

AN ACT

relating to an enhanced quality full-day prekindergarten program provided by public school districts in conjunction with community providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.104(b), Education Code, is amended to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

(F) special education programs under Subchapter

1 A, Chapter 29;

2 (G) bilingual education under Subchapter B,  
3 Chapter 29;

4 (H) prekindergarten programs under Subchapter E  
5 or E-1, Chapter 29;

6 (I) extracurricular activities under Section  
7 33.081;

8 (J) discipline management practices or behavior  
9 management techniques under Section 37.0021;

10 (K) health and safety under Chapter 38;

11 (L) public school accountability under  
12 Subchapters B, C, D, and G, Chapter 39;

13 (M) the requirement under Section 21.006 to  
14 report an educator's misconduct; and

15 (N) intensive programs of instruction under  
16 Section 28.0213.

17 SECTION 2. Section 28.002(1), Education Code, is amended to  
18 read as follows:

19 (1) A school district shall require a student enrolled in  
20 full-day prekindergarten, in kindergarten, or in a grade level  
21 below grade six to participate in moderate or vigorous daily  
22 physical activity for at least 30 minutes throughout the school  
23 year as part of the district's physical education curriculum or  
24 through structured activity during a school campus's daily recess.  
25 To the extent practicable, a school district shall require a  
26 student enrolled in prekindergarten on less than a full-day basis  
27 to participate in the same type and amount of physical activity as a

1 student enrolled in full-day prekindergarten. A school district  
2 shall require students enrolled in grade levels six, seven, and  
3 eight to participate in moderate or vigorous daily physical  
4 activity for at least 30 minutes for at least four semesters during  
5 those grade levels as part of the district's physical education  
6 curriculum. If a school district determines, for any particular  
7 grade level below grade six, that requiring moderate or vigorous  
8 daily physical activity is impractical due to scheduling concerns  
9 or other factors, the district may as an alternative require a  
10 student in that grade level to participate in moderate or vigorous  
11 physical activity for at least 135 minutes during each school week.  
12 Additionally, a school district may as an alternative require a  
13 student enrolled in a grade level for which the district uses block  
14 scheduling to participate in moderate or vigorous physical activity  
15 for at least 225 minutes during each period of two school weeks. A  
16 school district must provide for an exemption for:

17 (1) any student who is unable to participate in the  
18 required physical activity because of illness or disability; and

19 (2) a middle school or junior high school student who  
20 participates in an extracurricular activity with a moderate or  
21 vigorous physical activity component that is considered a  
22 structured activity under rules adopted by the commissioner.

23 SECTION 3. Section 28.006, Education Code, is amended by  
24 adding Subsections (d-2) and (d-3) to read as follows:

25 (d-2) A school district that participates in the grant  
26 program under Subchapter E-1, Chapter 29, shall include  
27 student-level results of reading instruments administered at the

1 kindergarten and first and second grade levels in the district's  
2 Public Education Information Management System (PEIMS) report.

3 (d-3) If a school district that participates in the grant  
4 program under Subchapter E-1, Chapter 29, administers a reading  
5 instrument that does not provide information in a form that can be  
6 reported to the agency on the Public Education Information  
7 Management System (PEIMS) report, the commissioner shall adopt an  
8 alternative reporting method that allows the district to submit  
9 student-level results of reading instruments administered by the  
10 district at the kindergarten and first and second grade levels.

11 SECTION 4. Chapter 29, Education Code, is amended by adding  
12 Subchapter E-1 to read as follows:

13 SUBCHAPTER E-1. ENHANCED QUALITY FULL-DAY PREKINDERGARTEN PROGRAM

14 Sec. 29.164. DEFINITION. In this subchapter, "enhanced  
15 program" or "program" means an enhanced quality full-day  
16 prekindergarten program provided free of tuition or fees in  
17 accordance with this subchapter.

18 Sec. 29.165. ENHANCED QUALITY FULL-DAY PREKINDERGARTEN  
19 PROGRAM GRANTS. (a) From funds appropriated for that purpose, the  
20 commissioner by rule shall establish a grant program under which  
21 grants are awarded to school districts to implement an enhanced  
22 quality full-day prekindergarten program for children eligible for  
23 classes under Section 29.153.

24 (b) A school district may apply to the commissioner to  
25 participate in the grant program. In awarding grants under this  
26 subchapter for each school year, the commissioner shall give  
27 priority in the order listed to the following school districts:

1           (1) school districts that receive grant funding from  
2 the commissioner for early childhood education in a lesser amount  
3 than the amount provided for that purpose during the 2008-2009  
4 school year and demonstrate above-average student performance for  
5 the preceding three school years on the assessment instruments  
6 administered under Section 39.023 to students in the third grade;  
7 and

8           (2) school districts that provide services to eligible  
9 prekindergarten students and demonstrate above-average student  
10 performance for the preceding three school years on the assessment  
11 instruments administered under Section 39.023 to students in the  
12 third grade.

13           (c) A school district may not enroll more than 22 students  
14 in a program class and must maintain an average ratio in the program  
15 of not less than one certified teacher or teacher's aide for each 11  
16 students. Each program class must have at least one certified  
17 teacher.

18           (d) A certified teacher in the program must have a minimum  
19 of nine semester credit hours of college education courses  
20 emphasizing early childhood education.

21           (d-1) If a certified teacher who meets the requirements of  
22 Subsection (d) is unavailable, a community provider contracting  
23 with a school district under this subchapter may employ a teacher  
24 for the program who has a minimum of three years experience in early  
25 childhood education, who is certified as a Child Development  
26 Associate by the Council for Professional Recognition, and who is  
27 taking one or more college education courses that emphasize early

1 childhood education. Not later than the third anniversary of the  
2 date the community provider contracts with the district, the  
3 community provider must employ a teacher who meets the requirements  
4 of Subsection (d).

5 (e) A school district must select and implement a curriculum  
6 for the program that includes the prekindergarten guidelines  
7 established by the agency.

8 (f) A program is subject to any other requirements imposed  
9 by law that apply to a prekindergarten program not provided in  
10 accordance with this subchapter, except that to the extent a  
11 conflict exists between this subchapter and any other provision of  
12 law, this subchapter prevails.

13 (g) The commissioner may accept, solicit, and use federal or  
14 private grant funds and gifts available for that purpose to fund  
15 additional or increased grants under this section and Section  
16 29.155.

17 Sec. 29.166. CONTRACTS WITH COMMUNITY PROVIDERS REQUIRED.

18 (a) A school district that provides an enhanced program shall use  
19 at least 20 percent of grant funds provided under this subchapter to  
20 contract with one or more eligible community providers to provide  
21 the program.

22 (b) The commissioner may waive the requirement under  
23 Subsection (a) on an annual basis if a school district provides  
24 documentation acceptable to the commissioner that:

25 (1) the area served by the district does not have a  
26 sufficient number of eligible community providers;

27 (2) after a good faith effort, the school district did

1 not receive any applications or other indications of interest in  
2 contracting with the district from eligible community providers; or  
3 (3) after a good faith effort and for good cause, the  
4 district and eligible community providers interested in  
5 contracting with the district were unable to reach an agreement.

6 (c) Not later than the 30th day after the date the  
7 commissioner receives a request for a waiver under Subsection (b),  
8 the commissioner shall send a written notice to the school district  
9 and the affected community provider, if applicable, granting or  
10 denying the request. A school district or community provider  
11 affected by a decision of the commissioner under this subsection  
12 may appeal the decision as provided by Section 7.057.

13 Sec. 29.167. ELIGIBLE COMMUNITY PROVIDERS. (a) To be  
14 eligible to contract with a school district to provide an enhanced  
15 program, a community provider must be center-based and licensed by  
16 and in good standing with the Department of Family and Protective  
17 Services. For purposes of this subsection, a community provider is  
18 in good standing with the Department of Family and Protective  
19 Services if the department has not taken an action against the  
20 provider's license under Section 42.071, 42.072, or 42.078, Human  
21 Resources Code, during the 12-month period preceding the date of a  
22 contract with a school district.

23 (b) Except as provided by Subsection (c), an eligible  
24 community provider must also meet one of the following criteria:

25 (1) the community provider must be certified through  
26 the school readiness certification system established under  
27 Section 29.161;

1           (2) the community provider must be a Texas Early  
2 Education Model participant;

3           (3) the community provider must be a Texas Rising Star  
4 Provider with a three-star certification or higher; or

5           (4) the community provider must be accredited by a  
6 research-based, nationally recognized, and universally accessible  
7 accreditation system approved by the agency that requires a  
8 developmentally appropriate curriculum that includes math,  
9 science, social studies, literacy, physical development, and  
10 social and emotional components.

11           (c) Notwithstanding failure to satisfy the requirements of  
12 Subsection (b) and subject to Subsection (d), a community provider  
13 otherwise eligible to contract with a school district under  
14 Subsection (a) may contract with a district if:

15           (1) the community provider meets quality criteria  
16 adopted by the district that are:

17                   (A) based on the best available peer-reviewed  
18 research; and

19                   (B) made available to the public in a timely  
20 manner; and

21           (2) the commissioner approves the arrangement.

22           (d) A community provider contracting with a school district  
23 as provided by Subsection (c) must meet the requirements for  
24 eligibility provided by Subsection (b) not later than the first  
25 anniversary of the date the contract was executed.

26           Sec. 29.168. WRITTEN CONTRACT REQUIRED. A school district  
27 and a community provider contracting under this subchapter shall



1 enter a written contract governing the services to be provided by  
2 the community provider. The contract may provide for, but is not  
3 limited to, the following types of partnerships:

4 (1) the school district leases school facilities to or  
5 from the community provider;

6 (2) the school district employs a certified teacher  
7 for the prekindergarten class and the community provider supplies  
8 the school facilities and all other personnel and supplies; or

9 (3) the community provider supplies the school  
10 facilities, certified teachers, personnel, and supplies.

11 Sec. 29.169. FUNDING TO COMMUNITY PROVIDER. (a) Except as  
12 provided by Subsection (b), the amount of reimbursement provided by  
13 a school district to a community provider is negotiable between the  
14 district and the community provider based on the services provided.

15 (b) For each school district prekindergarten student in  
16 attendance in an enhanced program class provided by a community  
17 provider in which the community provider supplies the school  
18 facilities, certified teachers, personnel, and supplies, a school  
19 district shall reimburse the community provider in an amount not  
20 less than the sum of:

21 (1) the amount of the district's adjusted basic  
22 allotment, as determined under Section 42.102 or 42.103, as  
23 applicable, multiplied by 1.0; and

24 (2) the amount of any additional funding received by  
25 the district for the student under Subchapter C, Chapter 42.

26 (c) Funding provided under this section does not affect a  
27 community provider's eligibility to receive any other local, state,

1 or federal funds to provide before-school, after-school, and summer  
2 child care.

3 Sec. 29.170. DISCRIMINATION BY COMMUNITY PROVIDER  
4 PROHIBITED. A community provider may not deny enhanced program  
5 services to a student on the basis of the student's race, religion,  
6 sex, ethnicity, national origin, or disability.

7 Sec. 29.171. ANNUAL ENHANCED PROGRAM REPORT. (a) A school  
8 district operating an enhanced program shall provide an annual  
9 report to the agency not later than August 1 of each year. The  
10 report must include:

11 (1) the percentage of the grant funds provided under  
12 this subchapter used by the district to contract with community  
13 providers; and

14 (2) data components, approved by the commissioner,  
15 that illustrate acquisition of knowledge and skills consistent with  
16 the prekindergarten guidelines established by the agency and  
17 student-level progress towards school readiness.

18 (b) The commissioner may not require a district or recipient  
19 of grant funds to participate in the school readiness certification  
20 system established under Section 29.161.

21 Sec. 29.172. COLLECTION AND REPORTING OF INFORMATION. The  
22 agency shall:

23 (1) collect and maintain information that is reported  
24 by a school district to the agency under Section 28.006 and  
25 information from the assessment instruments administered under  
26 Section 39.023 to students in the third grade;

27 (2) produce longitudinal student performance reports

1 using student-level information collected for consecutive grade  
2 levels; and

3 (3) make the reports available and accessible to  
4 parents and the general public.

5 Sec. 29.173. ENHANCED PROGRAM EVALUATION. (a) Using  
6 information provided to the agency under Sections 29.171 and 29.172  
7 and using funds available for that purpose, the Legislative Budget  
8 Board shall conduct or contract for an evaluation of the  
9 effectiveness of the enhanced program regarding student  
10 performance outcomes.

11 (b) Not later than December 1, 2012, the board shall deliver  
12 an interim report to the legislature containing the preliminary  
13 results of the evaluation.

14 (c) Not later than December 1, 2016, the board shall deliver  
15 to the legislature a final report regarding the program.

16 (d) This section expires December 1, 2016.

17 Sec. 29.174. DUTIES OF COMMISSIONER. The commissioner  
18 shall:

19 (1) require regional education service centers to  
20 assist:

21 (A) school districts in:

22 (i) informing parents of prekindergarten  
23 options;

24 (ii) identifying eligible community  
25 providers and maintaining an updated list of eligible community  
26 providers; and

27 (iii) creating standardized forms and

1 processes for outreach to and contracts with community providers  
2 for use when considering community partnerships;

3 (B) community providers in establishing  
4 contracts with school districts under this subchapter; and

5 (C) community providers who are not eligible to  
6 contract with a school district under this subchapter by providing  
7 information regarding eligibility to contract with a school  
8 district; and

9 (2) encourage regional education service centers and  
10 school districts to use locally available child care resources and  
11 referral services.

12 Sec. 29.175. STATE FUNDING; GRANT AMOUNT. (a) From funds  
13 appropriated for the purposes of this subchapter the commissioner  
14 shall award grants as provided by this subchapter.

15 (b) The commissioner, in accordance with this subsection,  
16 shall determine the amount of each grant awarded under this  
17 subchapter. A grant must provide an amount of funding for each  
18 student in the program equal to the greater of:

19 (1) the amount to which the district would be entitled  
20 under the foundation school program for an additional student in  
21 average daily attendance on a half-day basis; or

22 (2) the amount of funding equal to the statewide  
23 average amount to which a district would be entitled under the  
24 foundation school program for an additional student in average  
25 daily attendance on a half-day basis.

26 (c) Funding provided for each program student through a  
27 grant under this subchapter is in addition to funding otherwise

1 provided for the student under Chapter 42.

2 (d) Funding provided for each school district or  
3 open-enrollment charter school through a grant under this  
4 subchapter may not exceed \$4 million annually.

5 Sec. 29.176. RULES. The commissioner may adopt rules  
6 necessary to implement this subchapter.

7 Sec. 29.177. STATE FUNDING; DIRECTIVE FOR GRANT PAYMENTS TO  
8 SCHOOL DISTRICTS. Funds provided for the operation of the enhanced  
9 program through a grant awarded under this subchapter must be paid  
10 directly to a public school district or open-enrollment charter  
11 school. Funds awarded under this subchapter may not be awarded  
12 directly to a private or nonprofit child care provider or to a  
13 private school.

14 SECTION 5. FUNDING FOR GRANTS UNDER SECTION 29.155. Funds  
15 appropriated to fund eligible prekindergarten programs under  
16 Section 29.155, Education Code, may be used in the 2009-2010 school  
17 year, with prior written approval from the governor and the  
18 Legislative Budget Board, to support at the same level of funding as  
19 the 2008-2009 school year districts that received grant funds for  
20 such programs under Section 29.155 in the 2008-2009 school year,  
21 and to fund additional districts that have received notice of grant  
22 awards for such programs for the 2009-2010 school year. If  
23 additional state or federal funds become available to support such  
24 programs for the 2010-2011 school year, the commissioner of  
25 education shall have authority and flexibility to provide funds for  
26 all such programs. If additional funds are not sufficient to fund  
27 all such programs in the 2010-2011 school year at the amount per

1 student provided in the 2009-2010 school year, funding for all  
2 participating districts shall be reduced proportionally. All funds  
3 appropriated that are not expended in the 2009-2010 school year are  
4 transferred to the 2010-2011 school year, and the commissioner may  
5 use such funds to support additional programs and services for  
6 eligible prekindergarten students.

7 SECTION 6. This Act does not make an appropriation. This  
8 Act takes effect only if a specific appropriation for the  
9 implementation of the Act is provided in a general appropriations  
10 act of the 81st Legislature.

11 SECTION 7. This Act applies beginning with the 2009-2010  
12 school year.

13 SECTION 8. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 130 was passed by the House on May 8, 2009, by the following vote: Yeas 106, Nays 31, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 130 on May 29, 2009, by the following vote: Yeas 116, Nays 27, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 130 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 26, Nays 5.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor