

BILL ANALYSIS

Senate Research Center

H.B. 1556
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that the foster parent of a child with a disability is the best person to act as the child's special education decision maker. H.B. 1556 seeks to clarify a foster parent's role in representing a child with a disability in the education system.

H.B. 1556 supports foster children with disabilities. If the Department of Family and Protective Services (DFPS) is the permanent managing conservator of a child, and a foster parent cares for the child, a foster parent can become the "special education decision maker" for the child under H.B. 1556. This is only if that foster parent's decision making rights have not been limited due to court intervention. The parent must complete training about the responsibilities of the education decision making process, and the foster parent may "opt out" of the role.

H.B. 1556 also sets requirements for appointment of surrogate parent appointments by courts. School districts would be required to appoint a surrogate parent if the district is unable to identify a parent for the child, or if the foster parent is unwilling to serve as the special education decision maker for the child.

20 U.S.C. § 1415 charges local school districts and state education agencies to develop policies that ensure parents and children are "guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies." State law needs to reflect federal law and allow foster parents of children with disabilities to become the rightful "special education decision maker" for the child. This would allow parents to be hands-on involved and informed about the child's educational future. H.B. 1556 takes an important step towards preventing children with disabilities in foster care from falling through the cracks.

H.B. 1556 amends current law relating to the appointment of foster parents and other qualified persons to serve as educational decision-makers for certain 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 29.015, Education Code, as follows:

Sec. 29.015. New heading: SPECIAL EDUCATION DECISION-MAKING FOR CHILDREN IN FOSTER CARE. (a) Deletes existing text requiring the school district to give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child. Redesignates existing Subsection (b) as Subsection (a) to authorize a foster parent to act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments if:

(1) the Department of Family and Protective Services (DFPS), rather than the Department of Protective and Regulatory Services, is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of DFPS to make decisions regarding special education provided to the child under Section 153.371 (Rights and Duties of Nonparent Appointed as Sole Managing Conservator), Family Code, have not been limited by court order, rather than the child has been placed with the foster parent for at least 60 days; and

(3) the foster parent agrees to participate in making special education decisions, rather than educational decisions, on the child's behalf and complete a training program, rather than a training program for surrogate parents, that complies with minimum standards established by Texas Education Agency (TEA) rule.

(4) deletes this subdivision relating to the provision that the foster parent has no interest that conflicts with the child's interests.

(b) Requires a foster parent who will act as a parent of a child with a disability as provided by Subsection (a) to complete a training program before the next scheduled admission, review, and dismissal committee meeting for the child, but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making education decisions.

(b-1) Prohibits a school district from requiring a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by DFPS, a school district, an education service center, or any other entity that receives federal funds to provide special education training to parents.

(c) Authorizes a foster parent who is denied the right to act as a parent, rather than as a surrogate parent or a parent, by a school district to file a complaint with TEA in accordance with federal law and regulations.

(d) Requires DFPS, not later than the fifth day after the date a child with a disability is enrolled in a school, to inform the appropriate school district if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this subchapter (Special Education Program).

SECTION 2. Amends Subchapter A, Chapter 29, Education Code, by adding Section 29.0151, as follows:

Sec. 29.0151. APPOINTMENT OF SURROGATE PARENT FOR CERTAIN CHILDREN. (a) Provides that this section applies to a child with a disability for whom DFPS is appointed as the temporary or permanent managing conservator of the child and the rights and duties of DFPS to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Requires that a school district, except as provided by Section 263.0025, Family Code, appoint an individual to serve as the surrogate parent for a child if the district is unable to identify or locate a parent for a child with a disability or the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) Prohibits a surrogate parent appointed by a school district from being an employee of the state, school district, or any other agency involved in the education or care of the child or from having any interest that conflicts with the interests of the child.

(d) Requires a surrogate parent appointed by a district to fulfill certain requirements.

(e) Authorizes the district to appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the child's surrogate parent.

(f) Requires that the school district, if a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the district determines that the surrogate parent is failing to perform or is not properly performing the listed duties, to consult with DFPS and appoint another person to serve as the surrogate parent for the child.

(g) Requires DFPS, on receiving notice from a school district under Subsection (f), to promptly notify the court of the failure of the appointed surrogate parent to properly perform the required duties.

SECTION 3. Amends Section 107.031(c), Family Code, to authorize an appointed court-certified volunteer advocate to be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if the volunteer advocate completes a training program for surrogate parents that complies with minimum standards established by rule by TEA, within the time specified by Section 29.015(b), Education Code.

SECTION 4. Amends Section 263.0025, Family Code, as follows:

Sec. 263.0025. New heading: EDUCATIONAL DECISION-MAKING FOR CHILDREN IN FOSTER CARE. (a) Defines "child." Deletes existing text authorizing the court, if a child meets certain criteria, when necessary to ensure that the educational rights of the child are protected, to appoint a surrogate parent who meets certain criteria.

(a-1) Authorizes a foster parent for a child to act as a parent for the child, as authorized under 20 U.S.C. Section 1415(b), if the rights and duties of DFPS to make decisions regarding the child's education under Section 153.371 have not been limited by court order and the foster parent agrees to the requirements of Sections 29.015(a)(3) and (b), Education Code.

(a-2) Provides that Sections 29.015(b-1), (c), and (d), Education Code, apply to a foster parent who acts or desires to act as a parent for a child for the purpose of making special education decisions.

(b) Authorizes the court, to ensure the educational rights of a child are protected in the special education process, to appoint a surrogate parent for the child if the child's school district is unable to identify or locate a parent for the child or the foster parent of the child is unwilling or unable to serve as a parent for the purposes of this subchapter (General Provisions). Deletes existing text requiring that the court, in appointing a surrogate parent for a child, give preferential consideration to a foster parent of the child as required under Section 29.015, Education Code.

(c) Authorizes the court, except as provided by Subsection (d), to appoint a person to serve as a child's surrogate parent if the person is willing to serve in that capacity and meets the requirements of 20 U.S.C. Section 1415(b). Deletes existing text requiring 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).

(d) Prohibits an employee of certain entities, rather than certain entities, from being appointed as a surrogate parent for the child.

(e) Authorizes the court to appoint a child's guardian ad litem or court-certified volunteer advocate, as provided by Section 107.031(c), as the child's surrogate parent.

(f) Authorizes the court, in appointing a person to serve as the surrogate parent for a child, to consider the person's ability to meet the qualifications listed under Sections 29.0151(d)(2) through (8), Education Code.

(g) Requires that the training program, if the court prescribes training for a person who is appointed as the surrogate parent for a child, comply with the minimum standards for training established by TEA rule.

SECTION 5. Effective date: September 1, 2017.