

By: Menéndez

S.B. No. 100

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 29.002, Education Code, is amended to
8 read as follows:

9 Sec. 29.002. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

10 (1) "Parent" has the meaning assigned by the
11 Individuals with Disabilities Education Act (20 U.S.C. Section
12 1401(23)).

13 (2) "Special [~~,"special~~] services" means:

14 (A) [~~(1)~~] special education instruction, which
15 may be provided by professional and supported by paraprofessional
16 personnel in the regular classroom or in an instructional
17 arrangement described by Section 42.151; and

18 (B) [~~(2)~~] related services, which are
19 developmental, corrective, supportive, or evaluative services, not
20 instructional in nature, that may be required for the student to
21 benefit from special education instruction and for implementation
22 of a student's individualized education program.

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

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

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

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

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

16 (3) the foster parent agrees to:

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

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

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

24 (b) A foster parent who will act as a parent of a child with
25 a disability as provided by Subsection (a) must complete a training
26 program before the next scheduled admission, review, and dismissal
27 committee meeting for the child but not later than the 90th day

1 after the date the foster parent begins acting as the parent for the
2 purpose of making education decisions.

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

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

9 (2) a school district;

10 (3) an education service center; or

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

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

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

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

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

27 (1) the Department of Family and Protective Services

1 is appointed as the temporary or permanent managing conservator of
2 the child; and

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

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

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

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

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

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

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

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

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

22 (2) exercise independent judgment in pursuing the
23 child's interests;

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

26 (4) complete a training program that complies with
27 minimum standards established by agency rule within the time

1 specified in Section 29.015(b);

2 (5) visit the child and the school where the child is
3 enrolled;

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

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

7 (A) teachers;

8 (B) caseworkers;

9 (C) court-appointed volunteers;

10 (D) guardian ad litem;

11 (E) attorney ad litem;

12 (F) foster parent; and

13 (G) caregiver; and

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

16 (e) The district may appoint a person who has been appointed
17 to serve as a child's guardian ad litem or as a court-certified
18 volunteer advocate, as provided under Section 107.031(c), Family
19 Code, as the child's surrogate parent.

20 (f) If a court appoints a surrogate parent for a child with a
21 disability under Section 263.0025, Family Code, and the school
22 district determines that the surrogate parent is failing to perform
23 or is not properly performing the duties listed under Subsection
24 (d), the district shall consult with the Department of Family and
25 Protective Services and appoint another person to serve as the
26 surrogate parent for the child.

27 (g) On receiving notice from a school district under

1 Subsection (f), the Department of Family and Protective Services
2 must promptly notify the court of the failure of the appointed
3 surrogate parent to properly perform the duties required under this
4 section.

5 SECTION 4. Section 107.031(c), Family Code, is amended to
6 read as follows:

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

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

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

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

16 (4) the volunteer advocate completes a training
17 program for surrogate parents that complies with minimum standards
18 established by rule by the Texas Education Agency within the time
19 specified by Section 29.015(b), Education Code.

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

22 Sec. 263.0025. EDUCATIONAL DECISION-MAKING FOR CHILDREN IN
23 FOSTER CARE ~~[APPOINTMENT OF SURROGATE PARENT]~~. (a) In this section:

24 (1) "Child" means a child in the temporary or
25 permanent managing conservatorship of the department who is
26 eligible under Section 29.003, Education Code, to participate in a
27 school district's special education program.

1 (2) "Parent" has the definition assigned by the
2 Individuals with Disabilities Education Act (20 U.S.C. Section
3 1401(23)) [~~If a child in the temporary or permanent conservatorship~~
4 ~~of the department is eligible under Section 29.003, Education Code,~~
5 ~~to participate in a school district's special education program,~~
6 ~~the court may, when necessary to ensure that the educational rights~~
7 ~~of the child are protected, appoint a surrogate parent who:~~

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

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

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

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

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

18 (a-2) Sections 29.015(b-1), (c), and (d), Education Code,
19 apply to a foster parent who acts or desires to act as a parent for a
20 child for the purpose of making special education decisions.

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

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

26 (2) the foster parent of the child is unwilling or
27 unable to serve as a parent for the purposes of this subchapter [~~In~~

1 ~~appointing a surrogate parent for a child, the court shall give~~
2 ~~preferential consideration to a foster parent of the child as~~
3 ~~required under Section 29.015, Education Code].~~

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

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

8 (2) meets the requirements of 20 U.S.C. Section
9 1415(b) [If the court does not appoint a child's foster parent to
10 serve as the child's surrogate parent, the court shall give
11 consideration to:

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

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

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

19 (1) an employee of the department;

20 (2) an employee of the Texas Education Agency;

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

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

24 (e) The court may appoint a child's guardian ad litem or
25 court-certified volunteer advocate, as provided by Section
26 107.031(c), as the child's surrogate parent.

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

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

4 (g) If the court prescribes training for a person who is
5 appointed as the surrogate parent for a child, the training program
6 must comply with the minimum standards for training established by
7 rule by the Texas Education Agency.

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