

BILL ANALYSIS

Senate Research Center
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S.B. 1301
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The population of students with autism in Texas has increased dramatically in the past 20 years. Currently, there are more than 22,000 students with autism in Texas public schools. Autism is a spectrum disorder, meaning that a wide range of specific symptoms exist with children. Consequently, each child needs an individualized educational program to progress and many children with autism do not have access to the specialized instruction they need in the school setting.

Research shows that with appropriate intervention, almost 50 percent of children can become indistinguishable from the mainstream population, but if proper services are not provided, the majority of adults with autism will require high-level care or institutionalization.

As proposed, S.B. 1301 authorizes a student eligible to participate in the autism services accessibility program (program) to attend certain public schools. S.B. 1301 provides funding equal to the amount to which a child is entitled in the school district if parents choose to let a child attend a qualifying private school, and provides for academic accountability reports, administering state assessments to students, setting academic goals, and reporting progress toward achieving those goals to parents. This bill also provides that the Autism Services Accessibility Program is subject to a 10-year sunset review.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 29.410, 29.413, and 29.414, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 29, Education Code, by adding Subchapter K, as follows:

SUBCHAPTER K. AUTISM SERVICES ACCESSIBILITY PROGRAM

Sec. 29.401. DEFINITIONS. Defines "parent," "program," and "qualifying school."

Sec. 29.402. PROGRAM. Authorizes an eligible student under Section 29.403, at the option of the student's parent:

- (1) to attend any public school in the district in which the student resides;
- (2) attend a public school in a district other than the district in which the student resides; or
- (3) access services as provided by Section 29.406 through a qualifying school.

Sec. 29.403. ELIGIBLE STUDENT. (a) Provides that a student is eligible to participate in the autism services accessibility program (program) if the student is eligible to receive public school services and is eligible under Section 29.003 (Eligibility Criteria) to participate in a school district's special education program, the student has been diagnosed with autism or autism spectrum disorder, and an individualized educational

program has been developed for the student under Section 29.005 (Individualized Education Program).

(b) Requires a school district, each school year, to provide written notice of the program to the parent of a student who is eligible to participate in the program under Subsection (a) and allow the parent an opportunity to enroll the student in the program.

(c) Authorizes a student who establishes eligibility under this section to continue participating in the program until the earlier of the date the student graduates from high school or the student's 22nd birthday.

Sec. 29.404. TRANSFER OF STATE AID BETWEEN SCHOOL DISTRICTS. (a) Provides that except as provided by Section 29.405, an eligible student who as provided by Section 29.402(2) attends a public school in a school district other than the district in which the student resides is included in the average daily attendance of the district in which the student resides for purposes of Chapters 41 (Equalized Wealth Level) and 42 (Foundation School Program).

(b) Requires the commissioner of education (commissioner) to deduct an amount equal to the amount of funding to which the school district in which the eligible student resides is entitled under Chapter 42 for that student from the total state aid to which that district is entitled and to transfer that amount to the district in which the student is enrolled.

(c) Requires a school district that does not receive state aid under Chapter 42, if a student resides in the district, to purchase attendance credits under Subchapter D (Purchase of Attendance Credit), Chapter 41, in an amount equal to the amount of funding the district would receive for the student under Chapter 42 if the district were entitled to state aid under that chapter, and requires the commissioner to transfer that amount to the school district in which the student is enrolled.

Sec. 29.405. STATE AID IN CERTAIN CIRCUMSTANCES. Provides that an eligible student who as provided by Section 29.402(2) attends a public school in a school district other than the district in which the student resides is counted in the average daily attendance of the school district in which the student attends school if the total amount of state aid that the enrolling district would receive by counting the student in the district's average daily attendance is greater than the amount of state aid the district would receive as a result of receiving a transfer of funds from the district in which the student resides under Section 29.404.

Sec. 29.406. FINANCING OF SERVICES PROVIDED BY QUALIFYING SCHOOL. (a) Entitles a qualifying school, for a student who attends a qualifying school under this subchapter, to an annual amount of funding that is equal to the amount of funding to which the school district in which the student resides would be entitled under Chapter 42 for the student. Requires the Texas Education Agency (TEA) to directly distribute the funding to the qualifying school.

(b) Requires the parent of the student, for an eligible student to participate in the program, to apply to TEA on behalf of the student not later than a date specified by the commissioner. Requires that the application specify the qualifying school the student plans to attend and demonstrate that the student has been accepted for admission by that school. Requires TEA, on receiving the application from the parent of an eligible student, to determine a student's eligibility in accordance with rules adopted under Section 29.414, and to notify the student's parent if TEA determines the student is eligible.

(c) Requires TEA to direct the distribution of funds to the qualifying school the student attends on a schedule adopted by TEA after educational services have been provided and to require that the qualifying school submit documentation of the student's attendance before TEA directs funds to the qualifying school.

(d) Provides that a student who attends a qualifying school under this subchapter is included in the average daily attendance of the school district in which the student resides for purposes of determining the amount of the student's program funding. Provides that the amount of the student's program funding is deducted from the total state aid to which the school district is entitled. Requires the school district, if a student resides in a school district that does not receive aid under Chapter 42, to purchase attendance credits under Subchapter D, Chapter 41, in an amount equal to the amount of the student's program funding.

(e) Provides that the student's program funding is the entitlement of the student, under the supervision of the student's parent, and not that of any school.

(f) Prohibits a qualifying school from sharing a student's program funding with or refunding or rebating a student's program funding to the parent or the student in any manner.

(g) Prohibits a student's program funding from being financed by money appropriated from the available school fund.

Sec. 29.407. PARTICIPATION BY QUALIFYING SCHOOLS. (a) Requires a qualifying school, to participate in the program, to meet certain requirements.

(b) Requires a qualifying school to comply with all state laws applicable to nongovernmental schools regarding criminal background checks for employees and is prohibited from employing a person who is not authorized under state law to work in a nongovernmental school.

Sec. 29.408. ADMISSIONS. (a) Prohibits a qualifying school chosen by an eligible student's parent under this subchapter from denying admission by discriminating on the basis of the student's race, ethnicity, or national origin and is required to comply with certain requirements.

(b) Requires a qualifying school that has more qualified program applicants for attendance under this subchapter than available positions, except as provided by this subsection, to fill the available program positions by a random selection process. Authorizes a school, to achieve continuity in education, to give preference among program applicants to a previously enrolled student and to other students residing in the same household as a previously enrolled student.

(c) Authorizes a qualifying school to submit a written request for student records from the public school previously attended by an eligible student. Requires the public school, not later than the 10th working day after the date the public school receives the request, to deliver to the qualifying school a copy of the school's complete student records for that student, including attendance records, disciplinary records, past results of any assessment instruments administered to the student, the student's individualized educational program, and any other comprehensive assessments from each school the student previously attended. Requires a public school that is required to release student records under this subsection to comply with any applicable provision of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

Sec. 29.409. ACADEMIC ACCOUNTABILITY. (a) Requires a qualifying school, each school year, to establish academic goals for each eligible student enrolled in the school. Requires that the goals be developed in a manner similar to an individualized education program developed under Section 29.005. Requires the school, at least every six weeks, to provide a report to the student's parent describing the student's progress toward achieving the academic goals developed for the student under this subsection.

(b) Requires each qualifying school that enrolls a student under this subchapter to annually administer in the spring the appropriate assessment instrument required

under Section 39.023 (Adoption and Administration of Instruments) or a nationally norm-referenced assessment instrument approved by TEA.

(c) Requires the school to provide the student's results on assessment instruments required under Subsection (b) to the student's parent and the aggregated results of the assessment instruments required under Subsection (b) to the public.

Sec. 29.410. FINANCIAL SOLVENCY. Authorizes the commissioner to adopt rules requiring a qualifying school that accepts funding under this subchapter to demonstrate financial solvency.

Sec. 29.411. QUALIFYING SCHOOL AUTONOMY. (a) Provides that a qualifying school that accepts funding under this subchapter is not an agent or arm of the state or federal government.

(b) Prohibits the commissioner, TEA, the State Board of Education, or any other state agency, except as provided by this subchapter, from regulating the educational program of a qualifying school that accepts funding under this subchapter.

(c) Provides that a qualifying school that accepts funding under this subchapter is not required to implement an individualized education program developed for the student under Section 29.005. Provides that the student's parent and the qualifying school are responsible for determining the services and educational program to be provided to the student in accordance with the academic goals developed for the student under Section 29.409(a).

Sec. 29.412. RESPONSIBILITIES OF PARENT AND STUDENT. (a) Provides that it is the responsibility of the parent of an eligible student to locate and select a qualifying school, apply for admission to the qualifying school, and apply in the manner provided under Section 29.406 for participation in the program.

(b) Requires a student participating in the program to comply with the student code of conduct of the qualifying school the student attends. Requires a student to attend the qualifying school each school day unless the student is excused by the school for illness or other good cause.

Sec. 29.413. TRANSFER. (a) Authorizes an eligible student participating in the program to transfer to a public school or another qualifying school in the manner authorized by commissioner rule. Requires the commissioner, if a student transfers to another school under this section after the beginning of the school year, to prorate the amount of the student's program funding between the qualifying schools or the qualifying school and the school district, as applicable, according to the length of the student's attendance at each school.

(b) Authorizes the commissioner to adopt rules regarding the frequency with which a parent is authorized to transfer an eligible student from a qualifying school to another qualifying school or to a public school.

Sec. 29.414. RULES. (a) Requires the commissioner to adopt rules as necessary to implement, administer, and enforce the program, including rules regarding the calculation and distribution of payments for qualifying schools; application and approval procedures for qualifying school and student participation in the program, including timelines for the application and approval procedures; and student transfers under Section 29.413.

(b) Provides that a rule adopted under this section is binding on any other state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce the program.

Sec. 29.415. PROGRAM COMPLIANCE. (a) Requires TEA to enforce this subchapter and any rule adopted under this subchapter and is authorized to withhold funds from any

district or qualifying school that violates this subchapter or a rule adopted under this subchapter.

(b) Authorizes the commissioner to revoke a qualifying school's permission to participate in the program if the commissioner determines that the school has not met the requirements provided by this subchapter, has intentionally and substantially misrepresented information required by this subchapter, or has failed to refund to the state in a timely manner any overpayment of program funding made to the school.

(c) Requires TEA, if the commissioner revokes a qualifying school's permission to participate in the program under Subsection (b), to immediately notify the parent of an eligible student attending the school of the revocation.

Sec. 29.416. **LIABILITY.** Provides that TEA is not civilly liable for any action arising as the result of a student's participation in the program.

Sec. 29.417. **EVALUATION OF PROGRAM.** (a) Requires the commissioner to designate an impartial organization with experience in evaluating programs similar to the program established under this subchapter to conduct an annual evaluation of the program. Requires that the evaluation be conducted without the use of state funds.

(b) Requires that an evaluation under this section compare differences between qualifying schools and public schools and include consideration of certain factors.

(c) Requires that the evaluation apply appropriate analytical and behavioral science methodologies to ensure public confidence in the evaluation.

(d) Requires the commissioner, not later than December 1, 2012, to submit to each member of the legislature a copy of the evaluation conducted under this section.

(e) Requires that school districts and qualifying schools cooperate with the organization conducting the evaluation and to provide student assessment instrument results and any other information necessary to complete the evaluation in compliance with any applicable provision of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(f) Authorizes TEA to accept grants to assist in funding the evaluation.

Sec. 29.418. **APPLICATION OF SUNSET ACT.** (a) Provides that the program is subject to Chapter 325, Government Code (Texas Sunset Act), as if the program were a state agency, and unless continued in existence as provided by that chapter, the program is abolished and this subchapter expires September 1, 2019.

(b) Requires TEA, to the extent Chapter 325, Government Code, imposes a duty on a state agency under review, to perform that duty as it relates to the program.

SECTION 2. (a) Requires TEA to make the autism services accessibility program under Subchapter K, Chapter 29, Education Code, as added by this Act, available for participation beginning with the 2010-2011 academic school year.

(b) Requires the commissioner, as soon as practicable, to adopt and implement rules necessary for the administration of the program.

SECTION 3. Effective date: September 1, 2009.