

## **BILL ANALYSIS**

Senate Research Center  
88R22334 CXP-D

C.S.S.B. 418  
By: Paxton  
Education  
4/28/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas public school students lack options for transferring to another campus or school district, even though they may seek to do so for legitimate reasons.

Additionally, under current statute, some public schools even charge tuition to students seeking to transfer to their campus from another district, creating an additional burden upon these students' families who are seeking to find the best situation for their child within the public school system.

The proposed legislation permits students to transfer to any public school that has student capacity available and also prohibits public school districts from charging these students tuition. By addressing these barriers, the proposed legislation provides more flexible options for families to meet their unique situations and needs.

(Original Author's/Sponsor's Statement of Intent)

The committee substitute removes the capability for public schools to charge tuition. It clarifies that a student should be admitted unless special circumstances apply, and it allows students to transfer during the school year.

It requires districts to set a capacity determination based on their facilities plan, publicly post the number of available seats, and create transparency for districts based on their long-range facilities plan.

It also creates reporting requirements, which include providing a denied student with a reason for transfer denial in writing, posting transfer policies and requirements, and reporting to the Texas Education Agency (TEA) the number of available district seats, the number of students who applied for available seats, and the number of students denied.

It creates a policy to enforce commissioner rulemaking making TEA responsible for policies and forms that districts need to use. It also requires TEA to create a publication with transfer information.

The committee substitute clarifies and enhances transparency and reporting requirements to ensure that school districts are accountable for their transfer policies and procedures while focusing on best student performance outcomes.

C.S.S.B. 418 amends current law relating to the transfer of students between public schools.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 3 (Section 25.036, Education Code) and SECTION 4 (Sections 25.046 and 25.047, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 25.001(h), Education Code, as follows:

(h) Deletes text providing that a person who knowingly falsifies information on a form required for enrollment in a school district is liable, for the period during which the ineligible student is enrolled, for the greater of the maximum tuition the district is authorized to charge under Section 25.0038 (Tuition Fee for Transfer Students) or the amount of the district has budgeted for each student as maintenance and operating expenses.

SECTION 2. Amends Section 25.035, Education Code, as follows:

Sec. 25.035. TRANSFERS BETWEEN DISTRICTS OR COUNTIES. Authorizes the boards of trustees of two or more school districts or the boards of county school trustees of two or more counties, in accordance with Sections 25.032 (Basis for Assignment or Transfer), 25.033 (Assignment or Transfer on Petition of Parent), and 25.034 (Hearing; Action on Petition; Appeal), to arrange for the transfer and assignment of any student from the jurisdiction of one board to that of another. Deletes existing text authorizing the boards of trustees of two or more adjoining school districts or the boards of county school trustees of two or more adjoining counties, by agreement and in accordance with certain sections, to arrange for the transfer and assignment of any student from the jurisdiction of one board to that of another. Deletes existing text requiring the participating governing boards, in the case of the transfer and assignment of a student under this section, to also agree to the transfer of school funds or other payments proportionate to the transfer of attendance.

SECTION 3. Amends Section 25.036, Education Code, as follows:

Sec. 25.036. TRANSFER OF STUDENT. (a) Authorizes any child, other than a high school graduate, who is younger than 21 years of age and eligible for enrollment on September 1 of any school year to apply to transfer from the child's school district to any public school in this state that offers the appropriate grade level and has capacity, as determined under Section 25.046. Deletes existing text authorizing any child other than a high school graduate, who is younger than 21 years of age and eligible for enrollment on September 1 of any school year to transfer annually from the child's school district of residence to another district in this state if both the receiving district and the applicant parent or guardian or person having lawful control of the child jointly approve and timely agree in writing to the transfer.

(b) Requires a school district, before the beginning of each school year, to:

(1) require a transfer applicant under Subsection (a) to complete and submit the district's transfer application form by a reasonable deadline established by the district; and

(2) subject to Subsection (g), admit each eligible transfer applicant until enrollment at the campus reaches capacity, as determined under Section 25.046.

(c) Requires a school district, if the school district receives more eligible transfer applications for a district campus or a specific grade level at a district campus than the district has capacity for at that campus or in that grade level, as determined under Section 25.046, to fill the available positions by lottery. Requires a school district to offer to a student who the district does not enroll due to lack of capacity an available position, if any, in the appropriate grade level at another district campus.

(d) Requires a school district that is required to fill positions by lottery under Subsection (c), in developing the lottery system, to ensure priority is given to applicants in the following order:

(1) students residing in the receiving district;

- (2) students enrolled as transfer students at another campus in the receiving district;
- (3) students receiving special education services under Subchapter A (Special Education Program), Chapter 29;
- (4) students who are dependents of military personnel;
- (5) students who are dependents of law enforcement personnel;
- (6) students in foster care;
- (7) students who are the subject of court-ordered modification of an order establishing conservatorship or possession and access;
- (8) students who are siblings of a student who is enrolled in the receiving district at the time the student seeks to transfer; and
- (9) students who are dependents of an employee of the receiving district.

(e) Requires a school district that receives more eligible transfer applications for a district campus or a specific level at a district campus than the district is authorized to enroll at the capacity determined under Section 25.046 for that campus or grade level to establish and maintain a waitlist for transfer applicants who are not admitted.

(f) Requires the district, if a position at a school district campus with a waitlist under Subsection (e) becomes available after the start of the school year, to first admit transfer applicants according to that waitlist and then admit any additional transfer applicants in the order in which those additional transfer applications are received.

(g) Authorizes a school district to deny approval of a transfer under this section only if:

(1) the district or a school in the district to which a student seeks to transfer is at full student capacity or has more requests for transfers than available positions;

(2) at the time a student seeks to transfer:

(A) the student is:

(i) suspended or expelled by the district in which the student is enrolled; or

(ii) placed in a disciplinary alternative education program or a juvenile justice alternative education program; or

(B) disciplinary proceedings are pending against the student in the district in which the student is enrolled for conduct for which the student:

(i) may be placed in out-of-school suspension in accordance with the district's student code of conduct;

(ii) is required or permitted to be removed from class and placed in a disciplinary alternative education program under Section 37.006 (Removal for Certain Conduct); or

(iii) is required or permitted to be expelled under Section 37.007 (Expulsion for Serious Offenses); or

(3) approving the transfer would supersede a court-ordered desegregation plan.

(h) Requires a school district that denies approval of a transfer under this section to inform the applicant in writing of the reason for denying approval of the applicant's transfer.

(i) Prohibits a student who transfers to another school district under this section from being charged tuition. Provides that the student is included in the average daily attendance of the district to which the student transfers, beginning on the date the student begins attending classes at that district.

(j) Authorizes, but does not require, a receiving school district to provide transportation to a student who transfers to the receiving district under this section.

(k) Authorizes a receiving school district to revoke, at any time during the school year, the approval of the student's transfer if the student:

(1) fails to comply with a condition specified in the agreement that is:

(A) a condition specified in the student code of conduct under Section 37.001(a)(2) (relating to requiring the board of trustees of an independent school district to specify in the student code of conduct the circumstances under which a principal or school administrator is authorized or required to transfer a student to a disciplinary alternative education program);

(B) a circumstance specified in the student code of conduct under Section 37.001(a)(3) (relating to requiring the board of trustees of an independent school district to specify in the student code of conduct the circumstances under which a student is authorized to be suspended or expelled) that may result in out-of-school suspension;

(C) conduct for which a student is required or permitted to be removed from class and placed in a disciplinary alternative education program under Section 37.006; or

(D) conduct for which a student is required or permitted to be expelled from school under Section 37.007; or

(2) fails to maintain a specified school attendance rate.

(l) Authorizes a student who transfers to another school district or district campus as provided by this section to remain at the receiving campus until that student completes the highest grade level offered at the campus.

(m) Requires a student, once a student who transfers to another school district or district campus as provided by this section completes the highest grade level offered at the receiving campus, to reapply to continue attending school in the receiving district. Requires the district to prioritize admitting the student as provided by Subsection (d).

(n) Prohibits a school district from denying admission to a student who is currently enrolled in the district, including a student enrolled as a transfer student

at another campus in the district, for the purpose of accepting a transfer applicant under this section.

(o) Prohibits a school district from taking any adverse action against a student enrolled as a transfer student in the district based on the fact that the district charged a tuition fee for the student to attend school in the district for a previous school year under former Section 25.038 (Tuition Fee for Transfer Students).

(p) Requires the commissioner of education (commissioner) to adopt rules necessary to implement this section, including rules establishing:

(1) an admissions lottery, as described by Subsection (c), and a waitlist as described by Subsection (e); and

(2) procedures to ensure this section complies with state and federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g).

Deletes existing text requiring that a transfer agreement under this section be filed and preserved as a receiving district record for audit purposes of the Texas Education Agency (TEA).

SECTION 4. Amends Subchapter B, Chapter 25, Education Code, by adding Sections 25.046 and 25.047, as follows:

Sec. 25.046. TRANSFER CAPACITY; DISTRICT POLICY. (a) Requires the board of trustees of a school district to determine each year on the first day of January, April, July, and October, except as provided by Subsection (c) the capacity of each district campus and the capacity of each grade level offered at each campus. Provides that, the capacity of a district campus or a grade level at that campus for purposes of this section, is the total number of students that are authorized to be admitted at the campus or at that grade level, as applicable, less the students who are currently enrolled at that campus or at that grade level, as applicable. Requires the district, based on the board's determination of campus or grade level capacity and current student enrollment, to identify the number of available positions at each campus and for each grade level. Requires the district in determining campus and grade level capacity to consult the most recent district facility plan, including:

(1) a facility plan created as part of a district bond proposal; or

(2) a long-range facility plan created as part of a capital improvement project for which construction services are procured under Chapter 2269 (Contracting and Delivery Procedures for Construction Projects), Government Code, in accordance with Section 44.031(a)(5) (relating to the process for selection of purchasing contracts by a school district for construction services as provided by Chapter 2269) of this code.

(b) Requires the district to post for each campus in the district on the district's Internet website, if the district maintains a website, the most recent determination of campus and grade level capacity. Requires the district, if the district does not maintain a website, to make the information required under this subsection available to the public at an administrative office of the district.

(c) Provides that a school district is not required to determine the capacity of a new instructional facility, as defined by Section 48.152 (New Instructional Facility Allotment), in the first school year in which students attend the new instructional facility.

(d) Requires the board of trustees of a school district to adopt a written policy that meets the requirements adopted by the commissioner under Subsection (f) for the admission of a transfer applicant under Subchapter B (Assignments and Transfers). Requires the board to make the policy available to the public in the same manner the district makes available a district's determination of campus and grade level capacity under Subsection (b). Requires that the policy include:

- (1) adoption of a transfer application form;
- (2) the provision of the address of the district administrative office where a person is authorized to access the district's determination of campus and grade level capacity, if the district does not maintain an Internet website; and
- (3) the provision of information regarding available options for transportation provided by the district or in the community.

(e) Requires TEA to post on TEA's Internet website information regarding each school district's policy adopted under this section and each district's campus or grade level capacity determinations under Subsection (a).

(f) Requires the commissioner to adopt rules and prescribe procedures necessary to implement this section, including by developing required policies and forms for use by a school district in complying with Subsection (d). Requires the commissioner, in adopting rules to implement this section, to consider feedback from districts and to prioritize:

- (1) flexibility of access for students;
- (2) encouraging districts to accommodate student transfers; and
- (3) preventing districts from discouraging student transfers.

**Sec. 25.047. REPORTING AND AUDIT REQUIREMENTS.** (a) Requires each school district to annually submit not later than the last Friday in October of each school year a report to TEA regarding the transfer of students to and from the district during the previous school year, subject to Subsection (b). Requires that the report include:

- (1) for each district campus, the quarterly campus and grade level capacity determinations under Section 25.046;
- (2) for each campus, the number of transfer applications for transfers to that campus the district received, the number of applications that were granted, and the number of applications that were denied, including the reason for the denial, during the preceding school year;
- (3) the information described by Subdivisions (1) and (2) aggregated for all campuses in the district; and
- (4) for the purposes of demographic analysis, any information required by the commissioner as necessary to identify each student admitted to or denied admission to a campus in the district who is or was previously enrolled in a public school in this state.

(b) Provides that a school district with only one campus serving each grade level is exempt from Subsection (a)(3).

(c) Requires TEA to post on TEA's Internet website, not later than March 15 of each year, a report on the transfer and assignment of students. Requires that the report include:

- (1) a summary of school district admission practices relating to student transfer admissions;
- (2) for the state, the aggregated data reported under Subsection (a);
- (3) for each district, the aggregated data reported under Subsection (a);
- (4) a demographic analysis of the students transferring districts;
- (5) a demographic analysis of the students transferring between campuses within the same district;
- (6) for each district, the number of transfer applicants seeking admission or withdrawal, showing the potential net change in enrollment; and
- (7) for each district, the actual number of students who transferred into or out of the district, showing the actual net change in enrollment.

(d) Requires TEA, every sixth year, to publish a study of statewide transfer trends that includes:

- (1) the total number of students transferring districts and of students transferring between campuses within the same district;
- (2) using data from the previous six school years, an analysis at the state and district level of changes in:
  - (A) the number of school districts and campuses admitting transfer students;
  - (B) the number of students transferring districts; and
  - (C) the number of students transferring between campuses within the same district;
- (3) a demographic analysis of the students transferring districts and of the students transferring between campuses within the same district;
- (4) using data from the previous six school years, an analysis of the patterns of student movement between districts and campuses, including a description of any characteristics that are correlated with students transferring to or away from districts or schools;
- (5) a summary of district practices regarding transportation of transfer students;
- (6) an explanation of the reasons students choose to transfer districts or campuses and the barriers faced by students in transferring districts or campuses;
- (7) an explanation of the challenges restricting school districts from admitting more transfer students;
- (8) performance outcomes for inter- and intra-district transfer students, including changes in student proficiency after the date of transfer; and
- (9) the effects of inter-district transfers on student performance outcomes and district program offerings for both sending and receiving districts.

(e) Requires TEA, each year, to randomly select 10 percent of the school districts in the state and conduct an audit of each district's capacity determination under Section 25.046 and of each district's approved and denied transfer applications. Requires TEA, if TEA finds inaccurate reporting of capacity levels by a school district, to set the capacity for the school district. Provides that districts audited during the previous two school years are prohibited from being selected for audit in a school year.

(f) Requires the commissioner to adopt rules necessary to implement this section.

SECTION 5. Repealer: Section 25.038 (Tuition Fee for Transfer Students), Education Code.

Repealers: Sections 25.039(b) (relating requiring a school district to pay another school district teaching student grade levels which the paying district does not offer) and (c) (relating to providing that a school district is not required to pay tuition to certain other school districts that provides grade levels which the paying district does not offer), Education Code.

Repealer: Section 48.154 (Tuition Allotment for Districts Not Offering All Grade Levels), Education Code.

SECTION 6. Prohibits the changes in law made by this Act from being interpreted to affect the authority or existing rules of the University Interscholastic League regarding the participation of a student in an interscholastic competition.

SECTION 7. Provides that a student accepted for transfer to a school district for the 2023–2024 school year under Section 25.035 or 25.036, Education Code, on a date occurring before the effective date of this Act is entitled to transfer to the district for that school year in the same manner as any other student accepted for transfer to the district for that school year on a date occurring on or after the effective date of this Act, notwithstanding any other provision of this Act.

SECTION 8. Requires TEA, not later than September 1, 2029, to publish the first study of statewide transfer trends required under Section 25.047, Education Code, as added by this Act.

SECTION 9. Provides that this Act applies beginning with the 2023–2024 school year.

SECTION 10. Effective date: upon passage or September 1, 2023.