TCASE
TEXAS COUNCIL OF ADMINISTRATORS OF SPECIAL EDUCATION, INC.

CONCERNS REGARDING S.B. 1577

Texas Council of Administrators of Special Education
Hearing Date: April 7, 2009

This proposed state law appears to put special education programs in Texas in an apparent violation of Federal law which requires a school district to design a program to meet the educational needs of eligible students with a disability. The language in S.B. 1577 indicates that regular absences for students identified with autism or autism spectrum disorder receiving services during the school day from a health care provider are excused temporary absences under Texas state law. The services indicated in S.B. 1577 (applied behavior analysis, speech therapy and occupational therapy) are those same services many parents have requested of school districts over the past several years. For instance, applied behavior analysis is a treatment method believed by one school of practice to be the only effective means of changing the behavior of students with autism. However, the federal law and court cases have left the choice of methodology to school districts. See Fairfax County Sch. Bd. vs Knight, 49 IDELR 122 (4th Cir. 2008)(court deferred to district's experts and methodology regardless of increase in students test score at private placement).

Since school districts have a responsibility under the federal Individuals with Disabilities Education Act to establish eligibility as a student with a disability, identify needs of the student, design an educational program to meet those needs and provide access to the regular curriculum, identify any related services necessary to enhance the ability of the student to be successful and monitor services in order to determine future needs for the student, they are not in a position to abdicate their role to a parent. For students with a disability a district must meet the minimum requirements set out in federal law. States can exceed the law but not do less than is required. Districts cannot transfer it's obligation to provide services for a student with a disability to another entity. A school district through an admission, review and dismissal committee designs an educational program, including related services, and determines the time needed to accomplish the goals set out in the individualized education plan. For most students this includes the full school day.

To short circuit this process is to create a situation of potential legal liability for a school district. If, at a future time, the student is not successful in school, the parent or guardian can bring legal action against the district for failing to provide appropriately for the student and causing the student's failure. The parent or guardian can also say, as some have done in the past, that the district should have known better than to shorten the student's school day in order to accommodate the wishes of a parent. A parent is definitely a partner in the planning process and has knowledge of their child unavailable first hand from anyone else. However, this does not excuse a school district from complying with the legal requirements of the law regarding meeting the needs of students as determined by the ARD/IEP committee.

Even though state law and rule provide districts flexibility in accepting reasonable and necessary absences of a student, and federal law and state law say the ARD committee can determine the school day for a student with disabilities, it does not state that all absences meet the criteria for being excused.

As stated earlier school district's have a responsibility for meeting the needs of a student identified with a disability. TCASE is concerned that this legislation puts school districts in a vulnerable position legally so cannot support S.B. 1577.