

BILL ANALYSIS

Senate Research Center
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S.B. 2105
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Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, there are approximately 23,054 students between the ages of 18 and 21 receiving special education services in public schools. These students have a wide variety of needs and abilities, and many require the involvement of another adult in their continued education. Under the Individuals with Disabilities Education Act (IDEA), for instance, an adult student receiving special education services must have access to a process allowing his or her parent, or if the parent is not available, another appropriate person, to be appointed their educational representative. Texas, however, does not have such a process, and it is not in compliance with IDEA.

S.B. 2105 would create a procedure allowing the appointment of an educational representative for a student with disabilities between the ages of 18 and 21 who lacks a legal guardian and is transitioning out of high school. This would provide these students with disabilities the assistance needed to pursue an education and to advocate for their best interests.

As proposed, S.B. 2105 amends current law relating to the appointment of an educational representative for certain students with disabilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 29.0171, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is rescinded in SECTION 3 (Section 29.017, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 29.017(a), (b), (c), and (c-2), Education Code, as follows:

- (a) Provides that all other rights accorded to parents under Subchapter A (Special Education Program) or 20 U.S.C. Section 1415 transfer to the student or, if applicable, to the educational representative appointed for the student under Section 29.0171.
- (b) Provides that all rights accorded to parents under Subchapter A or 20 U.S.C. Section 1415 transfer to a student who is incarcerated in an adult or juvenile, state or local correctional institution or, if applicable, to the educational representative appointed for the student under Section 29.0171. Makes nonsubstantive changes.
- (c) Requires that the school district at which a student is enrolled, not later than one year before the 18th birthday of the student with a disability, provide to the student and the student's parents information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357 (Supported Decision-Making Agreement Act), Estates Code, the appointment of an educational representative under Section 29.0171, and other supports and services that may enable the student to live independently.

(c-2) Requires that the school district, if a student with a disability or the student's parent requests information regarding guardianship, alternatives to guardianship, or the appointment of an educational representative from the school district at which the student is enrolled, provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code, and on the appointment of an educational representative under Section 29.0171. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter A, Chapter 29, Education Code, by adding Section 29.0171, as follows:

Sec. 29.0171. APPOINTMENT OF EDUCATIONAL REPRESENTATIVE. (a) Requires that a school district, for purposes of compliance with 34 C.F.R. Section 300.520(b), appoint an educational representative as provided by this section for a student who:

(1) is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31 (Removal of Disabilities of Minority), Family Code;

(2) has been certified under Subsection (b) as not having the ability to provide informed consent regarding the student's educational program; and

(3) has not been determined to be incompetent.

(b) Authorizes a professional who meets the qualifications under Subsection (d) to certify in writing that a student does not have the ability to provide informed consent with respect to the student's educational program based on the professional's knowledge and expertise and clear and convincing evidence obtained through a personal examination of or interview with the student.

(c) Provides that, in making the determination that a student does not have the ability to provide informed consent regarding the student's educational program under Subsection (b), the professional:

(1) is required to consider whether the student is unable to:

(A) communicate, even with appropriate verbal support, in writing or in the student's most proficient method of communication, the student's preferences, decisions, and consent with respect to the student's educational program; and

(B) use an alternative to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, or power of attorney, for educational decision-making; and

(2) is prohibited from determining that the student is unable to provide informed consent based solely on the fact that the student has been voluntarily or involuntarily hospitalized for a mental illness or has a diagnosis of an intellectual disability.

(d) Provides that, to certify that a student does not have the ability to provide informed consent regarding the student's educational program under Subsection (b), a professional:

(1) is required to be a licensed physician, licensed physician assistant, or licensed clinical psychologist; and

(2) is prohibited from:

(A) being an employee of the school district currently serving the student; and

(B) having any interests that conflict with the interests of the student or the person seeking appointment as the student's educational representative, including being related by blood or marriage.

(e) Requires a professional who provides a certification for a student under Subsection (b) to provide a copy of the certification to the student.

(f) Authorizes a reevaluation of a student under 34 C.F.R. Section 300.303 to be used to request certification for the student under Subsection (b).

(g) Requires a school district, on receiving a written request from a student's parent, legal guardian, or spouse or another interested adult to appoint an educational representative for the student that is accompanied with the certification for the student made under Subsection (b) dated not earlier than the 91st day before the date the request is submitted, to:

(1) not later than:

(A) the fifth school day following the date the district receives the request, notify the student in the manner appropriate for the student's most proficient method of communication that the district has received the request; and

(B) the 15th school day following the date the district receives the request, determine whether the certification conforms with Subsection (b); and

(2) if the district determines that the certification conforms with Subsection (b), appoint one of the following individuals in the order listed as the student's educational representative:

(A) the student's spouse;

(B) the student's parent or legal guardian; or

(C) another appropriate individual who:

(i) is preferred by the student;

(ii) is not employed by the district; and

(iii) has significant knowledge of the student and the student's strengths, opportunities, and post-educational transitional goals.

(h) Provides that the scope of an appointment as an educational representative under this section is limited to representing the educational interests of the student in accordance with 34 C.F.R. Section 300.520(b).

(i) Requires an educational representative appointed for a student under this section to:

(1) in representing the student's educational interests:

(A) consider the student's interests, preferences, and goals; and

(B) consult with the student before providing informed consent or making educational decisions on the student's behalf; and

(2) notify the student when the representative has provided informed consent or made any educational decisions on the student's behalf.

(j) Requires that, if a student expresses disagreement with an informed consent or educational decision made by the student's educational representative on the student's behalf, the school district include a statement to that effect in the student's individualized education program.

(k) Provides that the term of an educational representative's appointment under this section expires on the earliest of:

(1) the date the student is no longer eligible for special education services;

(2) the date the student graduates from high school with a high school diploma under Section 28.025(c)(1) (relating to authorizing a person to receive a diploma if the person completes certain curriculum requirements);

(3) the date a guardian is appointed for the student under Chapter 1101 (General Procedure to Appoint Guardian), Estates Code; or

(4) the date the student rescinds the representative's appointment under Subsection (l).

(l) Authorizes a student who has not been determined to be incompetent to rescind at any time, in writing or in the student's most proficient method of communication, the appointment of an educational representative for the student under this section. Requires that, if the student is unable to rescind the appointment in writing, the school district serving the student document the student's rescission on the student's behalf. Provides that, if rescinded, all rights accorded to parents under Subchapter A or 20 U.S.C. Section 1415 transfer to the student. Requires that the school district notify the person who submitted the request for the appointment under Subsection (g) regarding the rescission.

(m) Prohibits a certification under Subsection (b) that a student is unable to provide informed consent with respect to the student's educational program or the appointment of an educational representative for the student under this section from being 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.

(n) Provides that any documentation relating to the appointment of an educational representative under this section, including certification under Subsection (b) or a request for the appointment of an educational representative under Subsection (g), is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(o) Provides that nothing in this section prohibits the appointment of a guardian under Chapter 1101, Estates Code, for a student for whom an educational representative has been appointed under this section.

(p) Requires the commissioner of education (commissioner) to develop and post on the Texas Education Agency's Internet website model forms that may be used for a certification under Subsection (b) and a request for appointment of an educational representative under Subsection (g).

(q) Requires the commissioner to adopt rules to implement this section, including rules to ensure compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

SECTION 3. Repealer: Section 29.017(f) (relating to requiring the commissioner to adopt rules implementing certain provisions), Education Code.

SECTION 4. Effective date: upon passage or September 1, 2021.