

By: Menéndez

S.B. No. 1881

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 29.002, Education Code, is amended to read as follows:

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

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

(2) "Special [~~special~~ services" means:

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

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

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

1           Sec. 29.015. EDUCATIONAL DECISION-MAKING FOR CHILDREN IN  
2 FOSTER CARE [~~FOSTER PARENTS~~]. (a) [~~The school district shall give~~  
3 ~~preferential consideration to a foster parent of a child with a~~  
4 ~~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 the child's education under Section 153.371,  
13 Family Code, have not been limited by court order [~~the child has~~  
14 ~~been placed with the foster parent for at least 60 days~~]; and

15                   (3) the foster parent agrees to:

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

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

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

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

1 purpose of making education decisions.

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

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

8 (2) a school district;

9 (3) an education service center; or

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

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

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

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

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

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

1 the child; and

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

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

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

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

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

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

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

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

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

20 (2) exercise independent judgment in pursuing the  
21 child's interests;

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

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

27 (5) visit the child and the school where the child is

1 enrolled;

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

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

5 (A) teachers;

6 (B) caseworkers;

7 (C) court-appointed volunteers;

8 (D) guardian ad litem;

9 (E) attorney ad litem;

10 (F) foster parent; and

11 (G) caretaker; and

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

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

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

25 (g) On receiving notice from a school district under  
26 Subsection (f), the Department of Family and Protective Services  
27 must promptly notify the court of the failure of the appointed

1 surrogate parent to properly perform the duties required under this  
2 section.

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

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

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

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

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

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

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

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

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

26 (2) "Parent" has the definition assigned by the  
27 Individuals with Disabilities Education Act (20 U.S.C. Section

~~1401(23)) [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 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~~

1 ~~required under Section 29.015, Education Code].~~

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

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

6           (2) meets the requirements of 20 U.S.C. Section  
7 1415(b) [If the court does not appoint a child's foster parent to  
8 serve as the child's surrogate parent, the court shall give  
9 consideration to:

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

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

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

17           (1) an employee of the department;

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

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

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

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

25       (f) In appointing a person to serve as the surrogate parent  
26 for a child, the court may consider the person's ability to meet the  
27 qualifications listed under Section 29.0151(d)(2)-(8), Education



1 Code.

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

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