

AN ACT

relating to the educational needs of 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 107.002, Family Code, is amended by adding Subsection (i) to read as follows:

(i) A guardian ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

SECTION 2. Section 107.004, Family Code, is amended by adding Subsection (d-2) to read as follows:

(d-2) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

SECTION 3. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.0025 to read as follows:

Sec. 263.0025. APPOINTMENT OF SURROGATE PARENT. (a) If a child in the temporary or permanent conservatorship of the department is eligible under Section 29.003, Education Code, to

1 participate in a school district's special education program, the
2 court may, when necessary to ensure that the educational rights of
3 the child are protected, appoint a surrogate parent who:

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

5 (2) meets the requirements of 20 U.S.C. Section
6 1415(b) and Section 29.001(10), Education Code.

7 (b) In appointing a surrogate parent for a child, the court
8 shall give preferential consideration to a foster parent of the
9 child as required under Section 29.015, Education Code.

10 (c) If the court does not appoint a child's foster parent to
11 serve as the child's surrogate parent, the court shall give
12 consideration to:

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

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

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

20 (1) the department;

21 (2) the Texas Education Agency;

22 (3) a school or school district; or

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

25 SECTION 4. Subchapter A, Chapter 263, Family Code, is
26 amended by adding Section 263.004 to read as follows:

27 Sec. 263.004. NOTICE TO COURT REGARDING EDUCATION

1 DECISION-MAKING. (a) Unless the rights and duties of the
2 department under Section 153.371(10) to make decisions regarding
3 the child's education have been limited by court order, the
4 department shall file with the court a report identifying the name
5 and contact information for each person who has been:

6 (1) designated by the department to make educational
7 decisions on behalf of the child; and

8 (2) assigned to serve as the child's surrogate parent
9 in accordance with 20 U.S.C. Section 1415(b) and Section
10 29.001(10), Education Code, for purposes of decision-making
11 regarding special education services, if applicable.

12 (b) Not later than the fifth day after the date an adversary
13 hearing under Section 262.201 or Section 262.205 is concluded, the
14 report required by Subsection (a) shall be filed with the court and
15 a copy shall be provided to:

16 (1) each person entitled to notice of a permanency
17 hearing under Section 263.301; and

18 (2) the school the child attends.

19 (c) If a person other than a person identified in the report
20 required by Subsection (a) is designated to make educational
21 decisions or assigned to serve as a surrogate parent, the
22 department shall file with the court an updated report that
23 includes the information required by Subsection (a) for the
24 designated or assigned person. The updated report must be filed not
25 later than the fifth day after the date of designation or
26 assignment.

27 SECTION 5. Section 263.306, Family Code, is amended to read

1 as follows:

2 Sec. 263.306. PERMANENCY HEARINGS: PROCEDURE. (a) At each
3 permanency hearing the court shall:

4 (1) identify all persons or parties present at the
5 hearing or those given notice but failing to appear;

6 (2) review the efforts of the department or another
7 agency in:

8 (A) attempting to locate all necessary persons;

9 (B) requesting service of citation; and

10 (C) obtaining the assistance of a parent in
11 providing information necessary to locate an absent parent, alleged
12 father, or relative of the child;

13 (3) review the efforts of each custodial parent,
14 alleged father, or relative of the child before the court in
15 providing information necessary to locate another absent parent,
16 alleged father, or relative of the child;

17 (4) return the child to the parent or parents if the
18 child's parent or parents are willing and able to provide the child
19 with a safe environment and the return of the child is in the
20 child's best interest;

21 (5) place the child with a person or entity, other than
22 a parent, entitled to service under Chapter 102 if the person or
23 entity is willing and able to provide the child with a safe
24 environment and the placement of the child is in the child's best
25 interest;

26 (6) evaluate the department's efforts to identify
27 relatives who could provide the child with a safe environment, if

1 the child is not returned to a parent or another person or entity
2 entitled to service under Chapter 102;

3 (7) evaluate the parties' compliance with temporary
4 orders and the service plan;

5 (8) identify an education decision-maker for the child
6 if one has not previously been identified;

7 (9) determine whether:

8 (A) the child continues to need substitute care;

9 (B) the child's current placement is appropriate
10 for meeting the child's needs, including with respect to a child who
11 has been placed outside of the state, whether that placement
12 continues to be in the best interest of the child; and

13 (C) other plans or services are needed to meet
14 the child's special needs or circumstances;

15 (10) [~~(9)~~] if the child is placed in institutional
16 care, determine whether efforts have been made to ensure placement
17 of the child in the least restrictive environment consistent with
18 the best interest and special needs of the child;

19 (11) [~~(10)~~] if the child is 16 years of age or older,
20 order services that are needed to assist the child in making the
21 transition from substitute care to independent living if the
22 services are available in the community;

23 (12) [~~(11)~~] determine plans, services, and further
24 temporary orders necessary to ensure that a final order is rendered
25 before the date for dismissal of the suit under this chapter;

26 (13) [~~(12)~~] if the child is committed to the Texas
27 Juvenile Justice Department [~~Youth Commission~~] or released under

1 supervision by the Texas Juvenile Justice Department [~~Youth~~
2 ~~Commission~~], determine whether the child's needs for treatment,
3 rehabilitation, and education are being met; and

4 (14) [~~(13)~~] determine the date for dismissal of the
5 suit under this chapter and give notice in open court to all parties
6 of:

- 7 (A) the dismissal date;
- 8 (B) the date of the next permanency hearing; and
- 9 (C) the date the suit is set for trial.

10 (b) The court shall also review the service plan, permanency
11 report, and other information submitted at the hearing to:

- 12 (1) determine:
 - 13 (A) the safety of the child;
 - 14 (B) the continuing necessity and appropriateness
 - 15 of the placement;
 - 16 (C) the extent of compliance with the case plan;
 - 17 (D) whether the child's education needs and goals
 - 18 have been identified and addressed;
 - 19 (E) the extent of progress that has been made
 - 20 toward alleviating or mitigating the causes necessitating the
 - 21 placement of the child in foster care; and
 - 22 (F) [~~(E)~~] whether the department has made
 - 23 reasonable efforts to finalize the permanency plan that is in
 - 24 effect for the child, including the concurrent permanency goals for
 - 25 the child; and

26 (2) project a likely date by which the child may be
27 returned to and safely maintained in the child's home, placed for

1 adoption, or placed in permanent managing conservatorship.

2 SECTION 6. Section 263.503(a), Family Code, is amended to
3 read as follows:

4 (a) At each placement review hearing, the court shall
5 determine whether:

6 (1) the child's current placement is necessary, safe,
7 and appropriate for meeting the child's needs, including with
8 respect to a child placed outside of the state, whether the
9 placement continues to be appropriate and in the best interest of
10 the child;

11 (2) efforts have been made to ensure placement of the
12 child in the least restrictive environment consistent with the best
13 interest and special needs of the child if the child is placed in
14 institutional care;

15 (3) the services that are needed to assist a child who
16 is at least 16 years of age in making the transition from substitute
17 care to independent living are available in the community;

18 (4) other plans or services are needed to meet the
19 child's special needs or circumstances;

20 (5) the department or authorized agency has exercised
21 due diligence in attempting to place the child for adoption if
22 parental rights to the child have been terminated and the child is
23 eligible for adoption;

24 (6) for a child for whom the department has been named
25 managing conservator in a final order that does not include
26 termination of parental rights, a permanent placement, including
27 appointing a relative as permanent managing conservator or

1 returning the child to a parent, is appropriate for the child;

2 (7) for a child whose permanency goal is another
3 planned, permanent living arrangement, the department has:

4 (A) documented a compelling reason why adoption,
5 permanent managing conservatorship with a relative or other
6 suitable individual, or returning the child to a parent is not in
7 the child's best interest; and

8 (B) identified a family or other caring adult who
9 has made a permanent commitment to the child;

10 (8) the department or authorized agency has made
11 reasonable efforts to finalize the permanency plan that is in
12 effect for the child; ~~and~~

13 (9) if the child is committed to the Texas Juvenile
14 Justice Department [~~Youth Commission~~] or released under
15 supervision by the Texas Juvenile Justice Department [~~Youth~~
16 ~~Commission~~], the child's needs for treatment, rehabilitation, and
17 education are being met;

18 (10) an education decision-maker for the child has
19 been identified; and

20 (11) the child's education needs and goals have been
21 identified and addressed.

22 SECTION 7. Subchapter B, Chapter 264, Family Code, is
23 amended by adding Section 264.1072 to read as follows:

24 Sec. 264.1072. EDUCATIONAL STABILITY. The department shall
25 develop, in accordance with 42 U.S.C. Section 675, a plan to ensure
26 the educational stability of a foster child.

27 SECTION 8. Section 266.008(c), Family Code, is amended to

1 read as follows:

2 (c) The department shall make the passport available to:

3 (1) any person authorized by law to make educational
4 decisions for the foster child;

5 (2) the person authorized to consent to medical care
6 for the foster child; and

7 (3) [to] a provider of medical care to the foster child
8 if access to the foster child's educational information is
9 necessary to the provision of medical care and is not prohibited by
10 law.

11 SECTION 9. Section 25.001(g), Education Code, is amended to
12 read as follows:

13 (g) A student enrolled in a primary or secondary public
14 [high] school [in grade 9, 10, 11, or 12] who is placed in the
15 conservatorship of [temporary foster care by] the [Texas]
16 Department of Family and Protective [Human] Services and at a
17 residence outside the attendance area for the school or outside the
18 school district is entitled to continue to attend [complete high
19 school at] the school in which the student was enrolled immediately
20 before entering conservatorship until the student successfully
21 completes the highest grade level offered by the school at the time
22 of placement without payment of tuition.

23 SECTION 10. Section 25.007(b), Education Code, is amended
24 to read as follows:

25 (b) In recognition of the challenges faced by students in
26 substitute care, the agency shall assist the transition of
27 substitute care students from one school to another by:

1 (1) ensuring that school records for a student in
2 substitute care are transferred to the student's new school not
3 later than the 10th working [~~14th~~] day after the date the student
4 begins enrollment at the school;

5 (2) developing systems to ease transition of a student
6 in substitute care during the first two weeks of enrollment at a new
7 school;

8 (3) developing procedures for awarding credit for
9 course work, including electives, completed by a student in
10 substitute care while enrolled at another school;

11 (4) promoting practices that facilitate access by a
12 student in substitute care to extracurricular programs, summer
13 programs, credit transfer services, electronic courses provided
14 under Chapter 30A, and after-school tutoring programs at nominal or
15 no cost;

16 (5) establishing procedures to lessen the adverse
17 impact of the movement of a student in substitute care to a new
18 school;

19 (6) entering into a memorandum of understanding with
20 the Department of Family and Protective Services regarding the
21 exchange of information as appropriate to facilitate the transition
22 of students in substitute care from one school to another;

23 (7) encouraging school districts and open-enrollment
24 charter schools to provide services for a student in substitute
25 care in transition when applying for admission to postsecondary
26 study and when seeking sources of funding for postsecondary study;

27 (8) requiring school districts, campuses, and

1 open-enrollment charter schools to accept a referral for special
2 education services made for a student in substitute care by a school
3 previously attended by the student; ~~and~~

4 (9) requiring school districts to provide notice to
5 the child's educational decision-maker and caseworker regarding
6 events that may significantly impact the education of a child,
7 including:

8 (A) requests or referrals for an evaluation under
9 Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or
10 special education under Section 29.003;

11 (B) admission, review, and dismissal committee
12 meetings;

13 (C) manifestation determination reviews required
14 by Section 37.004(b);

15 (D) any disciplinary actions under Chapter 37 for
16 which parental notice is required;

17 (E) citations issued for Class C misdemeanor
18 offenses on school property or at school-sponsored activities;

19 (F) reports of restraint and seclusion required
20 by Section 37.0021; and

21 (G) use of corporal punishment as provided by
22 Section 37.0011; and

23 (10) providing other assistance as identified by the
24 agency.

25 SECTION 11. Section 25.087(b), Education Code, is amended
26 to read as follows:

27 (b) A school district shall excuse a student from attending

1 school for:

2 (1) the following purposes, including travel for those
3 purposes:

4 (A) observing religious holy days;

5 (B) attending a required court appearance;

6 (C) appearing at a governmental office to
7 complete paperwork required in connection with the student's
8 application for United States citizenship;

9 (D) taking part in a United States naturalization
10 oath ceremony; ~~or~~

11 (E) serving as an election clerk; or

12 (F) for a child in the conservatorship of the
13 Department of Family and Protective Services, attending a mental
14 health or therapy appointment or family visitation as ordered by a
15 court under Chapter 262 or 263, Family Code; or

16 (2) a temporary absence resulting from an appointment
17 with a health care professional [~~professionals~~] if that student
18 commences classes or returns to school on the same day of the
19 appointment.

20 SECTION 12. (a) Sections 107.002(i) and 107.004(d-2),
21 Family Code, as added by this Act, apply only to a suit affecting
22 the parent-child relationship filed on or after the effective date
23 of this Act. A suit filed before the effective date of this Act is
24 governed by the law in effect on the date the suit was filed, and the
25 former law is continued in effect for that purpose.

26 (b) The changes in law made by this Act to the Education Code
27 apply beginning with the 2013-2014 school year.

1 SECTION 13. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 2619 was passed by the House on May 2, 2013, by the following vote: Yeas 147, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2619 was passed by the Senate on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor