explanation of the denial to the student and the student's parent. The written explanation would be required to provide notice of the student's ability to appeal the decision and an explanation of the appeal process. A determination made by the school district's board of trustees or the charter school's governing board would be final and could not be appealed.

Rights. A school district or charter school could not require a student to enroll in a virtual course. A student enrolled in a virtual course could participate in an extracurricular activity sponsored or sanctioned by the school district or charter school or by the University Interscholastic League in the same manner as other students. A virtual course offered to a student receiving special education services or other accommodations would be required to meet the needs of the participating student in a manner consistent with state and federal law.

A student enrolled in a school district could not be compelled to enroll in a full-time virtual or hybrid campus. A school district would be required to offer the option for a student's parent to select in-person instruction for the student. A charter school could require a student to attend a full-time virtual or hybrid campus.

A school district or open-enrollment charter school could not require a classroom teacher to provide both virtual instruction and in-person instruction for a course during the same class period. The education commissioner could waive these requirements for courses included in the enrichment curriculum. A teacher could not provide instruction for a virtual course unless the teacher had received appropriate professional development in virtual instruction or the district or school determined that the teacher had sufficient previous experience to not require professional development. A school district or open-enrollment charter school could not coerce any teacher hired to provide in-person instruction to agree to teach a virtual course or a course at a full-time hybrid campus.

Funding and fees. For the purposes of the bill, the education commissioner could seek and accept a grant from a public or private person. Additionally, the commissioner could accept federal funds and use the funds in compliance with applicable law. A school district or open-enrollment charter school could charge tuition and fees for a virtual course provided to a student who was ineligible to enroll in a Texas public school or was not enrolled in the school district or open-enrollment charter school.

A student enrolled in a virtual course offered by a school district or open-enrollment charter school would be counted toward the district's or school's average daily attendance in the same manner as district or school students not enrolled in a virtual course. For purposes of calculating the average daily attendance of students attending a full-time virtual campus or full-time hybrid campus, the education commissioner would be required to use the number of full-time equivalent students enrolled in the full-time virtual or full-time hybrid campus multiplied by the average attendance rate of the school district or charter school that offered the campus not including any student enrolled in a full-time virtual or full-time hybrid campus. In the event that a reliable attendance rate could not be determined, the commissioner would be required to use the statewide average attendance rate.

The commissioner would be required to provide proportionate funding to the applicable school district or charter school for a student that alternated attendance between a traditional, in-person campus setting and the full-time virtual or full-time hybrid campus of any single district or school in the same school year.

In a school year in which the occurrence of an emergency or crisis caused a statewide or regional decrease in average daily attendance of school districts entitled to funding, the education commissioner would be required to modify or waive requirements applicable to the affected districts and adopt appropriate safeguards to ensure the continued support and maintenance of an efficient system of public schools and the continued delivery of high-quality instruction.

Revocation. The education commissioner's authorization of a full-time virtual campus or hybrid campus would continue indefinitely, unless revoked. The commissioner would be required to revoke the authorization of a full-time virtual or hybrid campus if the campus had been assigned, for the three preceding school years:

- an unacceptable performance rating;

- a financial accountability performance rating indicating financial performance lower than satisfactory;
- any combination of the ratings described above; or
- a rating of performance that needed improvement or was unacceptable, as determined by the education commissioner on a performance evaluation approved by the commissioner.

Based on a special investigation, the education commissioner could revoke an authorization of a full-time virtual or hybrid campus or require any authorized intervention. If a private or third party was determined to be ineligible, the commissioner would be required to revoke an authorization of a full-time virtual or hybrid campus for which the private or third party acted as a whole campus virtual instruction provider, unless the commissioner approved a request by the school district or charter school to use an alternative private or third party. A school district or charter school would be required to provide the commissioner with notice of the use of or change in affiliation of a private or third party acting as a whole campus virtual instruction provider for the full-time virtual or hybrid campus.

State support. From appropriated or otherwise available funds, TEA would be required to develop professional development courses and materials aligned with research-based practices for educators in providing high-quality virtual education. TEA also would be required to provide grants and technical assistance to school districts and charter schools to aid in the establishment of high-quality full-time virtual or hybrid campuses. With certain exceptions, before a school district or charter school could expel a student, the district or school would be required to consider the appropriateness and feasibility of enrolling the student in a full-time virtual education program as an alternative.

Implementation. TEA could form an advisory committee to comply with the bill. The education commissioner would be required to determine and assign a unique campus designation number to each full-time virtual or hybrid campus.

The bill would not require a school district, charter school, virtual course provider, or the state to provide a student with home computer equipment or internet access for a virtual course provided by a school district or open-enrollment charter school. Additionally, school districts and charter schools would not be prohibited from providing a student with this equipment.

Certain applicable provisions would be repealed related to:

- rules on field-based experience and options for field experience and internships;
- minimum attendance for class credit or final grade;
- rights concerning state virtual school network;
- the local remote learning program;
- the state virtual school network;
- reporting certain performance indicators;
- average daily attendance; and
- allotment for certain special-purpose school districts.

A school district or charter school providing an electronic course or a full-time program through the state virtual school network as that law existed immediately before the effective date of the bill could continue to provide that course or program as if those provisions were still in effect. A school district or charter school providing an off-campus electronic course, off-campus electronic program, or instructional program that combined in-person instruction and off-campus electronic instruction could continue to provide the course until the end of the 2024-25 school year.

The commissioner could modify requirements as necessary to provide for the transition of an electronic course or program offered through the state virtual school network to a course or program operated under the bill. The commissioner would be required to adopt rules providing an expedited authorization process for a school district or charter school that applied to operate a full-time virtual campus or a full-time hybrid campus if the district or school, as of the effective date of the bill:

- operated a preestablished electronic course or full-time program through the state virtual school network;
- operated a preestablished local remote learning program; or
- provided certain electronic instruction.

In a state fiscal year until September 1, 2027, TEA would not be required to implement a mandatory provision of the bill unless money was specifically appropriated to the agency for that fiscal year to carry out that duty. TEA could implement the provision in that fiscal year to the extent other funding was available. If TEA did not implement a provision in a state fiscal year, the agency, in its legislative budget request for the next state fiscal biennium, would be required to certify that fact to the Legislative Budget Board and include a written estimate of the costs of implementing the provision in each year of that next state fiscal biennium.

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.

NOTES:

According to the Legislative Budget Board, CSSB 1861 would have a negative impact of about \$49 million on general revenue related funds during fiscal 2024-25.