

BILL ANALYSIS

C.S.H.B. 3880
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under the federal Individuals with Disabilities Education Act (IDEA), public school students who are suspected of struggling with a learning disability are entitled to a full and individual evaluation (FIE). The FIE is the means by which states must determine whether a child suspected of having a learning disability needs and is entitled to special education and related services. In listing many different types of learning disabilities that might trigger a need for special education and related services, IDEA expressly includes dyslexia. However, Texas public school students who are suspected of struggling with dyslexia are regularly denied a FIE and, as a result, are regularly denied special education and related services. The use of imprecise statutory and regulatory language in Texas education law has the effect of miscategorizing the learning disability of dyslexia and mislabeling the dyslexia-specific intervention used to remediate it, which in turn leads to systematic and discriminatory denial of IDEA services and protections, as well as a denial of a free and appropriate public education to public school students. C.S.H.B. 3880 seeks to rectify these systemic problems.

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 rulemaking authority is expressly granted to the commissioner of education in SECTIONS 4 and 9 of this bill.

ANALYSIS

C.S.H.B. 3880 amends the Education Code to remove the term "special services" for purposes of the special education program and replaces the term with "special education," defined as specially designed instruction that is provided at no cost to the parent or person standing in parental relation to meet the unique needs of a student with a disability. The bill defines "student with a disability" for purposes of special education as a student evaluated in accordance with the federal Individuals with Disabilities Education Act as having any of the following:

- an intellectual disability, a hearing impairment including deafness, a visual impairment including blindness, a serious emotional disturbance, an orthopedic impairment, autism, a traumatic brain injury, a speech or language impairment, deaf-blindness, multiple disabilities, any other health impairment, or a specific learning disability and who, as a result of the disability, needs special education;
- noncategorical early childhood developmental delays that prevent the student from being adequately or safely educated in a public school without receiving special education; or
- dyslexia or a related disorder and who, as a result of the dyslexia or the related disorder, needs special education.

C.S.H.B. 3880 changes the eligibility requirements for a district's special education program to make a student eligible if the student:

- is not more than 21 years of age and is identified as a student with a visual or hearing impairment;
- is at least three years of age but not more than 21 years of age and has been identified as a student with a disability other than a visual or hearing impairment; or
- is at least three years of age but not more than five years of age and is evaluated as having noncategorical early childhood developmental delays that prevent the student from being adequately or safely educated in a public school without receiving special education.

C.S.H.B. 3880 extends a requirement that a district improvement plan provide for evidence-based practices addressing students' needs for dyslexia treatment programs to require such practices to address students' needs for special education programs.

C.S.H.B. 3880 replaces the duty of the State Board of Education (SBOE) to approve a program for testing students for dyslexia and related disorders with the following duties:

- to develop and update, as necessary, guidance information for public school districts on evidence-based practices for intervention and instruction of students with dyslexia and related disorders; and
- to incorporate in the information input from a broad-based dialogue with educators and experts in the field of reading and dyslexia and related disorders from across Texas.

The bill prohibits the guidance information from addressing the following:

- the evaluation and identification of students with dyslexia or a related disorder; or
- how intervention and instruction are to be accessed by a student.

The bill requires the commissioner of education to include in each regional plan for the coordination of services to children with disabilities procedures for ensuring that services provided for students with dyslexia and related disorders align with the guidance information.

C.S.H.B. 3880 repeals provisions relating to the following:

- mandatory dyslexia screening of kindergarten and first grade students in accordance with a program approved by the SBOE, district responsibility to provide for treatment, and the development of Texas Education Agency (TEA) rules and procedures for monitoring compliance; and
- a statewide classroom technology plan for accommodating students with dyslexia, developed by a TEA committee.

C.S.H.B. 3880, with respect to the repealed requirements relating to classroom technology and training opportunities for educators, requires TEA instead to include in the statewide plan for special education procedures to ensure the following objectives are met:

- that technology is integrated to accommodate students with dyslexia and related disorders; and
- that training opportunities, including continuing education for an educator who teaches students with dyslexia, meet the following conditions:
 - are accessible to districts by developing a list of training opportunities regarding dyslexia and related disorders that comply with the knowledge and practice standards of an international organization on dyslexia; and
 - assist an educator or dyslexia service provider in understanding and recognizing dyslexia and providing instruction that is systematic, explicit, and evidence-based.

C.S.H.B. 3880 requires a district to do the following with respect to dyslexia screening and with respect to intervention for a student determined to be at risk for dyslexia or a related disorder:

- screen students for dyslexia and related disorders;
- notify the parent of or person standing in parental relation to each student who is determined to be at risk for dyslexia or a related disorder that the student is at risk;

- make a good faith effort to ensure that the notice is clear and easy to understand, is in the recipient's native language, and includes information about the student's data and measurements that led to the determination that the student is at risk;
- on determining that a student is at risk, implement an evidence-based reading instruction program as an intervention as part of the district's multi-tiered systems of support that, to the extent possible, incorporates training provided to teachers in teacher information literacy achievement academies; and
- determine the form, content, and timing of the reading instruction program, subject to requirements established by the commissioner by rule.

The bill prohibits the use of the reading instruction program to delay an evaluation for special education services.

C.S.H.B. 3880 requires the commissioner to adopt rules as necessary to implement the bill's provisions related to dyslexia screening and interventions and requires the rules to do the following:

- require a universal screening for each student for dyslexia and related disorders:
 - at the end of the school year in kindergarten; and
 - before the end of the school year in first grade;
- establish those screening requirements in coordination with experts and educators in the field of reading and dyslexia and related disorders from across Texas;
- establish the requirements for reading instruction programs used as interventions for students at risk of dyslexia or related disorders; and
- establish the personnel required to administer dyslexia intervention and specialized instruction support.

C.S.H.B. 3880 authorizes a district to employ a person, including a therapist, practitioner, specialist, or interventionist, to provide services to students with dyslexia and related disorders without holding a teaching certificate or permit in special education if the person is qualified as follows:

- holds the appropriate license;
- holds a certification issued by the appropriate association or has received training from an appropriate training provider; or
- meets the applicable training requirements for the position adopted by the commissioner by rule.

C.S.H.B. 3880 specifies that, for purposes of a district's entitlement to the dyslexia allotment, qualifying instruction that constitutes a basis for a student's eligibility for the allotment must meet applicable dyslexia intervention components established by the SBOE or TEA. The bill clarifies a district's entitlement to both the dyslexia allotment and the special education allotment for a student who satisfies the requirements for both. The bill requires a district to allocate money from the dyslexia allotment and any money from the special education allotment attributable to a student who is eligible for both allotments to the district's special education budget and to prioritize the use of that money for the employment and retention of district employees who are specially trained to evaluate, identify, and provide services for dyslexia and related disorders, including applicable professionals who may be employed without teacher certification or a teaching permit. The bill restricts a district's use of applicable funding to supplementing the district's special education budget and prohibits its use to offset or deduct from that budget.

C.S.H.B. 3880 requires each district to notify the parent or person standing in parental relation to a student who has been identified as having dyslexia or a related disorder and who received dyslexia intervention and instructional support in accordance with the federal Rehabilitation Act of 1973 during the 2020-2021 school year of the parent's or person's right to request a full individual evaluation for a special education program. The bill requires TEA, not later than September 1, 2021, to provide informal guidance to districts on the evaluation and identification of students with dyslexia or a related disorder in accordance with the bill's provisions.

C.S.H.B. 3880 applies beginning with the 2021-2022 school year. The bill specifies that the commissioner must adopt rules necessary to implement the bill's provisions using the process set out by the Negotiated Rulemaking Act.

C.S.H.B. 3880 repeals the following provisions of the Education Code:

- Section 38.003;
- Section 38.0031; and
- Section 38.0032.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3880 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the substitute and the original revise certain definitions for purposes of provisions governing special education, including the determination of eligibility for special education services, the original substituted "specially designed instruction" for "special services" and expanded the corresponding definition. The substitute instead replaces the term "special services" with "special education," provides a new definition of that term, and defines the related term "student with a disability." The substitute does not include a definition of "specific learning disability," which was included in the original.

The remaining provisions of the original were conforming changes, primarily to reflect those changes in definitions. These included conforming changes to the eligibility criteria for participation in the special education program, whereas the substitute makes substantive revisions other than terminology updates to those criteria.

The remaining substantive provisions of the substitute appear only in that version and relate to the following:

- requirements for a district relating to dyslexia screening, parental notification of screening results, and intervention through a certain reading instruction program for students determined to be at risk;
- commissioner rulemaking related to the implementation of those district requirements;
- the SBOE duty to develop and update certain guidance information for public school districts;
- certain updates and revisions to requirements for a district improvement plan, a regional plan for the coordination of services to children with disabilities, and the statewide plan for special education;
- authority for a district to employ certain persons to provide services to students with dyslexia and related disorders on the basis of qualifications other than teacher certification or a teaching permit in special education;
- restrictions on the allocation of foundation school program funding attributable to the dyslexia allotment and to applicable portions of the special education allotment; and
- repeals of provisions relating to the following:
 - required dyslexia screening under an SBOE-approved program and related provisions;
 - a statewide classroom technology plan for accommodating students with dyslexia; and
 - a TEA-developed list of dyslexia training opportunities that satisfy certain continuing education requirements.

The substitute also includes the following procedural provisions that were not in the original:

- a specification that the bill's provisions apply beginning with the 2021-2022 school year;
- a requirement for the use of negotiated rulemaking procedures;
- a transitional requirement for each district to notify applicable parents or persons with parental standing of the right to request a full individual evaluation; and
- a requirement for TEA to provide specified informal guidance to districts by September 1, 2021.

The substitute changes the bill's effective date from the original date of September 1, 2021, to on passage or September 1, 2021, if the bill does not receive the necessary vote for immediate effect.