

BILL ANALYSIS

Senate Research Center
83R22760 E

C.S.S.B. 115
By: Williams et al.
Education
4/15/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 115 will allow students in kindergarten through 12th grade who participate in a school district's special education program and have an individualized education program to attend the educational establishment best suited to their special educational needs. To facilitate access to a qualifying institution, this bill will provide special needs children with an annual scholarship amount equal to the student's special education allotment from the state that may be used to offset school costs. For purposes of this bill a qualifying school is defined as a nongovernmental community-based educational establishment that exists for the educational needs of elementary and secondary students with disabilities.

C.S.S.B. 115 amends current law relating to a school choice program for certain students with disabilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Section 29.359, Education Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER J. SCHOOL CHOICE PROGRAM FOR STUDENTS WITH DISABILITIES

Sec. 29.351. DEFINITIONS. Defines "parent," "program," and "qualifying school" in this subchapter.

Sec. 29.352. PROGRAM. Authorizes an eligible student under Section 29.353, at the option of the student's parent, to:

- (1) attend any public school in the school district in which the student resides as provided by Subchapter G (Public Education Grant Program);
- (2) subject to the limitations of Section 29.203 (Financing), attend a public school in a district other than the district in which the student resides as provided by Subchapter G; or
- (3) receive a scholarship as provided by Section 29.354 to pay the costs of attending a qualifying school.

Sec. 29.353. ELIGIBLE STUDENT. (a) Provides that a student is eligible to participate in the school choice program described by this subchapter if:

- (1) the student is in kindergarten through grade 12 and eligible under Section 29.003 (Eligibility Criteria) to participate in a school district's special education program; and

(2) an individualized education program has been developed for the student under Section 29.005 (Individualized Education Program).

(b) Requires a school district to provide written notice of the program to the parent of a student who is eligible to participate in the program under Subsection (a). Requires that the notice under this subsection inform the parent that a qualifying school is not subject to laws regarding the provision of education services in the same manner as a public school, and a student with disabilities attending a qualifying school may not receive the services a student with disabilities attending a public school is entitled to receive under federal and state law. Requires that the notice provide information regarding rights of a student with disabilities is entitled to under federal and state law if the student attends a public school, including:

(1) rights provided under the Individuals With Disabilities Education Act (20 U.S.C. Section 1400 et. seq.), including:

(A) an individualized education program;

(B) education services provided in the least restrictive environment;

(C) instruction from certified teachers;

(D) due process hearings to ensure proper and full implementation of an individualized education program;

(E) transition and planning services; and

(F) supplementary aids and services;

(2) rights provided under Subchapter A (Special Education Program)

(3) other rights provided under federal or state law.

(c) Authorizes a student who establishes eligibility under the section to continue participating in the program until the earlier of the date the student graduates from high school or the student's 22nd birthday.

Sec. 29.354. FINANCING; SCHOLARSHIP. (a) Entitles a student who attends a qualifying school under this subchapter to receive an annual scholarship in an amount 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 that the amount of the scholarship be reduced to the amount necessary to pay the costs of attending the qualifying school if the cost of attending the qualifying school is less than the amount the student would be entitled to under this subsection.

(b) Requires the Texas Education Agency (TEA), on application by the parent of an eligible student, to determine a student's eligibility in accordance with rules adopted under Section 29.359. Requires TEA, if TEA determines that the student is eligible for participation in the program, to issue a scholarship certificate to the parent. Requires the parent to endorse and present the certificate to the qualifying school chosen by the parent.

(c) Requires the qualifying school the student attends to endorse and present the student's scholarship certificate with documentation relating to the costs for the student to attend the qualifying school to TEA to receive payment. Requires TEA to distribute to the qualifying school the amount of the student's scholarship under Subsection (a).

(d) Requires TEA to direct the distribution of funds to the qualifying school the student attends on a monthly pro rata basis after educational services have been provided. Requires TEA to require that the qualifying school submit documentation of the student's attendance before TEA directs funds to the qualifying school. Requires that the payment be made not later than the 30th day after the date on which TEA receives from the qualifying school a request for payment.

(e) Provides that the student's scholarship is the entitlement of the student, under the supervision of the student's parent, and not that of any school.

(f) Prohibits a qualifying school from sharing a student's scholarship with or refunding or rebating a student's scholarship to the parent or the student in any manner.

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

Sec. 29.355. PARTICIPATION BY QUALIFYING SCHOOLS. Requires a qualifying school, to participate in the program, to:

(1) be accredited by or have filed an application for accreditation by an accrediting association recognized by the commissioner of education (commissioner) to accredit nongovernmental schools in this state;

(2) not advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion; and

(3) agree to fully comply with the individualized education program developed for a student under Section 29.005 (Individualized Education Program).

Sec. 29.356. ADMISSIONS. (a) Provides that a qualifying school chosen by an eligible student's parent under this subchapter:

(1) is prohibited from denying admission by discriminating on the basis of the student's race, ethnicity, or national origin, income status, or status as a student who qualifies for instruction in English as a second language; and

(2) is required to comply with the requirements of:

(A) 42 U.S.C. Section 2000d et seq., with respect to nondiscrimination on the basis of race, color, or national origin; and

(B) Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), with respect to nondiscrimination on the basis of disability.

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

(c) Authorizes a qualifying school to submit a written request for student records from the public school previously attended by an eligible student. Requires the public school, on receipt of a request submitted under this subsection, to in a timely manner deliver to the qualifying school a copy of the public 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 education 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 1232g).

Sec. 29.357. ACCOUNTABILITY. (a) Requires each qualifying school that enrolls a student under this subchapter to annually administer in the spring the appropriate assessment instrument required under Section 39.023 (Adoption and Administration of Instruments) or a nationally norm-referenced assessment instrument approved by TEA.

(b) Requires the school to provide the student's results to the student's parent and the aggregated results of the assessment instruments to the public.

Sec. 29.358. QUALIFYING SCHOOL AUTONOMY. (a) Provides that a qualifying school that accepts a scholarship 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, or any other state agency, except as provided by this subchapter, from regulating the educational program of a qualifying school that accepts a scholarship under this subchapter.

Sec. 29.359. (a) 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 qualifying schools, and application and approval procedures for qualifying schools and student participation in the program.

(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. 29.360. PROGRAM COMPLIANCE. (a) Requires TEA to respond to and investigate any complaint or dispute arising under this subchapter.

(b) Requires TEA to enforce this subchapter and any rule adopted under this subchapter and authorizes TEA to withhold funds from any school district or qualifying school that violates this subchapter or a rule adopted under this subchapter.

SECTION 2. Amends Section 29.202(a), Education Code, to provide that a student is eligible to receive a public education grant or to attend another public school in the district in which the student resides under this subchapter if certain criteria are met, including if the student is eligible to participate in the school choice program under Subchapter J, and makes nonsubstantive changes.

SECTION 3. (a) Requires TEA to make the school choice program as provided by Subchapter J, Chapter 29, Education Code, as added by this Act, available for participation beginning with the 2013-2014 academic school year.

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

SECTION 4. (a) Authorizes the constitutionality and other validity under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, to be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code.

(b) Provides that an appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or

otherwise determining that all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) Authorizes an interlocutory appeal, if the judgment or order is interlocutory, to be taken from the judgment or order and provides that an interlocutory appeal is an accelerated appeal.

(d) Authorizes a district court in Travis County to grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act.

(e) Provides that there is a direct appeal to the Supreme Court of Texas (supreme court) from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act.

(f) Provides that the direct appeal is an accelerated appeal.

(g) Provides that this section exercises the authority granted by Section 3-b (Appeal from Order Granting or Denying Injunction), Article V, Texas Constitution.

(h) Provides that the filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the supreme court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that:

(1) the applicant has a probable right to the relief it seeks on final hearing; and

(2) the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy.

(i) Provides that an appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6) (relating to the contents of notice of an accelerated appeal), 26.1(b) (relating to requiring a notice of appeal for an accelerated appeal to be filed by a certain deadline), 28.1 (Accelerated Appeals), 32.1(g) (relating to certain information required in a docketing statement filed in appellate court for accelerated appeals), 35.3(c) (relating to the responsibility for ensuring that an appellate record is timely filed), 37.3(a)(1) (relating to a notice of late record for civil cases), 38.6(a) (relating to requiring an appellant of an accelerated appeal to file a brief by a certain deadline) and (b) (relating to requiring an appellee of an accelerated appeal to file a brief by a certain deadline), 40.1(b) (relating to the preferential order of decision for an accelerated appeal), and 49.4 (Accelerated Appeals).

SECTION 5. Effective date: upon passage or September 1, 2013.