

BILL ANALYSIS

C.S.H.B. 3991
By: Allen
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, the Texas Education Agency recently eliminated longstanding rules relating to the individualized education program planning process for students with disabilities. C.S.H.B. 3991 seeks to restore several provisions previously adopted by rule and preserve important practices that support parents' and teachers' ability to actively participate in the process through which services for their special education students are determined.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3991 amends the Education Code to include among the objectives of certain procedures listed in the Texas Education Agency's statewide plan with programmatic content relating to the delivery of services to children with disabilities ensuring the development by each school district of a process to be used by a teacher who instructs a student with a disability in a regular classroom setting to provide input in the development of the student's individualized education program.

C.S.H.B. 3991 requires a regular education teacher, if the committee established to develop a child's individualized education program under federal law is required to include a regular education teacher, to be, to the extent practicable, a teacher who is responsible for implementing a portion of the child's individualized education program. The bill requires the written statement of the individualized education program to document the decisions of the committee with respect to issues discussed at each committee meeting. The bill requires the written statement to include the date of the meeting; the name, position, and signature of each member participating in the meeting; and an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decision of the committee. The bill entitles each member of the committee who disagrees with the individualized education program developed by the committee to include a statement of disagreement in the written statement of the program. The bill's provisions apply beginning with the 2015–2016 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3991 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Section 29.001, Education Code, is amended by amending Subsection (11) to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 29.001, Education Code, is amended to read as follows:

Sec. 29.001. STATEWIDE PLAN. The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;
- (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;
- (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;
- (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;
- (5) allow the agency to effectively monitor and periodically conduct site visits of all

school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006[;] are accurate and complete;

(6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;

(7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;

(8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;

(9) ensure that each student with a disability is provided necessary related services;

(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to:

(A) complete a training program that complies with minimum standards established by agency rule;

(B) visit the child and the child's school;

(C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;

(D) review the child's educational records;

(E) attend meetings of the child's admission, review, and dismissal committee;

(F) exercise independent judgment in pursuing the child's interests; and

(G) exercise the child's due process rights under applicable state and federal law; and

(11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

(A) to request a review of the student's individualized education program;

(11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

(A) to request a review of the student's individualized education program;

(B) to provide input into the student's IEP;

~~(B)~~(C) that provides for a timely district response to the teacher's request; and
~~(C)~~(D) that provides for notification to the student's parent or legal guardian of that response.

SECTION 2. Subchapter A, Section 29.005, Education Code, is amended by amending Subsection (a), adding a new Subsection (c), amending Subsection (c) and renumbering the following subsections accordingly to read as follows:

Sec. 29.005. INDIVIDUALIZED EDUCATION PROGRAM. (a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(11) to develop the child's individualized education program. The regular education teacher who serves as a member of the committee should be a regular education teacher who is responsible for implementing a portion of the student's individualized education program.

(b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.

(c) The committee shall develop a written report of the ARD committee which shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.321, 300.322, 300.324, and 300.325. The report shall also indicate each member's agreement or disagreement with the committee's decisions.

~~(c)~~(d) If the individualized education program is not developed by agreement, the written statement of the program required

(B) to provide input in the development of the student's individualized education program;

(C) that provides for a timely district response to the teacher's request; and
(D) ~~(C)~~ that provides for notification to the student's parent or legal guardian of that response.

SECTION 2. Section 29.005, Education Code, is amended by amending Subsections (a) and (c) and adding Subsection (b-1) to read as follows:

(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) [1401(11)] to develop the child's individualized education program. If a committee is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program.

(b-1) The written statement of the individualized education program must document the decisions of the committee with respect to issues discussed at each committee meeting. The written statement must include:

- (1) the date of the meeting;
- (2) the name, position, and signature of each member participating in the meeting; and
- (3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decision of the committee.

(c) If the individualized education program is not developed by agreement, the written statement of the program required under 20

under 20 U.S.C. Section 1401(11) must include the basis of the disagreement. The members who disagree shall be offered the opportunity to write their own statements of disagreement.

U.S.C. Section 1414(d) [~~1401(11)~~] must include the basis of the disagreement. Each member of the committee who disagrees with the individualized education program developed by the committee is entitled to include a statement of disagreement in the written statement of the program

~~(d)~~(e) If the child's parent is unable to speak English, the district shall:

(1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or

(2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

~~(e)~~(f) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

~~(f)~~(g) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

~~(g)~~(h) The committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student for whom the committee has developed an individualized education program. If the committee makes that determination, the behavior improvement plan or the behavioral intervention plan shall be included as part of the student's individualized education program and provided to each teacher with responsibility for educating the student.

SECTION 3. This Act applies beginning with the 2015-2016 school year.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article

SECTION 4. Same as introduced version.

III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.