

BILL ANALYSIS

Senate Research Center
2001S1054/1

C.S.S.B. 1735
By: Cain
Education
4/6/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Recently, the federal Individuals with Disabilities Education Act was reauthorized by the United States Congress, and the final implementing regulations were published. These new regulations necessitate the amendment of state statutes to reflect new federal law. C.S.S.B. 1735 updates current state law to conform to the revised federal law.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 29.002, Education Code, to redefine “special services.”

SECTION 2. Amends Section 29.004, Education Code, as follows:

Sec. 29.004. New heading: FULL INDIVIDUAL AND INITIAL EVALUATION. Requires a written report of a full individual and initial evaluation, rather than a comprehensive individual assessment, of a student for purposes of special education services to be completed not later than the 60th calendar day following the date on which the referral for the evaluation was initiated by certain individuals. Makes a conforming change.

SECTION 3. Amends Sections 29.005(a) and (c), Education Code, to require a school district, before a child is enrolled in a special education program of the district, to establish a committee composed of the persons required under 20 U.S.C. Section 1401(11), rather than 20 U.S.C. Section 1401(20). Makes a conforming change.

SECTION 4. Amends Section 29.006, Education Code, to require the governor to appoint a continuing advisory committee, composed of 17 members, under 20 U.S.C. Section 1412(a)(21), rather than 20 U.S.C. Section 1413(a)(12).

SECTION 5. Amends Section 29.012(d), Education Code, to delete existing text related to certain requirements of the memorandum of understanding. Requires the memorandum of understanding to establish criteria for determining when a public school will, rather than can, provide educational services and to provide for appropriate educational space when education services will be provided at the residential facility.

SECTION 6. Amends Section 37.004, Education Code, to require disciplinary placement of a student with disabilities, for nonemergency reasons, to occur only after a manifestation determination review has been conducted. Requires all disciplinary actions regarding a student with a disability who receives special education services to be determined in accordance with federal law and regulations, including the provision of certain assessments and plans. Requires a teacher in a disciplinary alternative education program who has a special education assignment to hold an appropriate certificate or permit for that assignment. Deletes existing text related to the placement of a student with a disability in

alternative education programs.

SECTION 7. Amends Section 37.019(c), Education Code, to provide that the term of a student's emergency placement or expulsion is subject to the requirements of 20 U.S.C. Section 1415(j) and (k), rather than Section 1415(e)(3) and 34 CFR 300.513, if the student is a student with disabilities.

SECTION 8. Amends Chapter 29A, Education Code, by adding Sections 29.016 and 29.017, as follows:

Sec. 29.016. EVALUATION CONDUCTED PURSUANT TO A SPECIAL EDUCATION DUE PROCESS HEARING. Authorizes a special education hearing officer in an impartial due process hearing brought under 20 U.S.C. 1415 to issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected of being eligible for, special education services. Provides that such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court..

Sec. 29.017. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY. Requires a student with a disability who 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, to have the same right to make educational decisions as a student without a disability, except that the school district is required to provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. Provides that all other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student. Provides that all rights accorded to parents under this subchapter or in 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution. Requires the school district, in accordance with 34 C.F.R. Section 300.5147, to notify the student and the parents of the transfer of rights under this section.

SECTION 9. Amends Section 31.006, Family Code, to provide that all educational rights accorded to the parent of a student, including the right to make education decisions under Section 151.003(a)(10), transfer to the minor whose disabilities are removed for general purposes, except as provided by federal law.

SECTION 10. Amends Section 26.002, Education Code, to require all rights of a parent under Title 2 of this code and all educational rights under Section 151.003(a)(10), Family Code, to be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order, except as provided by federal law.

SECTION 11. Repealer: Section 39.030(c) regarding compiling performance data, Education Code.

SECTION 12. Makes application of this Act prospective to the 2001-2002 school year.

SECTION 13. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. No change.

SECTION 2. No change.

SECTION 3. No change.

SECTION 4. No change.

Removes proposed SECTION 5 relating to the memorandum of understanding adopted by rule by certain state agencies.

SECTION 5. Amends As Filed S.B. 1735 by redesignating SECTION 6 as SECTION 5. Requires the memorandum of understanding to establish criteria for determining when a public school will, rather than can, provide educational services and to provide for appropriate educational space when education services will be provided at the residential facility.

SECTION 6. Amends As Filed S.B. 1735 by redesignating SECTION 7 as SECTION 6. Requires disciplinary placement of a student with disabilities, for nonemergency reasons, to occur only after a manifestation determination review has been conducted. Requires all disciplinary actions regarding a student with a disability who receives special education services to be determined in accordance with federal law and regulations, including the provision of certain assessments and plans. Requires a teacher in a disciplinary alternative education program who has a special education assignment to hold an appropriate certificate or permit for that assignment. Deletes existing text related to the placement of a student with a disability in alternative education programs.

SECTION 7. Amends As Filed S.B. 1735 to provide that the term of a student's emergency placement or expulsion is subject to the requirements of 20 U.S.C. Section 1415(j) and (k), rather than Section 1415(e)(3) and 34 CFR 300.513, if the student is a student with disabilities.

SECTION 8. Amends As Filed S.B. 1735 as follows:

Sec. 29.016. Provides that a certain order or decision of a special education hearing officer authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.

Sec. 29.017. Requires a student with a disability who 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, to have the same right to make educational decisions as a student without a disability, except that the school district is required to provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. Provides that all other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student. Provides that all rights accorded to parents under this subchapter or in 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution. Requires the school district, in accordance with 34 C.F.R. Section 300.5147, to notify the student and the parents of the transfer of rights under this section.

SECTION 9. Amends As Filed S.B. 1735 to provide that all educational rights accorded to the parent of a student, including the right to make education decisions under Section 151.003(a)(10), transfer to the minor whose disabilities are removed for general purposes, except as provided by federal law.

SECTION 10. Amends As Filed S.B. 1735 to require all rights of a parent under Title 2 of this code and all educational rights under Section 151.003(a)(10), Family Code, to be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order, except as provided by federal law.

SECTION 11. Amends As Filed S.B. 1735 to maintain existing Sections 29.011(c) and (e), Education Code.

SECTION 12. No change.

SECTION 13. No change.