

BILL ANALYSIS

Senate Research Center
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H.B. 1709
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Health & Human Services
4/17/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 85th Legislature passed legislation clarifying when a surrogate parent is needed for special education decision-making for children under the Department of Family and Protective Services (DFPS) conservatorship who do not have a foster parent or other caregiver willing or able to make decisions regarding special education. However, gaps still remain in the processes for appointing surrogates and ensuring accountability of surrogates.

H.B. 1709 addresses these gaps by clarifying that state employees are only prohibited from acting as surrogates if they are employed by agencies involved in the education or care of the child. It also requires school districts to notify DFPS when surrogates are appointed. Finally, it clarifies that if a court appoints a surrogate who the school district finds is not performing their duties, the district must consult with DFPS to request that the court remove the surrogate from their appointment.

This is a technical fix to H.B. 1556 (85th Session) that describes when a surrogate parent can be appointed to make decisions regarding special education for children under DFPS conservatorship. H.B. 1709 resolves the gaps that remain in the processes for appointing surrogates and ensuring accountability of surrogates.

This is a simple bill that had no opposition when it heard in committee. Further, there was no opposition during its second reading, with 147 votes for (2 members were absent at the time of the vote).

H.B. 1709 amends current law relating to the appointment of a surrogate parent 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 25.007(b), Education Code, as follows:

(b) Requires the Texas Education Agency (TEA), in recognition of challenges faced by students who are homeless or in substitute care, to assist the transition of students who are homeless or in substitute care from one school to another by:

(1)–(9) makes no changes to these subdivisions;

(10) requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's education decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A)–(E) makes no changes to these paragraphs;

(F)–(G) makes nonsubstantive changes to these paragraphs; and

(H) appointment of a surrogate parent for the child under Section 29.0151 (Appointment of Surrogate Parent For Certain Children);

(11)–(15) makes no changes to these subdivisions.

SECTION 2. Amends Section 29.0151, Education Code, by amending Subsections (c), (f), and (g) and adding Subsection (e-1), as follows:

(c) Prohibits a surrogate parent appointed by the school district from:

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

(2) makes no changes to this subdivision.

(e-1) Requires a school district, as soon as practicable after appointing a surrogate parent under this section, to provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Section 25.007(b)(10)(H).

(f) Requires the school district, if a court appoints a surrogate parent for a child with a disability under Section 263.0025 (Special Education Decision-Making For Children in Foster Care), Family Code, and the district determines that the surrogate parent is not properly performing the duties listed under Subsection (d) (relating to requiring a surrogate parent appointed by the district to take certain enumerated actions), to consult with the Department of Family and Protective Services (DFPS) regarding whether another person should be appointed to serve as the surrogate parent for the child, rather than requiring the 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 duties listed under Subsection (d), to consult with DFPS and appoint another person to serve as the surrogate parent for the child.

(g) Provides that, on receiving notice from a school district under Subsection (f), if DFPS agrees with the district that the appointed surrogate parents is unable or unwilling to properly perform the duties required under this section, rather than requiring 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 duties required under this section:

(1) DFPS is required to promptly notify the court of the agreement; and

(2) the court is required, as soon as practicable after receiving notice under Subdivision (1), to review the appointment and enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this section.

SECTION 3. Effective date: upon passage or September 1, 2019.