

BILL ANALYSIS

Senate Research Center
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H.B. 2619
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, court orders do not necessarily identify the child's education decision-maker or delineate which person holds specific education decision-making rights, such as school placement, or who may attend school activities. The absence of this specific designation can create confusion for caseworkers, foster parents, and educators. Naming who has specific education rights and duties, including the authority to make specific education decisions, will clarify roles and responsibilities. H.B. 2619 outlines the appointment of a surrogate parent for children in special education programs and the identification of the education decision-maker in permanency hearing procedures. Additionally, H.B. 2619 outlines what notices schools should send to educational decision-makers.

It is important for attorneys and guardians ad litem to be knowledgeable about the child's educational needs and goals, including special education, whether the child is at grade level, and school behavioral interventions. H.B. 2619 makes these part of the attorney ad litem and guardian ad litem duties.

When children in foster care miss school for court-ordered family visits and other appointments, the students are given unexcused absences. H.B. 2619 adds mental health appointments, family visitations, and appointments with health care professionals to the list of excused absences.

H.B. 2619 requires the Department of Family and Protective Services to develop an educational stability plan. H.B. 2619 requires schools to transfer the records of students in substitute care who switch schools no later than the tenth working day after the date the student begins enrollment.

H.B. 2619 amends current law relating to the educational needs of children in the conservatorship of the Department of Family and Protective Services.

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 107.002, Family Code, by adding Subsection (i), to require a guardian ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services (DFPS) to, before each scheduled hearing under Chapter 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services), determine whether the child's educational needs and goals have been identified and addressed.

SECTION 2. Amends Section 107.004, Family Code, by adding Subsection (d-2), to require an attorney ad litem appointed to represent a child in the managing conservatorship of DFPS to, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

SECTION 3. Amends Subchapter A, Chapter 263, Family Code, by adding Section 263.0025, as follows:

Sec. 263.0025. APPOINTMENT OF SURROGATE PARENT. (a) Authorizes the court, if a child in the temporary or permanent conservatorship of DFPS is eligible under Section 29.003 (Eligibility Criteria), Education Code, to participate in a school district's special education program, to, when necessary to ensure that the educational rights of the child are protected, appoint a surrogate parent who is willing to serve in that capacity, and meets the requirements of 20 U.S.C. Section 1415(b) and Section 29.001(10) (relating to requiring the Texas Education Agency (TEA) to develop a statewide design for the delivery of services to children with disabilities in this state that includes rules for the administration and requires TEA to also develop and implement a statewide plan with programmatic content that includes procedures designed to ensuring that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b)), Education Code.

(b) Requires the court, in appointing a surrogate parent for a child, to give preferential consideration to a foster parent of the child as required under Section 29.015 (Foster Parents), Education Code.

(c) Requires the court, if the court does not appoint a child's foster parent to serve as the child's surrogate parent, to give consideration to a relative or other designated caregiver as defined by Section 264.751 (Definitions), or a court-appointed volunteer advocate who has been appointed to serve as the child's guardian ad litem, as provided by Section 107.031(c) (relating to authorizing a court-certified volunteer advocate appointed under this section to be assigned to act as a surrogate parent for the child).

(d) Prohibits the following persons from being appointed as a surrogate parent for the child: DFPS, TEA, a school or school district, or any other agency that is involved in the education or care of the child.

SECTION 4. Amends Subchapter A, Chapter 263, Family Code, by adding Section 263.004, as follows:

Sec. 263.004. NOTICE TO COURT REGARDING EDUCATION DECISION-MAKING. (a) Requires DFPS, unless the rights and duties of DFPS under Section 153.371(10) (relating to providing that unless limited by court order or other provisions of this chapter, certain entities appointed as a managing conservator of the child have certain rights and duties, including the right to designate the primary residence of the child and to make decisions regarding the child's education) to make decisions regarding the child's education have been limited by court order, to file with the court a report identifying the name and contact information for each person who has been designated by DFPS to make educational decisions on behalf of the child, and assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code, for purposes of decision-making regarding special education services, if applicable.

(b) Requires that the report required by Subsection (a), not later than the fifth day after the date an adversary hearing under Section 262.201 (Full Adversary Hearing; Findings of the Court) or Section 262.205 (Hearing When Child Not in Possession of Governmental Entity) is concluded, be filed with the court and a copy is required to be provided to each person entitled to notice of a permanency hearing under Section 263.301 (Notice), and the school the child attends.

(c) Requires DFPS, if a person other than a person identified in the report required by Subsection (a) is designated to make educational decisions or assigned to serve as a surrogate parent, to file with the court an updated report that includes the information required by Subsection (a) for the designated or assigned

person. Requires that the updated report be filed not later than the fifth day after the date of designation or assignment.

SECTION 5. Amends Section 263.306, Family Code, as follows:

Sec. 263.306. PERMANENCY HEARINGS: PROCEDURE. (a) Requires the court, at each permanency hearing, to:

(1)-(7) Makes no change to these subdivisions;

(8) identify an education decision-maker for the child if one has not previously been identified;

(9)-(12) Makes nonsubstantive changes;

(13) if the child is committed to the Texas Juvenile Justice Department (TJJD), rather than the Texas Youth Commission (TYC), or released under supervision by TJJD, rather than TYC, determine whether the child's needs for treatment, rehabilitation, and education are being met; and

(14) Makes a nonsubstantive change.

(b) Requires the court to also review the service plan, permanency report, and other information submitted at the hearing to determine certain information, including whether the child's education needs and goals have been identified and addressed. Makes nonsubstantive changes.

SECTION 6. Amends Section 263.503(a), Family Code, as follows:

(a) Requires the court, at each placement review hearing, to determine whether:

(1)-(7) Makes no change to these subdivisions;

(8) Makes a nonsubstantive change;

(9) if the child is committed to TJJD, rather than TYC, or released under supervision by TJJD, rather than TYC, the child's needs for treatment, rehabilitation, and education are being met;

(10) an education decision-maker for the child has been identified; and

(11) the child's education needs and goals have been identified and addressed.

SECTION 7. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1072, as follows:

Sec. 264.1072. EDUCATIONAL STABILITY. Requires DFPS to develop, in accordance with 42 U.S.C. Section 675, a plan to ensure the educational stability of a foster child.

SECTION 8. Amends Section 266.008(c), Family Code, as follows:

(c) Requires DFPS to make an education passport available to:

(1) any person authorized by law to make educational decisions for the foster child; and

(2)-(3) Makes nonsubstantive changes.

SECTION 9. Amends Section 25.001(g), Education Code, as follows:

(g) Entitles a student enrolled in a primary or secondary public school who is placed in the conservatorship of DFPS and at a residence outside the attendance area for the school or outside the school district to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. Deletes existing text entitling a student enrolled in high school in grade 9, 10, 11, or 12 who is placed in temporary foster care by the Texas Department of Human Services at a residence outside the attendance area for the school or outside the school district to complete high school at the school in which the student was enrolled at the time of placement without payment of tuition.

SECTION 10. Amends Section 25.007(b), Education Code, as follows:

(b) Requires TEA, in recognition of the challenges faced by students in substitute care, to assist the transition of substitute care students from one school to another by:

(1) ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day, rather than the 14th day, after the date the student begins enrollment at the school;

(2)-(7) Makes no change to these subdivisions;

(8) Makes nonsubstantive changes;

(9) requiring school districts to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b) (relating to authorizing any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law to be taken only after a certain period of time);

(D) any disciplinary actions under Chapter 37 (Discipline; Law and Order) for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out); and

(G) use of corporal punishment as provided by Section 37.0011 (Use of Corporal Punishment); and

(10) providing other assistance as identified by TEA.

SECTION 11. Amends Section 25.087(b), Education Code, as follows:

(b) Requires a school district to excuse a student from attending school for:

(1) the following purposes, including travel for those purposes:

(A)-(C) Makes no change to these paragraphs;

(D) Makes a nonsubstantive change;

(E) Makes no change to this paragraph; or

(F) for a child in the conservatorship of DFPS, attending a mental health or therapy appointment or family visitation as ordered by a court under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) or 263, Family Code; or

(2) a temporary absence resulting from an appointment with a health care professional if that student commences classes or returns to school on the same day of the appointment.

Makes nonsubstantive changes.

SECTION 12. (a) Provides that Sections 107.002(i) and 107.004(d-2), Family Code, as added by this Act, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. Provides that a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) Provides that the changes in law made by this Act to the Education Code apply beginning with the 2013-2014 school year.

SECTION 13. Effective date: September 1, 2013.