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H.B. No. 1556

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of foster parents and other qualified
3 persons to serve as educational decision-makers for certain
4 children in the conservatorship of the Department of Family and
5 Protective Services.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 29.015, Education Code, is amended to
8 read as follows:

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

13 [~~(b)~~] A foster parent may act as a parent of a child with a
14 disability, as authorized under 20 U.S.C. Section 1415(b) and its
15 subsequent amendments, if:

16 (1) the Department of Family and Protective [~~and~~
17 ~~Regulatory~~] Services is appointed as the temporary or permanent
18 managing conservator of the child;

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

24 (3) the foster parent agrees to:

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

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

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

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

14 (b-1) A school district may not require a foster parent to
15 retake a training program to continue serving as a child's parent or
16 to serve as the surrogate parent for another child if the foster
17 parent has completed a training program to act as a parent of a
18 child with a disability provided by:

19 (1) the Department of Family and Protective Services;

20 (2) a school district;

21 (3) an education service center; or

22 (4) any other entity that receives federal funds to
23 provide special education training to parents.

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

1 (d) Not later than the fifth day after the date a child with
2 a disability is enrolled in a school, the Department of Family and
3 Protective Services must inform the appropriate school district if
4 the child's foster parent is unwilling or unable to serve as a
5 parent for the purposes of this subchapter.

6 SECTION 2. Subchapter A, Chapter 29, Education Code, is
7 amended by adding Section 29.0151 to read as follows:

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

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

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

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

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

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

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

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

1 or

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

4 (d) A surrogate parent appointed by a district must:

5 (1) be willing to serve in that capacity;

6 (2) exercise independent judgment in pursuing the
7 child's interests;

8 (3) ensure that the child's due process rights under
9 applicable state and federal laws are not violated;

10 (4) complete a training program that complies with
11 minimum standards established by agency rule within the time
12 specified in Section 29.015(b);

13 (5) visit the child and the school where the child is
14 enrolled;

15 (6) review the child's educational records;

16 (7) consult with any person involved in the child's
17 education, including the child's:

18 (A) teachers;

19 (B) caseworkers;

20 (C) court-appointed volunteers;

21 (D) guardian ad litem;

22 (E) attorney ad litem;

23 (F) foster parent; and

24 (G) caregiver; and

25 (8) attend meetings of the child's admission, review,
26 and dismissal committee.

27 (e) The district may appoint a person who has been appointed

1 to serve as a child's guardian ad litem or as a court-certified
2 volunteer advocate, as provided under Section 107.031(c), Family
3 Code, as the child's surrogate parent.

4 (f) If a court appoints a surrogate parent for a child with a
5 disability under Section 263.0025, Family Code, and the school
6 district determines that the surrogate parent is failing to perform
7 or is not properly performing the duties listed under Subsection
8 (d), the district shall consult with the Department of Family and
9 Protective Services and appoint another person to serve as the
10 surrogate parent for the child.

11 (g) On receiving notice from a school district under
12 Subsection (f), the Department of Family and Protective Services
13 must promptly notify the court of the failure of the appointed
14 surrogate parent to properly perform the duties required under this
15 section.

16 SECTION 3. Section 107.031(c), Family Code, is amended to
17 read as follows:

18 (c) A court-certified volunteer advocate appointed under
19 this section may be assigned to act as a surrogate parent for the
20 child, as provided by 20 U.S.C. Section 1415(b), if:

21 (1) the child is in the conservatorship of the
22 Department of Family and Protective Services;

23 (2) the volunteer advocate is serving as guardian ad
24 litem for the child; ~~and~~

25 (3) a foster parent of the child is not acting as the
26 child's parent under Section 29.015, Education Code; and

27 (4) the volunteer advocate completes a training

1 program for surrogate parents that complies with minimum standards
2 established by rule by the Texas Education Agency within the time
3 specified by Section 29.015(b), Education Code.

4 SECTION 4. Section 263.0025, Family Code, is amended to
5 read as follows:

6 Sec. 263.0025. EDUCATIONAL DECISION-MAKING FOR CHILDREN IN
7 FOSTER CARE [~~APPOINTMENT OF SURROGATE PARENT~~]. (a) In this
8 section, "child" means a child in the temporary or permanent
9 managing conservatorship of the department who is eligible under
10 Section 29.003, Education Code, to participate in a school
11 district's special education program. [~~If a child in the temporary~~
12 ~~or permanent conservatorship of the department is eligible under~~
13 ~~Section 29.003, Education Code, to participate in a school~~
14 ~~district's special education program, the court may, when necessary~~
15 ~~to ensure that the educational rights of the child are protected,~~
16 ~~appoint a surrogate parent who:~~

17 ~~[(1) is willing to serve in that capacity, and~~

18 ~~[(2) meets the requirements of 20 U.S.C. Section~~
19 ~~1415(b) and Section 29.001(10), Education Code.]~~

20 (a-1) A foster parent for a child may act as a parent for the
21 child, as authorized under 20 U.S.C. Section 1415(b), if:

22 (1) the rights and duties of the department to make
23 decisions regarding the child's education under Section 153.371
24 have not been limited by court order; and

25 (2) the foster parent agrees to the requirements of
26 Sections 29.015(a)(3) and (b), Education Code.

27 (a-2) Sections 29.015(b-1), (c), and (d), Education Code,

1 apply to a foster parent who acts or desires to act as a parent for a
2 child for the purpose of making special education decisions.

3 (b) To ensure the educational rights of a child are
4 protected in the special education process, the court may appoint a
5 surrogate parent for the child if:

6 (1) the child's school district is unable to identify
7 or locate a parent for the child; or

8 (2) the foster parent of the child is unwilling or
9 unable to serve as a parent for the purposes of this subchapter [~~In~~
10 ~~appointing a surrogate parent for a child, the court shall give~~
11 ~~preferential consideration to a foster parent of the child as~~
12 ~~required under Section 29.015, Education Code].~~

13 (c) Except as provided by Subsection (d), the court may
14 appoint a person to serve as a child's surrogate parent if the
15 person:

16 (1) is willing to serve in that capacity; and

17 (2) meets the requirements of 20 U.S.C. Section
18 1415(b) [~~If the court does not appoint a child's foster parent to~~
19 ~~serve as the child's surrogate parent, the court shall give~~
20 ~~consideration to:~~

21 [~~(1) a relative or other designated caregiver as~~
22 ~~defined by Section 264.751, or~~

23 [~~(2) a court-appointed volunteer advocate who has been~~
24 ~~appointed to serve as the child's guardian ad litem, as provided by~~
25 ~~Section 107.031(c)].~~

26 (d) The following persons may not be appointed as a
27 surrogate parent for the child:

- 1 (1) an employee of the department;
- 2 (2) an employee of the Texas Education Agency;
- 3 (3) an employee of a school or school district; or
- 4 (4) an employee of any other agency that is involved in
- 5 the education or care of the child.

6 (e) The court may appoint a child's guardian ad litem or

7 court-certified volunteer advocate, as provided by Section

8 107.031(c), as the child's surrogate parent.

9 (f) In appointing a person to serve as the surrogate parent

10 for a child, the court may consider the person's ability to meet the

11 qualifications listed under Sections 29.0151(d)(2)-(8), Education

12 Code.

13 (g) If the court prescribes training for a person who is

14 appointed as the surrogate parent for a child, the training program

15 must comply with the minimum standards for training established by

16 rule by the Texas Education Agency.

17 SECTION 5. This Act takes effect September 1, 2017.