

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 769
SPONSOR(S): Kelly
TIED BILLS: None

Education for Children in Shelter Care or Foster Care
IDEN./SIM. BILLS: SB 2750

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------|----------------|--------------------|
| 1) <u>Committee on Healthy Families</u> | <u>8 Y, 0 N</u> | <u>Preston</u> | <u>Schoolfield</u> |
| 2) <u>Healthcare Council</u> | <u></u> | <u></u> | <u></u> |
| 3) <u>Policy & Budget Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

The bill provides authority for the court to appoint a surrogate parent for a child in proceedings under chapter 39, Florida Statutes, who has or is suspected to have a disability for the purpose of educational decisionmaking under certain specified circumstances, specifies the individuals the court can and cannot appoint, and requires the court to defer to the district school board's appointment of a surrogate parent if such appointment is made prior to the court's appointment. In addition, the bill does the following:

- Adds a designated liaison between a local school district and the Department of Children and Family Services (DCF or department) or the court to the list of entities that may be granted access to records in child abuse and neglect cases.
- Requires the court to request parental consent for the release of a child's educational records if the child is placed in shelter following a shelter hearing and provides that the court may order the release of those records if the parents withhold consent.
- Adds "surrogate parent" to the definition of the term "parent" under the school code and gives a surrogate parent the same rights as a parent under chapter 2003, Florida Statutes.
- Creates a definition for the term "surrogate parent".
- Amends the current definition of "homeless child" to align with definition under the federal McKinney-Vento Homeless Assistance Act for purposes of school enrollment and obtaining health records and immunizations.
- Establishes provisions in the K-20 Education Code related to the appointment of surrogate parents.

The bill is anticipated to have no fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill clarifies that the court and the district school boards have the authority to appoint a surrogate parent for a child in proceedings under chapter 39 who has or is suspected of having a disability.

Safeguard individual liberty – Provisions of the bill may lead to better educational decisions and outcomes for children in foster care who have a disability and need the services of a surrogate parent for purposes of educational decisionmaking.

B. EFFECT OF PROPOSED CHANGES:

Federal Law

In 1975, Congress enacted the Education for All Handicapped Children Act (EAHCA). The goal of this federal legislation was to ensure access to a free, appropriate public education (FAPE) for each child with a disability in every state and locality across the country. The law provided a framework to improve access to education for children with disabilities. Changes implicit in the law included efforts to improve how children with disabilities were identified and educated, to evaluate the success of these efforts, and to provide due process protections for children and families. In addition, the law authorized financial incentives to enable states and localities to comply.¹

Prior to this enactment, public schools educated only 1 out of 5 children with disabilities. Until that time, many states had laws that explicitly excluded children with certain types of disabilities from attending public school, including children who were blind, deaf, and children labeled "emotionally disturbed" or "mentally retarded." When the EAHCA was signed into law, more than 1 million children nationwide had no access to the public school system. Many of these children lived at state institutions where they received limited or no educational or rehabilitation services. An additional 3.5 million children attended school but were "warehoused" in segregated facilities and received little or no effective instruction.²

The EAHCA was a Congressional response to concern for two groups of children: the more than 1 million children with disabilities who were excluded entirely from the education system and the children with disabilities who had only limited access to the education system and were therefore denied an appropriate education. This latter group encompassed more than half of all children with disabilities who were living in the United States at that time. These issues of improved access became guiding principles for further advances in educating children with disabilities over the last quarter of the 20th century.³

In 1990 the "Education of All Handicapped Children Act" was renamed the "Individuals with Disabilities Education Act" (IDEA).⁴ Like its predecessor, IDEA addresses the educational needs of children with disabilities from birth to the age of 21 and governs how states and public agencies provide early intervention, special education, and related services to children with disabilities.⁵ IDEA was

¹ United States Department of Education, Office of Special Education and Rehabilitative Services. History: Twenty-Five Years of Progress in Educating Children With Disabilities Through IDEA. Date of Publication Unknown. Available at <http://www.ed.gov/policy/speced/leg/idea/history.pdf>.

² Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind," a report published by the National Council on Disability on January 25, 2000.

³ Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind," a report published by the National Council on Disability on January 25, 2000.

⁴ Public. Law No. 101-476, 104 Stat. 1142.

⁵ See 20 U.S.C. s. 1400 et seq.

significantly amended in 1997. The definition of disabled children was expanded to include developmentally delayed children between three and nine years of age. The amendments also required parents to attempt to resolve disputes with schools and Local Educational Agencies (LEAs) through mediation, and provided a process for doing so, and authorized additional grants for technology, disabled infants and toddlers, parent training, and professional development.⁶

On December 3, 2004, IDEA was amended by the Individuals With Disabilities Education Improvement Act of 2004 (IDEA 2004) which was a significant update. Several provisions aligned IDEA with the No Child Left Behind Act of 2001. Fifteen states were authorized to implement 3-year individualized education plans (IEPs) on a trial basis when parents continually agree and more concrete provisions relating to discipline of special education students were also added.⁷ As of 2006, more than 6 million children in the U.S. receive special education services through IDEA.⁸

Free Appropriate Public Education

In defining the purpose of special education, IDEA 2004 clarifies Congress' intended outcome for each child with a disability: students must be provided a free appropriate public education that prepares them for further education, employment and independent living. FAPE is an educational right of disabled children in the United States and is defined as an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives educational benefit.

Surrogate Parents

The IDEA 2004 requires that school districts and all other education agencies protect the rights of children with disabilities. Whenever the parents of a child are not known, cannot be located after reasonable efforts, or when the child is a ward of the court, a surrogate parent must be appointed. The surrogate parent represents a child with a disability in all matters relating to the identification, evaluation, educational placement, and the provision of a free appropriate public education to the child. Both school districts and juvenile courts in a state have the authority to appoint surrogate parents when needed. In addition, parents themselves, or children who have reached the age of majority, may request the assistance of a surrogate parent.⁹ In order to serve as a surrogate parent:

- The individual must have the knowledge and skills to ensure that the child is adequately represented in decisions about special education;
- The individual may not be an employee of the state educational agency (SEA), the local educational agency (LEA), or any other agency that is involved in the education or care of the child. However, surrogates shall not be considered employees of a school district solely on the basis of being compensated from public funds;
- The individual must not be an employee of any other agency involved in the education or care of the child, except of non-public agencies that provide only non-education care for the child; and
- The individual must be free of any other interest that conflicts with the child's interest.

Consent of Parent for Evaluation

If the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

⁶ Pub. L. No. 105-17, 111 Stat. 37.

⁷ Pub. L. No. 108-446, 118 Stat. 2647.

⁸ IDEA Parent Guide, National Center for Learning Disabilities, April 2006. Available at: http://www.nclld.org/images/stories/downloads/parent_center/idea2004parentguide.pdf.

⁹ 20 U.S.C. 1415(b)(2)(A).

- Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.¹⁰

Foster Children and Special Education

Research has confirmed that foster children perform significantly worse in school than do children in the general population. The educational shortcomings of foster children can be seen in higher rates of grade retention, lower scores on standardized tests, and higher absenteeism, tardiness, truancy and dropout rates. The poor academic performance of these children affects their lives after foster care and contributes to higher than average rates of homelessness, criminality, drug abuse, and unemployment among those who have aged out of care.¹¹ When children in foster care need special education services the statistics also indicate deficits. Specifically, numerous studies indicate that:

- Between one-quarter and nearly one-half (23%–47%) of children and youth in out-of-home care in the U.S. receive special education services at some point in their schooling. The national average of school-aged children and youth served in special education each year is close to 12%.
- At both the elementary and secondary levels, more than twice as many foster youth as non-foster youth in a Washington State study had enrolled in special education programs.
- In an Oregon study done in 2006 comparing a group of 45 youth in foster care in special education to a group in special education, but not in foster care, revealed that youth in foster care were less likely to have an advocate such as a family member, foster parent, or educational surrogate present at their planning process meeting (42% vs. 69%).
- In a New York study, Advocates for Children of New York found that 90% of biological parents of children in foster care surveyed did not participate in any special education processes concerning their child, 60% of caseworkers/social workers surveyed “were not aware of existing laws when referring children to special education” and over 50% said “that their clients did not receive appropriate services very often while in foster care.”¹²

Among the numerous problems related to education that children in foster care with special education needs face is often the lack of a consistent and knowledgeable adult who can advocate on their behalf for special education and supplemental services. The birth parents of a child in foster care may be unable or unwilling to make decisions about his or her education or to advocate on behalf of their child for special education services. Their rights to participate in educational decisions may have been limited or terminated by a court, or they may no longer be involved in their child’s life. In such cases, a responsible adult must be appointed to fill this role. In many cases, a child’s foster parent is the person most familiar with the child’s educational needs and thus may be in the best position to advocate and make decisions on behalf of the child regarding special educational services. The regulations under the IDEA provide that a foster parent may act as a child’s parent under the act if the following conditions are met:

- State law does not prohibit the foster parent from acting as the child’s “parent;”
- The birth parents’ authority to make educational decisions for the child has been extinguished; and
- The foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under the act; and has no interest that would conflict with the interests of the child.

¹⁰ 20 U.S.C. 1414(a)(1)(D)(iii).

¹¹ Christian, S. National Conference on State Legislatures, *Educating Children in Foster Care*. December 2003.

¹² National Working Group on Foster Care and Education. *Educational Outcomes for Children and Youth in Foster and Out-of-Home Care*, September 2007.

Some state laws require that relative caregivers, foster parents or court-appointed special advocates be given first preference for appointment as a surrogate.¹³ In some cases, however, it may not be advisable for a foster parent to represent a child in need of special education services, either as a parent or as a surrogate. Most foster parents have not been trained in the complexities of special education and thus may not be able to adequately represent the children in their care. Some states have amended their foster parent licensure laws to require specialized foster care providers to receive training in special education.¹⁴ Another disadvantage of having a foster parent represent a child's special education needs is that a change in foster placement would result in loss of the foster parent's authority. A similar issue exists with respect to a surrogate parent, who may lose his or her authority if the child changes school districts. California has enacted two laws that are intended to provide continuity in educational decision making for children in foster care who experience frequent placement changes:

- AB 490 restricts the authority of a foster parent to act as a child's "parent" under the IDEA to those situations in which the child's placement is a "planned permanent living arrangement,"¹⁵ rather than a temporary foster care placement. This provision is in line with the IDEA regulations' requirement that foster parents acting as parents have a "long-term parental relationship" with the child.¹⁶
- A related law passed in 2002 requires that courts appoint a "responsible adult" to make educational decisions for a child in a dependency proceeding whenever the court limits the educational rights of the parent or guardian. Because a responsible adult is appointed by the court, not the school district, he or she retains authority even if the child changes school districts. Where no responsible adult can be identified, and the child is eligible for special education services, the court is required to refer the child to the school district for appointment of a surrogate.¹⁷

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- Adds a designated liaison between a local school district and the Department of Children and Family Services (DCF or department) or the court to the list of entities that may be granted access to records in child abuse and neglect cases.
- Requires the court to request parental consent for the release of a child's educational records if the child is placed in shelter following a shelter hearing and provides that the court may order the release of those records if the parents withhold consent.
- Adds "surrogate parent" to the definition of the term "parent" under the school code and gives a surrogate parent the same rights as a parent under chapter 2003, Florida Statutes, and creates a definition for the term "surrogate parent".
- Amends the current definition of "homeless child" to align with definition under the federal McKinney-Vento Homeless Assistance Act for purposes of school enrollment and obtaining health records and immunizations.
- Establishes provisions in the K-20 Education Code related to the appointment of surrogate parents.

SEE DRAFTING ISSUES AND COMMENTS SECTION.

¹³ See, e.g., Cal. Government Code, s.7579.5.

¹⁴ See, e.g., Ohio Rev. Code Ann. §5103.0310(M).

¹⁵ See s. 39.6241, Florida Statutes.

¹⁶ 2003 Cal. Stats., Chap. 862, AB 490.

¹⁷ 2002 Cal. Stats., A.B. 886, Chap. 180, codified at Cal. Welfare and Institutions Code s. 361.

C. SECTION DIRECTORY:

Section 1. Creates s. 39.0017, Florida Statutes, relating to appointment of a surrogate parent for education decisionmaking.

Section 2. Amends s. 39.202, Florida Statutes, relating to confidentiality of records and reports in child abuse and neglect cases.

Section 3. Amends s. 39.402, Florida Statutes, relating to placement in a shelter.

Section 4. Amends s. 39.701, Florida Statutes, relating to judicial review.

Section 5. Amends s. 1000.21, Florida Statutes, relating to definitions as used in the Florida K-20 Education Code.

Section 6. Amends s. 1002.22, Florida Statutes, relating to student records and reports, rights of parents and students, notification, and penalties.

Section 7. Amends s. 1003.01, Florida Statutes, relating to definitions.

Section 8. Amends s. 1003.21, Florida Statutes, relating to school attendance.

Section 9. Amends s. 1003.22, Florida Statutes, relating to school entry health exams, immunizations, exemptions, and duties of the Department of Health.

Section 10. Creates s. 1003.572, Florida Statutes, relating to appointment of a surrogate parent.

Section 11. Provides for an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While the bill provides no additional rulemaking authority, the Department of Education has reported that they will have to amend Rule 6A-6.0333, F.A.C., to limit the provisions of surrogate parents to students with disabilities and to clarify the option of court-appointed surrogate parents.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Lines 49 and 470 of the bill, reference “child has or is suspected of having a disability”. The term “disability” is not defined.¹⁸ Students with disabilities are included in the definition of the term “exceptional student” in s. 1003.01(3)(a), Florida Statutes, but that definition also includes students who are gifted. It would appear that the bill might relieve the school boards of the duty to appoint surrogate parents for gifted students as they are currently required to do.¹⁹

- Lines 51-68 of the bill, delineate who may be court appointed to serve as a surrogate parent. This listing is not the same as lines 486-502 of the bill, the requirements of the IDEA or Rule 6A.-6.0333, F.A.C. This disparity may cause confusion for those individuals responsible for implementation of the provisions of the bill.

- Lines 85-87 of the bill, add a designated liaison between local school districts and the Department of Children and Family Services (DCF) or the court to the list of entities that may be granted access to records in child abuse and neglect cases. It is unclear who these liaisons are, how they are designated, what authority they have, and how such authority is granted.

¹⁸ In addition, s. 39.0016, Florida Statutes, relating to the education of abused, neglected and abandoned children, references a child who has or is suspected of having a disability with no definition. The section also refers to the IDEA in such a manner that it could be implied that the IDEA definition of “child with a disability” might apply, but it’s unclear.

¹⁹ See Rule 6A-6.0333 F.A.C., relating to surrogate parents.

Current law, relating to the education of abused, neglected, and abandoned children, requires the department to enter into an agreement with the Department of Education (DOE) and into agreements with district school boards regarding the education and related care of children known to the department.²⁰ An interagency agreement was entered into on July 11, 2005, between the department, DOE and the Agency for Workforce Innovation (AWI). A section of the agreement provides:

The Parties agree to each promote the appointment of a Liaison by each district school board, by each DCF district/region or community-based care provider and for each Regional Workforce Board Liaison, with the intent that such Liaisons shall be responsible for implementation of the requirements in this Agreement. The Liaisons shall work to achieve appropriate educational, job training and employment services for children known to the department.²¹

It is unclear whether the liaisons appointed pursuant to the interagency agreement are the same as those referenced on lines 85-87 of the bill. Since the appointment of liaisons pursuant to the interagency agreement is not required, some district school boards may not have a liaison. Also, line 87 of the bill, appears to reference a liaison between school districts and the court which appears to be outside the scope of both the statute and the interagency agreement.

- Lines 109-112 of the bill, provide that at the shelter hearing or any subsequent hearing the court may either appoint a surrogate parent or refer a child to the district school board for appointment of a surrogate parent. This is inconsistent with current law which provides that a surrogate parent may be appointed “as soon as the child is determined to be dependent...”²²
- The portions of the bill creating new sections of statute – lines 40-76 and lines 465-521 – are related to educational decisionmaking and the appointment of a surrogate parent for dependent children under chapter 39, Florida Statutes, who have or are suspected of having a disability. Lines 98-112 of the bill appear to apply to **any** child placed in shelter not just those who have or are suspected of having a disability. On line 110, “child” may need to be “child who has or is suspected of having a disability”. In addition, it is unclear if the phrase, “to any of the identified entities or persons” on lines 106-107 of the bill refers back to lines 101-102. Striking this phrase would provide clarity.
- Lines 187-190 of the bill, adds a “surrogate parent” to the definition of “parent” as defined under s. 1000.21(5), Florida Statutes. The definitions in s. 1000.21, Florida Statutes are systemwide definitions, applicable to the entire Florida K-20 Education Code. The newly created s. 1003.572, Florida Statutes – lines 465-521 – entitles a surrogate parent to the same rights afforded to a parent under chapter 1003, Florida Statutes. This would appear to be problematic. A surrogate parent is appointed only for purposes of educational decisionmaking under IDEA – it would appear that parent’s have rights under chapter 1003 not related to educational decisionmaking that would be inappropriate for surrogate parents to be entitled to. For example, under s. 1003.22, Florida Statutes, parents have the right to request that their child be exempted from health examinations and immunizations for religious reasons. This would appear to fall outside educational decisionmaking arena. Rule 6A-6.0333, F.A.C. is much clearer in that it specifically states that the responsibilities of a surrogate parent shall not extend to the care, maintenance, custody, residential placement or any other area not specifically related to the education of the child.
- Lines 323-324 of the bill, appear to be limiting this provision to children placed in shelter care under s. 39.402, Florida Statutes, when the existing language would appear to apply to all children under chapter 39 proceedings.

²⁰ See s. 39.0016, Florida Statutes.

²¹ See Interagency Agreement, Article 2, Section 2.04 Liaisons. July 11, 2005.

²² See s. 39.0016(4)(c)5., Florida Statutes.

- Pages 13-19 of the bill, add numerous references to “child” and “youth” into the School Code, but the School Code, unlike s. 39.01(12), F.S., does not define these terms. May want to cross-reference s. 39.01(12), Florida Statutes.
- Lines 393, 418, & 438 refer to “foster care.” This is defined in s. 39.01(30), F.S., but not in the School Code. May want to cross-reference s. 39.01(30), Florida Statutes.
- On line 493 – “Department of Education” should be shortened to “department”.
- At the end of line 505 of the bill, there needs to be a “.”.
- Line 394 of the bill (current law), refers to “free public education” for children who are homeless and children who are in foster care. Lines 515-516 of the bill, refer to “free appropriate education” for children with surrogate parents and federal IDEA uses the term “free appropriate public education”. This creates additional inconsistency.
- Section 39.0016, Florida Statutes, and the Interagency Agreements required by that section use the term, “child known to the department” which is not used in the bill or the K-20 Education Code. This type of inconsistency may lead to implementation problems.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES