

## **BILL ANALYSIS**

Senate Research Center  
81R11103 CAE-F

S.B. 2204  
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Education  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Autism is a complex neurobiological disorder that typically lasts throughout a person's lifetime. It is part of a group of disorders known as autism spectrum disorders (ASD). Symptoms can range from very mild to quite severe.

Children with autism spectrum disorders offer unique challenges to families, teachers, and other care providers, particularly in the areas of communication, social interaction, and behavior. Their varying needs require careful individualization. Research shows that with appropriate intervention, almost 50 percent of children with autism can become indistinguishable from the mainstream population. However, if proper services are not provided, adults with autism often require high-level care or institutionalization.

In the 2007-2008 school year, 42 out of the 101 Texas schoolchildren placed into private residential treatment facilities had autism. These placements were the only private placements reported that are part of the required continuum of special education placement options for students with disabilities under the Individuals with Disabilities Education Act.

As proposed, S.B. 2204 creates a public school enhancement program that provides an opportunity for students with autism to improve educational results and life outcomes through an interdisciplinary layering of resources. The bill ensures that educators and parents have the necessary tools to improve educational results for children with autism by supporting system improvement activities that will provide timely access to community-based services for high-risk students with autism. The supporting system improvement activities will also allow eligible students the option to access research-based services through a qualified community provider by using the funding they would be entitled to at the district in which the student resides. S.B. 2204 also provides for a transition plan back into public school, which includes the provision of educator training necessary to enable the student's success in public school and achieve long-term positive outcomes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 29.409, 29.410, 29.413, and 29.414, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 29, Education Code, by adding Subchapter K, as follows:

#### **SUBCHAPTER K. AUTISM INTERDISCIPLINARY ENHANCEMENT PROGRAM**

Sec. 29.401. DEFINITIONS. Defines "parent," "program," and "qualifying community provider" (provider).

Sec. 29.402. PROGRAM. Authorizes an eligible student under Section 29.403 to, at the option of the student's parent, access services as provided by Section 29.404 through a provider.

Sec. 29.403. ELIGIBLE STUDENT. (a) Sets forth the eligibility requirements for a student to participate in the autism interdisciplinary enhancement program (program).

(b) Requires a school district, each school year, to provide written notice of the program to the parent of a student who is eligible to participate in the program under Subsection (a) and allow the parent an opportunity to enroll the student in the program.

(c) Authorizes a student who establishes eligibility under this section to continue participating in the program until the autism interdisciplinary enhancement team established for the student as required by Section 29.407 determines that it is appropriate for the student to make the transition back into the public school system.

Sec. 29.404. FINANCING OF SERVICES PROVIDED BY QUALIFYING COMMUNITY PROVIDER. (a) Entitles the provider, for a student who accesses services through a provider under this subchapter, to an annual amount of funding that is equal to the amount of funding to which the school district in which the student resides would be entitled under Chapter 42 (Foundation School Program) for the student. Requires the Texas Education Agency (TEA) to directly distribute the funding to the provider.

(b) Requires the parent of an eligible student, for an eligible student to participate in the program, to apply to TEA on behalf of the student not later than a date specified by the commissioner of education (commissioner). Requires that the application specify the provider whose services the student plans to access and demonstrate that the student has been accepted by that provider. Requires TEA, on receiving the application from the parent of an eligible student, to determine a student's eligibility in accordance with rules adopted under Section 29.414. Requires TEA, if TEA determines that the student is eligible for participation in the program, to notify the student's parent of the student's eligibility.

(c) Requires TEA to direct the distribution of funds to the provider whose services the student accesses on a schedule adopted by TEA after educational services have been provided. Requires TEA to require that the provider submits documentation of the student's attendance before TEA directs funds to the provider.

(d) Provides that a student who accesses services through a provider under this subchapter is included in the average daily attendance of the school district in which the student resides for purposes of determining the amount of the student's program funding. Provides that the amount of the student's program funding is deducted from the total state aid to which the school district is entitled. Requires the school district, if a student resides in a school district that does not receive state aid under Chapter 42, to purchase attendance credits under Subchapter D (Purchase of Attendance Credit), Chapter 41 (Equalized Wealth Level), in an amount equal to the amount of the student's program funding.

(e) Provides that the student's program funding is the entitlement of the student, under the supervision of the student's parent, and not that of any community provider.

(f) Prohibits a provider from sharing a student's program funding with or refunding or rebating a student's program funding to the parent or the student in any manner.

(g) Prohibits a student's program funding from being financed by money appropriated from the available school fund.

Sec. 29.405. PARTICIPATION BY QUALIFYING COMMUNITY PROVIDERS. (a) Requires a provider, to participate in the program, to be approved as a nonpublic community provider by the commissioner; not advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion; comply with all health and safety laws applicable to nongovernmental schools;

and hold a valid occupancy permit if required by the municipality in which the community provider is located.

(b) Requires a provider to comply with all state laws applicable to nongovernmental schools regarding criminal background checks for employees and prohibits the provider from employing a person who is not authorized under state law to work in a nongovernmental school.

Sec. 29.406. ADMISSIONS. (a) Prohibits a provider chosen by an eligible student's parent under this subchapter from denying admission by discriminating on the basis of the student's race, ethnicity, or national origin, and is required to comply with certain federal nondiscrimination requirements.

(b) Requires a provider that has more qualified program applicants for services under this subchapter than available positions, except as provided by this subsection, to fill the available program positions by a random selection process. Authorizes a community provider, to achieve continuity in education, to give preference among program applicants to a previously enrolled student and to other students residing in the same household as a previously enrolled student.

(c) Authorizes a provider to submit a written request for student records from the public school previously attended by an eligible student. Requires the public school, not later than the 10th working day after the date the public school receives the request, to deliver to the provider a copy of the school's complete student records for that student, including attendance records, disciplinary records, past results of any assessment instruments administered to the student, the student's individualized educational program, and any other comprehensive assessments from each school the student previously attended. Requires a public school that is required to release student records under this subsection to comply with any applicable provision of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232q).

Sec. 29.407. AUTISM INTERDISCIPLINARY ENHANCEMENT TEAM. (a) Requires that an autism interdisciplinary enhancement team (team) be established for each student enrolled in the program. Requires the team to consist of a representative from the school district in which the student resides, a representative of the provider, and a parent of the student. Authorizes the team to include a member of the community with knowledge and experience in autism or autism spectrum disorder.

(b) Requires the team to meet on a regular basis to develop an individual service plan for the student; monitor the progress of the student, including review of the student's assessments and progress reports; and set goals for the student, including specific timelines for the potential transition of the student back into the public school system.

(c) Requires that the plan and goals developed by the team for a student be considered and incorporated by the provider in developing the goals required to be established under Section 29.408.

(d) Requires the team, at the time the student makes the transition back into the public school system, to provide to the public school that the student will attend training in and assistance with the methodologies that have been successful with the student during the student's participation in the program. Authorizes the team to provide any support or service requested by the school.

Sec. 29.408. ACADEMIC ACCOUNTABILITY. (a) Requires a provider, each school year, to establish academic goals for each program student accessing services through the provider. Requires that the goals under this system include communication and behavior skills. Requires that the goals be developed in a manner similar to an individualized education program developed under Section 29.005 (Individualized Education Program), based on individual student assessment, and include recommendations from the student's

team. Requires the provider, every six weeks, to provide a report to the student's parent and team describing the student's progress toward achieving the goals developed for the student.

(b) Requires each provider that provides services to a student under this subchapter to annually administer the appropriate assessment instrument required under Section 39.023 (Adoption and Administration of Instruments), or a nationally norm-referenced assessment instrument approved by TEA.

(c) Requires the provider to provide the student's results on assessment instruments required under Subsection (b) to the student's parent and the student's team and the aggregated results of the assessment instruments required under Subsection (b) to the public.

Sec. 29.409. **AUTISM INTERDISCIPLINARY ENHANCEMENT TEAM TRANSITION AND COORDINATION INITIATIVE.** (a) Requires the student's team, if a student participating in the program is ready to make the transition back into the public school system, based on the student's performance on assessment instruments and other measures of progress, to assist with the transition. Requires the team to provide training in the research-based instruction that has proven effective for the student to the school district the student will attend.

(b) Requires that training by the team be funded by the regional educational service center that provides services to the school district the student will attend. Requires the regional education service center to assist in the coordination of teacher training between the school district and the qualifying community provider.

(c) Requires the provider and the team to develop appropriate training for the educators who will serve the student in the school district. Requires that the training include scientifically and behaviorally based training.

(d) Requires the team to develop procedures for the school district to use in determining the training needs of educators who will serve the student, including evaluating student counts and distribution, conducting an inventory of staff knowledge, and conducting an inventory of staff resources.

(e) Requires the team to ensure that all elements identified as necessary for the student's transition are in place before the transition occurs.

(f) Requires the team, after the transition has occurred, to meet at least once every 12 weeks at the school to monitor the transition and ensure that each aspect of the student's transition is being effectively implemented.

(g) Authorizes the commissioner to adopt rules as necessary to implement this section.

Sec. 29.410. **FINANCIAL SOLVENCY.** Authorizes the commissioner to adopt rules requiring a provider that accepts funding under this subchapter to demonstrate financial solvency.

Sec. 29.411. **QUALIFYING COMMUNITY PROVIDER AUTONOMY.** (a) Provides that a provider that accepts funding under this subchapter is not an agent or arm of the state or federal government.

(b) Prohibits the commissioner, TEA, the State Board of Education (SBOE), or any other state agency, except as provided by this subchapter, from regulating the educational program of a provider that accepts funding under this subchapter.

(c) Provides that a provider that accepts funding under this subchapter is not required to implement an individualized education program developed for the

student under Section 29.005. Provides that the student's parent and the provider are responsible for determining the services and educational program to be provided to the student in accordance with goals developed for the student under Section 29.408(a).

Sec. 29.412. RESPONSIBILITIES OF PARENT AND STUDENT. (a) Provides that it is the responsibility of the parent of an eligible student to locate and select a provider, apply for acceptance by the provider, and apply in the manner provided under Section 29.404 for participation in the program.

(b) Requires a student participating in the program to comply with the student code of conduct of the provider providing services to the student. Requires a student to receive services from the provider each school day or as otherwise determined to be appropriate for the student's needs.

Sec. 29.413. TRANSFER. (a) Authorizes an eligible student participating in the program to transfer to another provider in the manner authorized by commissioner rule. Requires the commissioner, if a student transfers to another provider under this section after the beginning of the school year, to prorate the amount of the student's program funding between the providers according to the length of the period that the student received services from each provider.

(b) Authorizes the commissioner to adopt rules regarding the frequency with which a parent is authorized to transfer an eligible student from a provider to another provider.

Sec. 29.414. RULES. Requires the commissioner to adopt rules as necessary to implement, administer, and enforce the program, including rules regarding the calculation and distribution of payments for providers and application and approval procedures for provider and student participation in the program, including timelines for the application and approval procedures.

(b) Provides that a rule adopted under this section is binding on any other state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce the program.

Sec. 29.415. PROGRAM COMPLIANCE. (a) Requires TEA to enforce this subchapter and any rule adopted under this subchapter and is authorized to withhold funds from any provider that violates this subchapter or a rule adopted under this subchapter.

(b) Authorizes the commissioner to revoke a provider's permission to participate in the program if the commissioner determines that the provider has not met the requirements provided by this subchapter, has intentionally and substantially misrepresented information required by this subchapter; or has failed to refund to the state in a timely manner any overpayment of program funding made to the provider.

(c) Requires TEA, if the commissioner revokes a provider's permission to participate in the program under Subsection (b), to immediately notify the parent of an eligible student receiving services from the provider of the revocation.

Sec. 29.416. LIABILITY. Provides that TEA is not civilly liable for any action arising as the result of a student's participation in the program.

Sec. 29.417. EVALUATION OF PROGRAM. (a) Requires the commissioner to designate an impartial organization with experience in evaluating programs similar to the program established under this subchapter to conduct an annual evaluation of the program. Requires that the evaluation be conducted without the use of state funds.

(b) Requires that an evaluation under this section compare differences between providers and public schools and to include consideration of certain factors.

(c) Requires that the evaluation apply appropriate analytical and behavioral science methodologies to ensure public confidence in evaluation.

(d) Requires the commissioner, not later than December 1, 2012, to submit to each member of the legislature a copy of the evaluation conducted under this section.

(e) Requires school districts and providers to cooperate with the organization conducting the evaluation and are required to provide student assessment instrument results and any other information necessary to complete the evaluation in compliance with any applicable provision of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232q).

(f) Authorizes TEA to accept grants to assist in funding the evaluation.

Sec. 29.418. APPLICATION OF SUNSET ACT. (a) Provides that the program is subject to Chapter 325, Government Code (Texas Sunset Act), as if the program were a state agency. Provides that unless continued in existence as provided by that chapter, the program is abolished and this subchapter expires September 1, 2019.

(b) Requires TEA, to the extent Chapter 325, Government Code, imposes a duty on a state agency under review, to perform that duty as it relates to the program.

SECTION 2. (a) Requires TEA to make the program under Subchapter K, Chapter 29, Education Code, as added by this Act, available for participation beginning with the 2010-2011 academic school year.

(b) Requires the commissioner, as soon as practicable, to adopt and implement rules necessary for the administration of the program.

SECTION 3. Effective date: September 1, 2009.