

## **BILL ANALYSIS**

C.S.H.B. 2619  
By: Naishtat  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Certain court orders are not currently required to identify the person who is authorized to make decisions about the education of a child in foster care. Interested parties assert that the absence of this specific designation creates confusion for caseworkers, foster parents, and educators and that such a designation would help to clarify roles and responsibilities. In addition, while it is important for attorneys and guardians ad litem to be knowledgeable about the child's educational needs and goals, including special education, the child's ability to meet grade-level expectations, and school behavioral interventions, current law does not include such assessments in the duties of a guardian or attorney ad litem or require a court to determine whether the child's education needs are being addressed. Furthermore, interested parties contend that certain changes to the law are necessary to allow a foster child to attend important appointments, such as mental health appointments and court-ordered family visits, without being penalized by the child's school and to ensure the development of plans for the educational stability of foster care children, including when transferring schools. C.S.H.B. 2619 seeks to address these issues to ensure that the educational needs of children in the conservatorship of the state are met.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2619 amends the Family Code to require a guardian ad litem or an attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services (DFPS), before each scheduled hearing relating to the review of a placement of a child under DFPS care, to determine whether the child's educational needs and goals have been identified and addressed.

C.S.H.B. 2619 authorizes a court, if a child in the temporary or permanent conservatorship of DFPS is eligible to participate in a school district's special education program and when necessary to ensure that the child's educational rights are protected, to appoint a surrogate parent who is willing to serve in that capacity and meets certain state and federal requirements. The bill requires the court to give preferential consideration to a foster parent of the child in appointing such a surrogate and 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 or a court-appointed volunteer advocate who has been appointed to serve as the child's guardian ad litem. The bill prohibits the appointment of DFPS, the Texas Education Agency (TEA), a school or school district, or any other agency that is involved in the education or care of the child as the child's surrogate parent.

C.S.H.B. 2619 requires DFPS, unless the right of DFPS to designate the primary residence of the child and to make decisions regarding the child's education has 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 who has been assigned to serve as the child's surrogate parent in accordance with state and federal requirements for purposes of decision-making regarding special education services, if applicable. The bill requires the report, not later than the fifth day after the date an adversary hearing in a suit by a governmental entity to protect the health and safety of a child is concluded, to be filed with the court and requires a copy to be provided to each person entitled to notice of a permanency hearing in a review of a placement of a child under DFPS care and to the school the child attends. The bill requires DFPS, if a person other than a person identified in the report 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 required information for the designated or assigned person not later than the fifth day after the date of designation or assignment.

C.S.H.B. 2619 includes identifying an education decision-maker for a child in DFPS care if one has not previously been identified among the actions required to be performed by a court at a permanency hearing and requires the court to determine whether the child's education needs and goals have been identified and addressed in reviewing the service plan, permanency report, and other information submitted at the hearing. The bill includes among the determinations the court is required to make at a placement review hearing for such a child whether an education decision-maker for the child has been identified and whether the child's education needs and goals have been identified and addressed.

C.S.H.B. 2619 requires DFPS to develop, in accordance with federal law, a plan to ensure the educational stability of a foster child. The bill includes any person authorized by law to make educational decisions for a foster child among the persons to whom DFPS is required to make an education passport for a foster child available.

C.S.H.B. 2619 amends the Education Code to remove provisions entitling a student enrolled in high school in grade 9, 10, 11, or 12 who is placed in temporary foster care by DFPS 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 the placement without payment of tuition and instead 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 and until the student successfully completes the school's highest grade level at the time of placement without payment of tuition.

C.S.H.B. 2619, in a statutory provision requiring TEA to assist the transition of substitute care students from one school to another, changes the deadline by which the school records for a student in substitute care are required to be transferred to the student's new school from not later than the 14th day to not later than the 10th working day after the date the student begins enrollment at the school. The bill expands TEA's duties in assisting that transition to include requiring school districts to provide notice to the child's education decision-maker and caseworker regarding events that may significantly impact the child's education, including requests or referrals for an evaluation under the federal Rehabilitation Act of 1973 or the special education program; admission, review, and dismissal committee meetings; manifestation determination reviews regarding the placement of students with disabilities; any disciplinary actions for which parental notice is required; citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities; required reports of restraint and seclusion; and the use of corporal punishment. The bill requires a school district to excuse a student who is a child in DFPS conservatorship from attending school for attending a mental health or therapy appointment or a specified court-ordered family visitation. The bill makes its provisions amending the Education Code applicable beginning with the 2013-2014 school year.

#### **EFFECTIVE DATE**

September 1, 2013.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2619 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Section 107.002, Family Code, is amended by adding Subsection (i) to read as follows:

(i) A guardian ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services must, before each scheduled hearing under Chapter 263, file with the court a report on the guardian ad litem's efforts to identify and address the educational needs and goals of the child.

SECTION 2. Section 107.004, Family Code, is amended by adding Subsection (d-2) to read as follows:

(d-2) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services must, before each scheduled hearing under Chapter 263, file with the court a report on the attorney ad litem's efforts to identify and address the educational needs and goals of the child.

SECTION 3. Subchapter A, Chapter 263, Family Code, is amended.

SECTION 4. Subchapter A, Chapter 263, Family Code, is amended.

**No equivalent provision.**

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 107.002, Family Code, is amended by adding Subsection (i) to read as follows:

(i) A guardian ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

SECTION 2. Section 107.004, Family Code, is amended by adding Subsection (d-2) to read as follows:

(d-2) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Section 263.306, Family Code, is amended to read as follows:

Sec. 263.306. PERMANENCY HEARINGS: PROCEDURE. (a) At each permanency hearing the court shall:

- (1) identify all persons or parties present at the hearing or those given notice but failing to appear;
- (2) review the efforts of the department or another agency in:
  - (A) attempting to locate all necessary persons;
  - (B) requesting service of citation; and
  - (C) obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, or relative of

- the child;
- (3) review the efforts of each custodial parent, alleged father, or relative of the child before the court in providing information necessary to locate another absent parent, alleged father, or relative of the child;
  - (4) return the child to the parent or parents if the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;
  - (5) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the placement of the child is in the child's best interest;
  - (6) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;
  - (7) evaluate the parties' compliance with temporary orders and the service plan;
  - (8) identify an education decision-maker for the child if one has not previously been identified;
  - (9) determine whether:
    - (A) the child continues to need substitute care;
    - (B) the child's current placement is appropriate for meeting the child's needs, including with respect to a child who has been placed outside of the state, whether that placement continues to be in the best interest of the child; and
    - (C) other plans or services are needed to meet the child's special needs or circumstances;
  - (10) [~~9~~] if the child is placed in institutional care, determine whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;
  - (11) [~~10~~] if the child is 16 years of age or older, order services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;
  - (12) [~~11~~] determine plans, services, and further temporary orders necessary to ensure that a final order is rendered before the date for dismissal of the suit under this chapter;
  - (13) [~~12~~] if the child is committed to the

Texas Juvenile Justice Department [~~Youth Commission~~] or released under supervision by the Texas Juvenile Justice Department [~~Youth Commission~~], determine whether the child's needs for treatment, rehabilitation, and education are being met; and

(14) [~~(13)~~] determine the date for dismissal of the suit under this chapter and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

(b) The court shall also review the service plan, permanency report, and other information submitted at the hearing to:

(1) determine:

(A) the safety of the child;

(B) the continuing necessity and appropriateness of the placement;

(C) the extent of compliance with the case plan;

(D) whether the child's education needs and goals have been identified and addressed;

(E) the extent of progress that has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care; and

(F) [~~(E)~~] whether the department has made reasonable efforts to finalize the permanency plan that is in effect for the child, including the concurrent permanency goals for the child; and

(2) project a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship.

No equivalent provision.

SECTION 6. Section 263.503(a), Family Code, is amended to read as follows:

(a) At each placement review hearing, the court shall determine whether:

(1) the child's current placement is necessary, safe, and appropriate for meeting the child's needs, including with respect to a child placed outside of the state, whether the placement continues to be appropriate and in the best interest of the child;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a

child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances;

(5) the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption;

(6) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, a permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(7) for a child whose permanency goal is another planned, permanent living arrangement, the department has:

(A) documented a compelling reason why adoption, permanent managing conservatorship with a relative or other suitable individual, or returning the child to a parent is not in the child's best interest; and  
(B) identified a family or other caring adult who has made a permanent commitment to the child;

(8) the department or authorized agency has made reasonable efforts to finalize the permanency plan that is in effect for the child; ~~and~~

(9) if the child is committed to the Texas Juvenile Justice Department [~~Youth Commission~~] or released under supervision by the Texas Juvenile Justice Department [~~Youth Commission~~], 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 5. Subchapter B, Chapter 264, Family Code, is amended.

SECTION 6. Section 266.008(c), Family Code, is amended.

SECTION 7. Section 25.001(g), Education Code, is amended to read as follows:

(g) A student enrolled in a primary or

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Section 25.001(g), Education Code, is amended to read as follows:

(g) A student enrolled in a primary or

secondary public [high] school [in grade 9, 10, 11, or 12] who is placed in the conservatorship of [temporary foster care by] the Texas Department of Family and Protective [Human] Services and at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend [complete high school at] 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].

secondary public [high] school [in grade 9, 10, 11, or 12] who is placed in the conservatorship of [temporary foster care by] the [Texas] Department of Family and Protective [Human] Services and at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend [complete high school at] 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.

SECTION 8. Section 25.007(b), Education Code, is amended.

SECTION 10. Same as introduced version.

SECTION 9. Section 25.087(b), Education Code, is amended.

SECTION 11. Same as introduced version.

SECTION 10. (a) 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. 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) The changes in law made by this Act to the Education Code apply beginning with the 2013-2014 school year.

SECTION 12. Same as introduced version.

SECTION 11. This Act takes effect September 1, 2013.

SECTION 13. Same as introduced version.