

By Senator Storms

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1 A bill to be entitled

2 An act relating to education for children in shelter care
3 or foster care; creating s. 39.0017, F.S.; providing
4 conditions for court appointment of a surrogate parent for
5 educational decisionmaking for a child who has or is
6 suspected of having a disability; amending s. 39.202,
7 F.S.; providing for access to certain records to liaisons
8 between school districts and the Department of Children
9 and Family Services or the court; amending s. 39.402,
10 F.S.; requiring access to a child's educational records if
11 a child is placed in a shelter; authorizing appointment of
12 a surrogate parent for educational decisionmaking;
13 amending s. 39.701, F.S.; requiring the court and citizen
14 review panel in judicial reviews to consider testimony by
15 a surrogate parent for educational decisionmaking;
16 amending s. 1000.21, F.S.; revising definition of the term
17 "parent" to include a surrogate parent and defining the
18 term "surrogate parent" for purposes of the K-20 Education
19 Code; amending s. 1002.22, F.S.; providing for release of
20 educational records of children placed in shelter care;
21 amending s. 1003.01, F.S.; revising the definition
22 relating to a homeless child for purposes of public K-12
23 education; amending s. 1003.21, F.S.; conforming
24 terminology; providing access to free public education for
25 certain children in foster care and authorizing a
26 temporary exemption relating thereto; amending s. 1003.22,
27 F.S.; conforming terminology; authorizing a temporary
28 exemption from school-entry health examinations for
29 certain children in foster care; creating s. 1003.572,

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30 F.S.; requiring a district school board to appoint a
31 surrogate parent for a child who has or is suspected of
32 having a disability under certain circumstances; providing
33 joint responsibility of a district school board and the
34 court; providing qualifications, rights, responsibilities,
35 and immunities for a surrogate parent; providing an
36 effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 39.0017, Florida Statutes, is created to
41 read:

42 39.0017 Appointment of surrogate parent for educational
43 decisionmaking.--

44 (1) Any time that the court determines that no person holds
45 the right to make educational decisions for a child in
46 proceedings under this chapter or that it is in the best
47 interests of a child to remove educational decisionmaking from
48 the parent and finds that the child has or is suspected of having
49 a disability, the court may appoint a surrogate parent for
50 educational decisionmaking for that child.

51 (2) The court may appoint an adult with the knowledge and
52 skills needed to ensure adequate representation of the child to
53 serve as a surrogate parent. The court may not appoint an
54 employee of the Department of Education, the local school
55 district, a community-based care provider, the Department of
56 Children and Family Services, or any other public or private
57 agency involved in the education or care of the child as
58 appointment of those persons is prohibited by federal law;

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59 however, a person who acts in a parental role to a child, such as
60 a foster parent or relative caregiver, is not prohibited from
61 serving as a surrogate parent if employed by such agency. Group
62 home staff and therapeutic foster home parents are deemed
63 employees who are not acting in a parental role for this purpose.
64 The court shall be guided by, but not limited to, the
65 qualifications for a surrogate parent set forth in s. 1003.572.
66 The surrogate parent may be a relative or other adult involved in
67 the child's life regardless of whether that person has custody of
68 the child.

69 (3) The court must defer to the district school board's
70 appointment of a surrogate parent under s. 1003.572 if such
71 appointment is made prior to the court's appointment of a
72 surrogate parent.

73 (4) Surrogate parents appointed under this section shall
74 have the same rights, responsibilities, and immunities as set
75 forth in s. 1003.572 and shall be eligible to attend any
76 appropriate training provided by the district school board.

77 Section 2. Paragraph (p) of subsection (2) of section
78 39.202, Florida Statutes, is amended to read:

79 39.202 Confidentiality of reports and records in cases of
80 child abuse or neglect.--

81 (2) Except as provided in subsection (4), access to such
82 records, excluding the name of the reporter which shall be
83 released only as provided in subsection (5), shall be granted
84 only to the following persons, officials, and agencies:

85 (p) An employee of the local school district who is
86 designated as a liaison between the school district and the
87 Department of Children and Family Services or the court and the

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88 principal of a public school, private school, or charter school
89 where the child is a student. Information contained in the
90 records which the liaison or the principal determines are
91 necessary for a school employee to effectively provide a student
92 with educational services may be released to that employee.

93 Section 3. Subsections (12) through (18) of section 39.402,
94 Florida Statutes, are renumbered as subsections (13) through
95 (19), respectively, and a new subsection (12) is added to that
96 section to read:

97 39.402 Placement in a shelter.--

98 (12) If a child is placed in a shelter pursuant to a court
99 order following a shelter hearing, the court shall request that
100 the parents consent to provide access to the child's educational
101 records to the court, the department or its contract agencies,
102 and any guardian ad litem or attorney for the child. Whenever a
103 parent withholds consent and the court determines access to the
104 records is necessary to provide educational or other services to
105 the child, the court shall issue an order granting access to the
106 child's educational records to any of the identified entities or
107 persons. The court shall also make an initial determination as to
108 who holds the right to make educational decisions for the child.
109 The court at the shelter hearing or any subsequent hearing may
110 refer the child to the district school board for appointment of a
111 surrogate parent under s. 1003.572 or may itself appoint a
112 surrogate parent under s. 39.0017.

113 Section 4. Subsection (8) of section 39.701, Florida
114 Statutes, is amended to read:

115 39.701 Judicial review.--

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116 (8) The court and any citizen review panel shall take into
117 consideration the information contained in the social services
118 study and investigation and all medical, psychological, and
119 educational records that support the terms of the case plan;
120 testimony by the social services agency, the parent, the foster
121 parent or legal custodian, the guardian ad litem or surrogate
122 parent for educational decisionmaking if one has been appointed
123 for the child, and any other person deemed appropriate; and any
124 relevant and material evidence submitted to the court, including
125 written and oral reports to the extent of their probative value.
126 These reports and evidence may be received by the court in its
127 effort to determine the action to be taken with regard to the
128 child and may be relied upon to the extent of their probative
129 value, even though not competent in an adjudicatory hearing. In
130 its deliberations, the court and any citizen review panel shall
131 seek to determine:

132 (a) If the parent was advised of the right to receive
133 assistance from any person or social service agency in the
134 preparation of the case plan.

135 (b) If the parent has been advised of the right to have
136 counsel present at the judicial review or citizen review
137 hearings. If not so advised, the court or citizen review panel
138 shall advise the parent of such right.

139 (c) If a guardian ad litem needs to be appointed for the
140 child in a case in which a guardian ad litem has not previously
141 been appointed or if there is a need to continue a guardian ad
142 litem in a case in which a guardian ad litem has been appointed.

143 (d) Who holds the rights to make educational decisions for
144 the child. If appropriate, the court may refer the child to the

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145 district school board for appointment of a surrogate parent under
146 s. 1003.572 or may itself appoint a surrogate parent under s.
147 39.0017.

148 (e)~~(d)~~ The compliance or lack of compliance of all parties
149 with applicable items of the case plan, including the parents'
150 compliance with child support orders.

151 (f)~~(e)~~ The compliance or lack of compliance with a
152 visitation contract between the parent and the social service
153 agency for contact with the child, including the frequency,
154 duration, and results of the parent-child visitation and the
155 reason for any noncompliance.

156 (g)~~(f)~~ The compliance or lack of compliance of the parent
157 in meeting specified financial obligations pertaining to the care
158 of the child, including the reason for failure to comply if such
159 is the case.

160 (h)~~(g)~~ Whether the child is receiving safe and proper care
161 according to s. 39.6012, including, but not limited to, the
162 appropriateness of the child's current placement, including
163 whether the child is in a setting that is as family-like and as
164 close to the parent's home as possible, consistent with the
165 child's best interests and special needs, and including
166 maintaining stability in the child's educational placement.

167 (i)~~(h)~~ A projected date likely for the child's return home
168 or other permanent placement.

169 (j)~~(i)~~ When appropriate, the basis for the unwillingness or
170 inability of the parent to become a party to a case plan. The
171 court and the citizen review panel shall determine if the efforts
172 of the social service agency to secure party participation in a
173 case plan were sufficient.

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174 ~~(k)~~~~(j)~~ For a child who has reached 13 years of age but is
175 not yet 18 years of age, the adequacy of the child's preparation
176 for adulthood and independent living.

177 ~~(l)~~~~(k)~~ If amendments to the case plan are required.

178 Amendments to the case plan must be made under s. 39.6013.

179 Section 5. Subsection (5) of section 1000.21, Florida
180 Statutes, is amended, subsection (8) is renumbered as subsection
181 (9), and a new subsection (8) is added to that section, to read:

182 1000.21 Systemwide definitions.--As used in the Florida K-
183 20 Education Code:

184 (5) "Parent" is either or both parents of a student, any
185 guardian of a student, any person in a parental relationship to a
186 student, or any person exercising supervisory authority over a
187 student in place of the parent. The term "parent" includes a
188 person appointed to serve as a surrogate parent under s. 1003.572
189 or appointed by order of a court with jurisdiction over a child
190 under s. 39.0017.

191 (8) "Surrogate parent" means an individual appointed to act
192 in the place of a parent in educational decisionmaking and in
193 safeguarding a child's rights under the Individuals with
194 Disabilities Education Act and ss. 1003.572 and 39.0017.

195 Section 6. Paragraph (d) of subsection (3) of section
196 1002.22, Florida Statutes, is amended to read:

197 1002.22 Student records and reports; rights of parents and
198 students; notification; penalty.--

199 (3) RIGHTS OF PARENT OR STUDENT.--The parent of any student
200 who attends or has attended any public school, career center, or
201 public postsecondary educational institution shall have the
202 following rights with respect to any records or reports created,

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203 maintained, and used by any public educational institution in the
204 state. However, whenever a student has attained 18 years of age,
205 or is attending a postsecondary educational institution, the
206 permission or consent required of, and the rights accorded to,
207 the parents of the student shall thereafter be required of and
208 accorded to the student only, unless the student is a dependent
209 student of such parents as defined in 26 U.S.C. s. 152 (s. 152 of
210 the Internal Revenue Code of 1954). The State Board of Education
211 shall adopt rules whereby parents or students may exercise these
212 rights:

213 (d) Right of privacy.--Every student has a right of privacy
214 with respect to the educational records kept on him or her.
215 Personally identifiable records or reports of a student, and any
216 personal information contained therein, are confidential and
217 exempt from s. 119.07(1). A state or local educational agency,
218 board, public school, career center, or public postsecondary
219 educational institution may not permit the release of such
220 records, reports, or information without the written consent of
221 the student's parent, or of the student himself or herself if he
222 or she is qualified as provided in this subsection, to any
223 individual, agency, or organization. However, personally
224 identifiable records or reports of a student may be released to
225 the following persons or organizations without the consent of the
226 student or the student's parent:

227 1. Officials of schools, school systems, career centers, or
228 public postsecondary educational institutions in which the
229 student seeks or intends to enroll; and a copy of such records or
230 reports shall be furnished to the parent or student upon request.

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231 2. Other school officials, including teachers within the
232 educational institution or agency, who have legitimate
233 educational interests in the information contained in the
234 records.

235 3. The United States Secretary of Education, the Director
236 of the National Institute of Education, the Assistant Secretary
237 for Education, the Comptroller General of the United States, or
238 state or local educational authorities who are authorized to
239 receive such information subject to the conditions set forth in
240 applicable federal statutes and regulations of the United States
241 Department of Education, or in applicable state statutes and
242 rules of the State Board of Education.

243 4. Other school officials, in connection with a student's
244 application for or receipt of financial aid.

245 5. Individuals or organizations conducting studies for or
246 on behalf of an institution or a board of education for the
247 purpose of developing, validating, or administering predictive
248 tests, administering student aid programs, or improving
249 instruction, if the studies are conducted in a manner that does
250 not permit the personal identification of students and their
251 parents by persons other than representatives of such
252 organizations and if the information will be destroyed when no
253 longer needed for the purpose of conducting such studies.

254 6. Accrediting organizations, in order to carry out their
255 accrediting functions.

256 7. Early learning coalitions and the Agency for Workforce
257 Innovation in order to carry out their assigned duties.

258 8. For use as evidence in student expulsion hearings
259 conducted by a district school board under chapter 120.

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260 9. Appropriate parties in connection with an emergency, if
261 knowledge of the information in the student's educational records
262 is necessary to protect the health or safety of the student or
263 other individuals.

264 10. The Auditor General and the Office of Program Policy
265 Analysis and Government Accountability in connection with their
266 official functions; however, except when the collection of
267 personally identifiable information is specifically authorized by
268 law, any data collected by the Auditor General and the Office of
269 Program Policy Analysis and Government Accountability is
270 confidential and exempt from s. 119.07(1) and shall be protected
271 in a way that does not permit the personal identification of
272 students and their parents by other than the Auditor General, the
273 Office of Program Policy Analysis and Government Accountability,
274 and their staff, and the personally identifiable data shall be
275 destroyed when no longer needed for the Auditor General's and the
276 Office of Program Policy Analysis and Government Accountability's
277 official use.

278 11.a. A court of competent jurisdiction in compliance with
279 an order of that court or the attorney of record in accordance
280 with a lawfully issued subpoena, upon the condition that the
281 student and the student's parent are notified of the order or
282 subpoena in advance of compliance therewith by the educational
283 institution or agency.

284 b. A person or entity in accordance with a court of
285 competent jurisdiction in compliance with an order of that court
286 or the attorney of record pursuant to a lawfully issued subpoena,
287 upon the condition that the student, or his or her parent if the
288 student is either a minor and not attending a postsecondary

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289 | educational institution or a dependent of such parent as defined
290 | in 26 U.S.C. s. 152 (s. 152 of the Internal Revenue Code of
291 | 1954), is notified of the order or subpoena in advance of
292 | compliance therewith by the educational institution or agency.

293 | 12. Credit bureaus, in connection with an agreement for
294 | financial aid that the student has executed, if the information
295 | is disclosed only to the extent necessary to enforce the terms or
296 | conditions of the financial aid agreement. Credit bureaus shall
297 | not release any information obtained under this paragraph to any
298 | person.

299 | 13. Parties to an interagency agreement among the
300 | Department of Juvenile Justice, school and law enforcement
301 | authorities, and other signatory agencies for the purpose of
302 | reducing juvenile crime and especially motor vehicle theft by
303 | promoting cooperation and collaboration, and the sharing of
304 | appropriate information in a joint effort to improve school
305 | safety, to reduce truancy and in-school and out-of-school
306 | suspensions, and to support alternatives to in-school and out-of-
307 | school suspensions and expulsions that provide structured and
308 | well-supervised educational programs supplemented by a
309 | coordinated overlay of other appropriate services designed to
310 | correct behaviors that lead to truancy, suspensions, and
311 | expulsions, and that support students in successfully completing
312 | their education. Information provided in furtherance of the
313 | interagency agreements is intended solely for use in determining
314 | the appropriate programs and services for each juvenile or the
315 | juvenile's family, or for coordinating the delivery of the
316 | programs and services, and as such is inadmissible in any court
317 | proceedings before a dispositional hearing unless written consent

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318 is provided by a parent or other responsible adult on behalf of
319 the juvenile.

320 14. Consistent with the Family Educational Rights and
321 Privacy Act and applicable to a child placed in shelter care
322 under s. 39.402, the Department of Children and Family Services
323 or a community-based care lead agency acting on behalf of the
324 Department of Children and Family Services, as appropriate.

325

326 This paragraph does not prohibit any educational institution from
327 publishing and releasing to the general public directory
328 information relating to a student if the institution elects to do
329 so. However, no educational institution shall release, to any
330 individual, agency, or organization that is not listed in
331 subparagraphs 1.-14., directory information relating to the
332 student body in general or a portion thereof unless it is
333 normally published for the purpose of release to the public in
334 general. Any educational institution making directory information
335 public shall give public notice of the categories of information
336 that it has designated as directory information for all students
337 attending the institution and shall allow a reasonable period of
338 time after the notice has been given for a parent or student to
339 inform the institution in writing that any or all of the
340 information designated should not be released.

341 Section 7. Subsection (12) of section 1003.01, Florida
342 Statutes, is amended to read:

343 1003.01 Definitions.--As used in this chapter, the term:

344 (12) "Child or youth who is experiencing homelessness," for
345 programs authorized under Subtitle B, Education for Homeless
346 Children and Youth, of Title VII of the McKinney-Vento Homeless

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347 Assistance Act, 42 U.S.C. ss. 11431 et seq., means a child or
348 youth who lacks a fixed, regular, and adequate nighttime
349 residence and includes:

350 (a) A child or youth who is sharing the housing of other
351 persons due to loss of housing, economic hardship, or a similar
352 reason; is living in a motel, hotel, travel trailer park, or
353 camping ground due to the lack of alternative adequate
354 accommodations; is living in an emergency or transitional
355 shelter; is abandoned in a hospital; or is awaiting foster care
356 placement.

357 (b) A child or youth who has a primary nighttime residence
358 that is a public or private place not designed for or ordinarily
359 used as a regular sleeping accommodation for human beings.

360 (c) A child or youth who is living in a car, park, public
361 space, abandoned building, bus or train station, or similar
362 setting.

363 (d) A migratory child or youth who is living in
364 circumstances described in paragraphs (a)-(c). "Homeless child"
365 means:

366 ~~(a) One who lacks a fixed, regular nighttime residence;~~

367 ~~(b) One who has a primary nighttime residence that is:~~

368 ~~1. A supervised publicly or privately operated shelter~~
369 ~~designed to provide temporary living accommodations, including~~
370 ~~welfare hotels, congregate shelters, and transitional housing for~~
371 ~~the mentally ill;~~

372 ~~2. An institution that provides a temporary residence for~~
373 ~~individuals intended to be institutionalized; or~~

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374 ~~3. A public or private place not designed for, or~~
375 ~~ordinarily used as, a regular sleeping accommodation for human~~
376 ~~beings; or~~

377 ~~(c) One who temporarily resides with an adult other than~~
378 ~~his or her parent because the parent is suffering financial~~
379 ~~hardship.~~

380
381 ~~A child who is imprisoned, detained, or in the custody of the~~
382 ~~state pursuant to a state or federal law is not a homeless child.~~

383 Section 8. Paragraph (f) of subsection (1) and paragraph
384 (g) of subsection (4) of section 1003.21, Florida Statutes, are
385 amended to read:

386 1003.21 School attendance.--

387 (1)

388 (f) A child or youth who is experiencing homelessness
389 Homeless children, as defined in s. 1003.01, or a child who is in
390 foster care until the time of achieving reunification or a
391 permanent placement must have access to a free public education
392 and must be admitted to school in the school district in which he
393 or she or his or her family lives ~~they or their families live~~.
394 School districts shall assist such homeless children and youth to
395 meet the requirements of subsection (4) and s. 1003.22, as well
396 as local requirements for documentation.

397 (4) Before admitting a child to kindergarten, the principal
398 shall require evidence that the child has attained the age at
399 which he or she should be admitted in accordance with the
400 provisions of subparagraph (1)(a)2. The district school
401 superintendent may require evidence of the age of any child whom
402 he or she believes to be within the limits of compulsory

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403 attendance as provided for by law. If the first prescribed
404 evidence is not available, the next evidence obtainable in the
405 order set forth below shall be accepted:

406 (g) If none of these evidences can be produced, an
407 affidavit of age sworn to by the parent, accompanied by a
408 certificate of age signed by a public health officer or by a
409 public school physician, or, if neither of these is available in
410 the county, by a licensed practicing physician designated by the
411 district school board, which certificate states that the health
412 officer or physician has examined the child and believes that the
413 age as stated in the affidavit is substantially correct. A
414 ~~homeless~~ child or youth who is experiencing homelessness, as
415 defined in s. 1003.01, or a child who is in foster care until the
416 time of achieving reunification or a permanent placement shall be
417 given temporary exemption from this section for 30 school days.

418 Section 9. Subsection (1) and paragraph (e) of subsection
419 (5) of section 1003.22, Florida Statutes, are amended to read:

420 1003.22 School-entry health examinations; immunization
421 against communicable diseases; exemptions; duties of Department
422 of Health.--

423 (1) Each district school board and the governing authority
424 of each private school shall require that each child who is
425 entitled to admittance to kindergarten, or is entitled to any
426 other initial entrance into a public or private school in this
427 state, present a certification of a school-entry health
428 examination performed within 1 year prior to enrollment in
429 school. Each district school board, and the governing authority
430 of each private school, may establish a policy that permits a
431 student up to 30 school days to present a certification of a

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432 school-entry health examination. A ~~homeless~~ child or youth who is
433 experiencing homelessness, as defined in s. 1003.01, or a child
434 who is in foster care until the time of achieving reunification
435 or a permanent placement shall be given a temporary exemption for
436 30 school days. Any district school board that establishes such a
437 policy shall include provisions in its local school health
438 services plan to assist students in obtaining the health
439 examinations. However, any child shall be exempt from the
440 requirement of a health examination upon written request of the
441 parent of the child stating objections to the examination on
442 religious grounds.

443 (5) The provisions of this section shall not apply if:

444 (e) An authorized school official issues a temporary
445 exemption, for a period not to exceed 30 school days, to permit a
446 student who transfers into a new county to attend class until his
447 or her records can be obtained. A ~~homeless~~ child or youth who is
448 experiencing homelessness, as defined in s. 1003.01, or a child
449 who is in foster care until the time of achieving reunification
450 or a permanent placement shall be given a temporary exemption for
451 30 school days. The public school health nurse or authorized
452 private school official is responsible for followup of each such
453 student until proper documentation or immunizations are obtained.
454 An exemption for 30 days may be issued for a student who enters a
455 juvenile justice program to permit the student to attend class
456 until his or her records can be obtained or until the
457 immunizations can be obtained. An authorized juvenile justice
458 official is responsible for followup of each student who enters a
459 juvenile justice program until proper documentation or
460 immunizations are obtained.

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461 Section 10. Section 1003.572, Florida Statutes, is created
462 to read:

463 1003.572 Appointment of surrogate parent.--

464 (1) Each district school board must appoint a surrogate
465 parent for a child who has or is suspected of having a disability
466 when:

467 (a) After reasonable efforts, no parent can be located; or

468 (b) A court of competent jurisdiction over the child under
469 chapter 39 has determined that no person has the authority to
470 serve as the educational decisionmaker for the child.

471
472 The district school board must appoint the surrogate parent
473 within 30 days after notice that the child meets the criteria in
474 paragraph (a) or paragraph (b).

475 (2) For a child in shelter care or with dependency status,
476 the responsibility to appoint a surrogate parent resides with
477 both the district school board and the court with jurisdiction
478 over the child. The district school board must defer to the
479 court's appointment of a surrogate parent under s. 39.0017 if
480 such appointment is made prior to the district school board's
481 appointment of a surrogate parent.

482 (3) Qualifications for a surrogate parent are as follows:

483 (a) A surrogate parent must be 18 years of age or older.

484 (b) A surrogate parent must have no personal or
485 professional interests that conflict with the interests of the
486 child.

487 (c) A guardian ad litem may serve as a surrogate parent.

488 (d) A person may not serve as a surrogate parent if he or
489 she is an employee of the Department of Education, the local

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490 school district, a community-based care provider, the Department
491 of Children and Family Services, or any other public or private
492 agency involved in the education or care of the child; however, a
493 person who acts in a parental role to a child, such as a foster
494 parent or relative caregiver, is not prohibited from serving as a
495 surrogate parent if employed by such agency. Group home staff and
496 therapeutic foster home parents are deemed employees who are not
497 acting in a parental role for this purpose.

498 (e) A person who is appointed as a surrogate parent is not
499 an employee of an agency solely because he or she is paid by the
500 agency to serve as a surrogate parent

501 (f) A surrogate parent must complete training provided or
502 approved by the district school board to ensure that he or she
503 has the knowledge and skills to adequately represent the child.

504 (4) Rights, responsibilities, and immunities of a surrogate
505 parent are as follows:

506 (a) A surrogate parent is entitled to all of the rights
507 afforded to a parent under this chapter.

508 (b) A surrogate parent is responsible for assisting the
509 child's school with the identification, evaluation, and
510 educational placement of the child in order to obtain a free
511 appropriate education for the child.

512 (c) A person appointed as a surrogate parent who
513 participates in proceedings related to the child's education
514 shall be presumed prima facie to be acting in good faith and, in
515 doing so, shall be immune from any civil or criminal liability
516 that otherwise might be incurred or imposed.

517 Section 11. This act shall take effect July 1, 2008.