

## **BILL ANALYSIS**

C.S.H.B. 1556  
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Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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. C.S.H.B. 1556 seeks to clarify a foster parent's role in representing a child with a disability in the education system.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 1556 amends the Education Code to include among the requisite conditions on a foster parent's authority to act as a parent of a child with a disability for purposes of making education decisions for the child the condition that the rights and duties of the Department of Family and Protective Services (DFPS) as the child's managing conservator to make decisions regarding special education provided to the child have not been limited by court order, to remove the conditions that the child has been placed with the foster parent for at least 60 days and that the foster parent has no interest that conflicts with the child's interest, and to revise the conditions to which the foster parent must agree. The bill requires a foster parent who will act as a parent of a child with a disability 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. The bill prohibits a public 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. The bill 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 purposes of making education decisions for the child. The bill clarifies that for purposes of statutory provisions relating to special education programs, "parent" has the meaning assigned by the federal Individuals with Disabilities Education Act.

C.S.H.B. 1556 removes the requirement that a school district give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child and sets out provisions relating to the appointment of a surrogate parent by a school district that apply to a child with a disability for whom DFPS is appointed as the temporary or permanent managing

conservator of the child and for whom the rights and duties of DFPS to make decisions regarding the child's education have not been limited by court order. The bill requires a district to appoint an individual to serve as a child's surrogate parent 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 purposes of making education decisions for the child. The bill prohibits a surrogate parent appointed by a district from being an employee of the state, the district, or any other agency involved in the education or care of the child or having any interest that conflicts with the interests of the child. The bill authorizes a district to appoint a person who has been appointed to serve as a child's guardian ad litem or a court-certified volunteer advocate as the child's surrogate parent and sets out the required duties of a surrogate parent appointed by a district. The bill requires a district, if a court appoints a surrogate parent for a child with a disability and the district determines that the surrogate parent is failing to perform or is not properly performing those required duties, to consult with DFPS and appoint another person to serve as the child's surrogate parent. The bill requires DFPS on receiving such notice to promptly notify the court of the appointed surrogate parent's failure to properly perform those duties.

C.S.H.B. 1556 amends the Family Code to include the completion of a training program for surrogate parents that complies with minimum standards established by rule by the Texas Education Agency (TEA) within a specified time period among the requisite criteria for a court-certified volunteer advocate to be eligible for assignment as a surrogate parent for a child. The bill authorizes a foster parent for a child who is in the temporary or permanent managing conservatorship of DFPS and who is eligible to participate in a school district's special education program to act as a parent for the child under specified circumstances and applies certain Education Code provisions relating to a foster parent's ability to serve as a child's parent to a foster parent who acts or desires to act as a parent for a child for the purpose of making special education decisions.

C.S.H.B. 1556 removes the requirement for a court to give preferential consideration to a foster parent of a child who is in the temporary or permanent managing conservatorship of DFPS and who is eligible to participate in a school district's special education program in appointing a surrogate parent for the child and the requirement for a court to give consideration to certain other persons if the court does not appoint the child's foster parent. The bill instead authorizes a court to appoint a surrogate parent for such a child if the child's school district is unable to identify or locate a parent for the child or the child's foster parent is unwilling or unable to serve as a parent. The bill authorizes the court to appoint a child's guardian ad litem or court-certified volunteer advocate as the child's surrogate parent and clarifies a prohibition against certain persons being appointed as a child's surrogate parent. The bill authorizes the court, in appointing a person to serve as the child's surrogate parent, to consider the person's ability to meet the qualifications prescribed by the bill for a surrogate parent appointed by a school district and removes as criteria for a person appointed by a court to serve as a child's surrogate parent that the person meets similar qualifications established under statutory provisions relating to TEA's statewide plan for the delivery of services to children with disabilities. The bill establishes that if a court prescribes training for a person who is appointed as the surrogate parent for a child, the training program must comply with the minimum standards for training established by TEA rule.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1556 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 29.002, Education Code, is amended.

SECTION 2. Section 29.015, Education Code, is amended to read as follows:

Sec. 29.015. EDUCATIONAL DECISION-MAKING FOR CHILDREN IN FOSTER CARE [~~FOSTER PARENTS~~]. (a) [~~The school district shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.~~

~~[(b)]~~ A foster parent may 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 [~~and Regulatory~~] Services is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order [~~the child has been placed with the foster parent for at least 60 days~~]; and

(3) the foster parent agrees to:

(A) participate in making educational decisions on the child's behalf; and

(B) complete a training program [~~for surrogate parents~~] that complies with minimum standards established by agency rule [~~; and~~

~~[(4) the foster parent has no interest that conflicts with the child's interests].~~

(b) A foster parent who will act as a parent of a child with a disability as provided by Subsection (a) must 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) A school district may not require 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Substantially the same as introduced version.

SECTION 2. Section 29.015, Education Code, is amended to read as follows:

Sec. 29.015. SPECIAL EDUCATION DECISION-MAKING FOR CHILDREN IN FOSTER CARE [~~FOSTER PARENTS~~]. (a) [~~The school district shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.~~

~~[(b)]~~ A foster parent may 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 [~~and Regulatory~~] Services is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of the department to make decisions regarding special education provided to the child under Section 153.371, Family Code, have not been limited by court order [~~the child has been placed with the foster parent for at least 60 days~~]; and

(3) the foster parent agrees to:

(A) participate in making special education [~~educational~~] decisions on the child's behalf; and

(B) complete a training program [~~for surrogate parents~~] that complies with minimum standards established by agency rule [~~; and~~

~~[(4) the foster parent has no interest that conflicts with the child's interests].~~

(b) A foster parent who will act as a parent of a child with a disability as provided by Subsection (a) must 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) A school district may not require 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:

- (1) the Department of Family and Protective Services;
- (2) a school district;
- (3) an education service center; or
- (4) any other entity that receives federal funds to provide training to parents.

(c) A foster parent who is denied the right to act as a [~~surrogate parent or a~~] parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

(d) Not later than the fifth day after the date a child with a disability is enrolled in a school, the Department of Family and Protective Services must 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.

SECTION 3. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0151 to read as follows:

Sec. 29.0151. APPOINTMENT OF SURROGATE PARENT FOR CERTAIN CHILDREN. (a) This section applies to a child with a disability for whom:

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

(2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Except as provided by Section 263.0025, Family Code, a school district must appoint an individual to serve as the surrogate parent for a child if:

(1) the district is unable to identify or locate a parent for a child with a disability; or

(2) the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) A surrogate parent appointed by a school district may not:

(1) be an employee of the state, the school district, or any entity that is compensated to provide care for the child; or

(2) have any interest that conflicts with the interests of the child.

(d) A surrogate parent appointed by a

with a disability provided by:

- (1) the Department of Family and Protective Services;
- (2) a school district;
- (3) an education service center; or
- (4) any other entity that receives federal funds to provide special education training to parents.

(c) A foster parent who is denied the right to act as a [~~surrogate parent or a~~] parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

(d) Not later than the fifth day after the date a child with a disability is enrolled in a school, the Department of Family and Protective Services must 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.

SECTION 3. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0151 to read as follows:

Sec. 29.0151. APPOINTMENT OF SURROGATE PARENT FOR CERTAIN CHILDREN. (a) This section applies to a child with a disability for whom:

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

(2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Except as provided by Section 263.0025, Family Code, a school district must appoint an individual to serve as the surrogate parent for a child if:

(1) the district is unable to identify or locate a parent for a child with a disability; or

(2) the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) A surrogate parent appointed by a school district may not:

(1) be an employee of the state, the school district, or any other agency involved in the education or care of the child; or

(2) have any interest that conflicts with the interests of the child.

(d) A surrogate parent appointed by a

district must:

- (1) be willing to serve in that capacity;
- (2) exercise independent judgment in pursuing the child's interests;
- (3) ensure that the child's due process rights under applicable state and federal laws are not violated;
- (4) complete a training program that complies with minimum standards established by agency rule within the time specified in Section 29.015(b);
- (5) visit the child and the school where the child is enrolled;
- (6) review the child's educational records;
- (7) consult with any person involved in the child's education, including the child's:
  - (A) teachers;
  - (B) caseworkers;
  - (C) court-appointed volunteers;
  - (D) guardian ad litem;
  - (E) attorney ad litem;
  - (F) foster parent; and
  - (G) caretaker; and
- (8) attend meetings of the child's admission, review, and dismissal committee.
- (e) The district may 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) If a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the school district determines that the surrogate parent is not properly performing the duties listed under Subsection (d), the district shall notify the Department of Family and Protective Services and appoint another person to serve as the surrogate parent for the child.
- (g) On receiving notice from a school district under Subsection (f), the Department of Family and Protective Services must promptly notify the court of the failure of the appointed surrogate parent to properly perform the duties required under this section.

SECTION 4. Section 107.031(c), Family Code, is amended.

SECTION 5. Section 263.0025, Family

district must:

- (1) be willing to serve in that capacity;
- (2) exercise independent judgment in pursuing the child's interests;
- (3) ensure that the child's due process rights under applicable state and federal laws are not violated;
- (4) complete a training program that complies with minimum standards established by agency rule within the time specified in Section 29.015(b);
- (5) visit the child and the school where the child is enrolled;
- (6) review the child's educational records;
- (7) consult with any person involved in the child's education, including the child's:
  - (A) teachers;
  - (B) caseworkers;
  - (C) court-appointed volunteers;
  - (D) guardian ad litem;
  - (E) attorney ad litem;
  - (F) foster parent; and
  - (G) caregiver; and
- (8) attend meetings of the child's admission, review, and dismissal committee.
- (e) The district may 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) If a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the school district determines that the surrogate parent is failing to perform or is not properly performing the duties listed under Subsection (d), the district shall consult with the Department of Family and Protective Services and appoint another person to serve as the surrogate parent for the child.
- (g) On receiving notice from a school district under Subsection (f), the Department of Family and Protective Services must promptly notify the court of the failure of the appointed surrogate parent to properly perform the duties required under this section.

SECTION 4. Substantially the same as introduced version.

SECTION 5. Substantially the same as

Code, is amended.

introduced version.

SECTION 6. This Act takes effect  
September 1, 2017.

SECTION 6. Same as introduced version.