

House Bill 1556
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. 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.

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SECTION 1. 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 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 special education

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(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 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 2. 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.

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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 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 2. Same as House version.

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(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) caregiver; and

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

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

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

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

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

(4) the volunteer advocate completes a training program for surrogate parents that complies with minimum standards

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established by rule by the Texas Education Agency within the time specified by Section 29.015(b), Education Code.

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

Sec. 263.0025. **EDUCATIONAL DECISION-MAKING FOR CHILDREN IN FOSTER CARE** [~~APPOINTMENT OF SURROGATE PARENT~~]. (a) In this section, "child" means a child in the temporary or permanent managing conservatorship of the department who is eligible under Section 29.003, Education Code, to participate in a school district's special education program. [If a child in the temporary or permanent conservatorship of the department is eligible under Section 29.003, Education Code, to participate in a school district's special education program, the court may, when necessary to ensure that the educational rights of the child are protected, appoint a surrogate parent who:
[~~(1) is willing to serve in that capacity; and~~
[~~(2) meets the requirements of 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code.~~]

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

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

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

(a-2) 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) To ensure the educational rights of a child are protected in

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

Sec. 263.0025. **SPECIAL EDUCATION DECISION-MAKING FOR CHILDREN IN FOSTER CARE** [~~APPOINTMENT OF SURROGATE PARENT~~]. (a) In this section, "child" means a child in the temporary or permanent managing conservatorship of the department who is eligible under Section 29.003, Education Code, to participate in a school district's special education program. [If a child in the temporary or permanent conservatorship of the department is eligible under Section 29.003, Education Code, to participate in a school district's special education program, the court may, when necessary to ensure that the educational rights of the child are protected, appoint a surrogate parent who:
[~~(1) is willing to serve in that capacity; and~~
[~~(2) meets the requirements of 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code.~~]

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

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

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

(a-2) 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) To ensure the educational rights of a child are protected in

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the special education process, the court may appoint a surrogate parent for the child if:

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

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

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

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

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

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

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

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

(1) an employee of the department;

(2) an employee of the Texas Education Agency;

(3) an employee of a school or school district; or

(4) an employee of any other agency that is involved in the education or care of the child.

(e) The court may 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) In appointing a person to serve as the surrogate parent for

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the special education process, the court may appoint a surrogate parent for the child if:

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

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

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

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

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

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

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

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

(1) an employee of the department;

(2) an employee of the Texas Education Agency;

(3) an employee of a school or school district; or

(4) an employee of any other agency that is involved in the education or care of the child.

(e) The court may 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) In appointing a person to serve as the surrogate parent for

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a child, the court may consider the person's ability to meet the qualifications listed under Sections 29.0151(d)(2)-(8), Education Code.

(g) If the 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 rule by the Texas Education Agency.

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

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a child, the court may consider the person's ability to meet the qualifications listed under Sections 29.0151(d)(2)-(8), Education Code.

(g) If the 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 rule by the Texas Education Agency.

SECTION 5. Same as House version.

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