

BILL ANALYSIS

Senate Research Center

S.B. 1871
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Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The rising incidence of autism is well-documented. According to the United States Department of Education (DOE) Data Accountability Center, the number of Texas schoolchildren with autism rose five-fold over the past 10 years (from 5,134 in 1999 to 25,912 in 2009), while children with intellectual developmental delays (IDD) rose just under 15 percent over the same period. This surge in the special needs population puts financial pressure on the state and on local school districts, as a study funded by DOE showed that the annual cost of education for children with autism is 2.9 times that of the overall average, while children with IDD cost 2.3 times those who are typically developing.

Contracted services for special needs children is not a new idea, as Texas school districts currently contract with private schools when they determine that the public sector is unable to adequately meet the student's needs. In that case, the local school district must pay 100 percent of the cost, often at the end of a contentious process.

S.B. 1871 implements the contracted services concept in Texas by allowing families to access the amount of funding that is equal to the amount schools receive for a student. The proposed legislation lays out clear qualifying criteria for students, provides guidelines for establishing academic oversight, and delineates additional oversight and administrative roles and responsibilities.

S.B. 1871 creates an additional education option for parents of special needs children that could also be cost-effective for public schools.

As proposed, S.B. 1871 amends current law relating to a contracted services program for certain students with pervasive developmental disorder or intellectual disability.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Assistive and Rehabilitative Services in SECTION 1 (Section 29.405, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 29.408, 29.411, and 29.412, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER K. CONTRACTED SERVICES PROGRAM

Sec. 29.401. DEFINITIONS. Defines, in this subchapter, "parent," "pervasive developmental disorder," "program," and "qualifying institution."

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

- (1) 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, pursuant to Section 25.001 (Admission), Education Code; or

(3) access contracted services as provided by Section 29.405 through a qualifying institution.

Sec. 29.403. ELIGIBLE STUDENT. (a) Provides that a student is eligible to participate in the program if:

(1) the student is eligible to receive public school services and is eligible under Section 29.003 (Eligibility Criteria), Education Code to participate in a school district's special education program; and

(2) the student has been diagnosed with pervasive developmental disorder or as having an intellectual disability.

(b) Requires a school district or open-enrollment charter school, each school year, to:

(1) provide written notice of the program to the parent of a student who is eligible to participate in the program under Subsection (a); and [sic]

(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.

(d) Provides that a student establishes eligibility to participate in a school district's special education program in the manner provided by Subchapter A (Special Education Program), Chapter 29 (Educational Programs), Education Code. Requires the qualifying institution and school district in which the student resides to jointly determine whether a student would be eligible to receive special education services if the student were enrolled in the district if the student has not previously been identified as eligible to receive special education services under Subchapter A, Chapter 29, Education Code, and attends a qualifying institution and wishes to establish eligibility to participate in the program,

(e) Provides that a student is not required to attend a public school for any period of time in order to establish eligibility to participate in the program.

(f) Requires the school district in which the student resides, the qualifying institution and the student's parent to biannually review for a student who attends a qualifying institution under this subchapter:

(1) the continued presence of the student's original diagnosis; and

(2) the student's continued eligibility for participation in the program.

Sec. 29.404. FINANCING OF SERVICES PROVIDED BY QUALIFYING INSTITUTION. (a) Entitles a qualifying institution to an annual amount of funding that is equal to the amount the institution would receive for a student if the institution were an open-enrollment charter school, as calculated under Sections 12.106(a)(2) (relating to the amount of funds to which a charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 (Foundation School Program)) and (a-1) (relating to determining funding for an open-enrollment charger school), Education Code, less any amount to which the state determines is necessary to meet the costs of administration, oversight, and other elements of program development and implementation for a student who attends a qualifying institution under this subchapter, except as otherwise provided by this section.

(b) Prohibits a student's program funding under this section from being financed by:

(1) money appropriated from the available school fund; or

(2) federal funds.

(c) Requires the Texas Education Agency (TEA) to directly distribute the funding to the qualifying institution. Requires qualifying institutions to be determined through a Request for Qualifications (RFQ) process established by TEA, in collaboration with the Department of Assistive and Rehabilitative Services (DARS), subject to public comment as to the criteria and standards to be used to establish qualification. Requires TEA and DARS to have equal input in the RFQ process and selection of qualifying institutions.

(d) Requires the parent of a student to apply to TEA on behalf of the student for an eligible student to participate in the program. Requires that the application specify the qualifying institution the student plans to attend and demonstrate that the student has been accepted for admission by that institution. 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 29.412. Requires TEA, if TEA determines that the student is eligible for participation in the program, to notify the student's parent of the student's eligibility. Authorizes a parent to apply on behalf of the student to participate in the program at any time.

(e) Requires TEA to direct the distribution of funds to the qualifying institution the student attends after services have been provided. Requires TEA to require that the qualifying institution submit documentation of the student's attendance before TEA directs funds to the qualifying institution. Requires the qualifying institution to submit the documentation to TEA on a monthly basis and requires TEA to direct the distribution of funds to the qualifying institution not later than the 30th day after receiving the documentation.

(f) 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 institution.

(g) Prohibits a qualifying institution 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.

Sec. 29.405. PARTICIPATION BY QUALIFYING INSTITUTIONS. (a) Requires a qualifying institution, to participate in the program, to:

(1) either:

(A) be accredited by an accrediting association recognized by the commissioner to accredit nongovernmental schools in this state;

(B) have filed an application for accreditation by an accrediting association described by Paragraph (A) that has not been withdrawn, denied, or left pending for more than eighteen months; or,

(C) recognized as an institution under the Department of Assistive and Rehabilitative Services (DARS) that provides medical and therapeutic services for disorders listed in Section 29.401(2) of this subchapter.

(i) Provides that DARS has the rulemaking authority to create rules regarding Section 29.405(a)(1)(C).

(2) not advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion;

(3) comply with all health and safety laws applicable to nongovernmental schools; and

(4) hold a valid occupancy permit if required by the municipality in which the school is located.

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

(c) Authorizes a nongovernmental community-based educational establishment that provides for the educational needs of students with pervasive developmental disorder or intellectual disability to apply to TEA to participate in the program as a qualifying institution. Requires TEA, in consultation with DARS, to create and maintain a list of qualifying institutions and ensure the list is available to the public.

Sec. 29.406. ADMISSIONS. (a) Prohibits a qualifying institution chosen by an eligible student's parent under this subchapter from denying admission by discriminating on the basis of the student's race, ethnicity, religion, creed, or national origin and requires the institution to comply with the requirements of:

(1) 42 U.S.C. Section 2000d et seq. with respect to nondiscrimination on the basis of race, color, or national origin; and

(2) Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), with respect to nondiscrimination on the basis of disability.

(b) Requires a qualifying institution that has more qualified program applicants for attendance under this subchapter than available positions to fill the available program positions by a random selection process, except as provided by this subsection. Authorizes an institution, to achieve continuity in education or services, 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 institution to submit a written request for student records from the public school previously attended by an eligible student, if applicable. 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 institution 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. 29.407. ACADEMIC ACCOUNTABILITY. (a) Requires a qualifying institution, 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 (Individualized Education Program), Education Code. Requires the school, at regular intervals not less than three times each academic year, 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 institution that enrolls a student under this subchapter to, each spring, administer an assessment instrument to the student in order to assess the student's academic progress. Authorizes the assessment instrument administered by the institution to be an assessment instrument adopted under Subchapter B (Assessment of Academic Skills), Chapter 39 (Public School System Accountability), Education Code.

(c) Requires the institution to provide:

(1) the student's results on assessment instruments administered under Subsection (b) to the student's parent; and

(2) the aggregated results of any assessment instruments administered under Subsection (b) to the public.

Sec. 29.408. FINANCIAL SOLVENCY. Authorizes the commissioner of education (commissioner) to adopt rules requiring a qualifying institution that accepts funding under this subchapter to demonstrate financial solvency.

Sec. 29.409. QUALIFYING INSTITUTION AUTONOMY. (a) Provides that a qualifying institution 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 from regulating the educational program of a qualifying institution that accepts funding under this subchapter, except as provided by this subchapter.

(c) Provides that a qualifying institution that accepts funding under this subchapter is not required to implement an individualized education program developed for the student under Section 29.005, Education Code. Provides that the student's parent and the qualifying institution are responsible for determining the services and educational program to be provided to the student.

Sec. 29.410. RESPONSIBILITIES OF PARENT AND STUDENT. (a) Provides that it is the responsibility of the parent of an eligible student to:

(1) locate and select a qualifying institution;

(2) apply for admission to the qualifying institution; and

(3) 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 institution the student attends. Requires a student to attend the qualifying institution each school day unless the student is excused by the school for illness or other good cause.

Sec. 29.411. TRANSFER. (a) Authorizes an eligible student participating in the program to transfer to a public school or another qualifying institution in the manner authorized by commissioner rule. Requires the commissioner to prorate the amount of a student's program funding between the qualifying institutions or the qualifying institution and the school district, as applicable, according to the length of the student's attendance at each school if the student transfers to another school under this section after the beginning of the school year.

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

Sec. 29.412. RULES. (a) Requires the commissioner to adopt rules as necessary to implement, administer, and enforce the program, including rules regarding:

- (1) the calculation and distribution of payments for qualifying institutions;
- (2) application and approval procedures for qualifying institution and student participation in the program, including timelines for the application and approval procedures; and
- (3) student transfers under Section 29.411.

(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. 29.413. PROGRAM COMPLIANCE. (a) Requires TEA to enforce this subchapter and any rule adopted under this subchapter and authorizes TEA to withhold funds from any district or qualifying institution that violates this subchapter or a rule adopted under this subchapter. Provides that TEA decisions are final and may not be appealed.

(1) Provides that participation in the program does not create a property right for either the parents or the participating institution.

(b) Authorizes the commissioner to revoke a qualifying institution's permission to participate in the program if the commissioner determines that the institution:

- (1) has not met the requirements provided by this subchapter;
- (2) has willfully misrepresented information required by this subchapter; or
- (3) has failed to refund to the state in a timely manner any overpayment of program funding made to the institution.

(c) Requires TEA to immediately notify the public through TEA's website if the commissioner revocation of a qualifying institution's permission to participate in the program under Subsection (b).

Sec. 29.414. LIABILITY. Provides that TEA is not civilly liable for any action arising as the result of a student's participation in the program.

Sec. 29.415. EVALUATION OF PROGRAM. (a) Authorizes the commissioner to designate, subject to available financial resources, 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 institutions and public schools and authorizes the evaluation to include consideration of:

- (1) student satisfaction;
- (2) parent satisfaction;
- (3) behavioral problems of program students attending qualifying institutions as compared with students attending public schools;
- (4) class size;

(5) the fiscal impact to the state and school districts;

(6) academic performance by comparable students as measured by an assessment instrument required under Section 29.407(b);

(7) factors resulting in more than 25 percent of eligible students in a school district attending a different school district or a qualifying institution under this subchapter; and

(8) the practices of a qualifying institution that contribute to any change in student behavior or academic performance.

(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, 2014, to submit to each member of the legislature a copy of any evaluation conducted under this section.

(e) Requires school districts and qualifying institutions to 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 subject to available financial resources.

Sec. 29.416. APPLICATION OF SUNSET ACT. (a) Provides that the contracted services program is subject to Chapter 325 (Sunset Law), Government Code, as if the program were a state agency. Provides that, unless continued in existence as provided by that chapter, the program is abolished and this subchapter expires September 1, 2017.

(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 subject to available financial resources.

SECTION 2. (a) Requires TEA to make the contracted services program under Subchapter K, Chapter 29, Education Code, as added by this Act, available for participation beginning with the 2012-2013 academic school year.

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

SECTION 3. Effective date: September 1, 2011.