

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,
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
41 to read:

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

44 (1) Any time that the court determines that no person
45 holds 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
49 having a disability, the court may appoint a surrogate parent
50 for 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

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57 agency involved in the education or care of the child as
58 appointment of those persons is prohibited by federal law;
59 however, a person who acts in a parental role to a child, such
60 as 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
64 purpose. 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
67 in the child's life regardless of whether that person has
68 custody of 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:

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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
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
94 39.402, Florida Statutes, are renumbered as subsections (13)
95 through (19), respectively, and a new subsection (12) is added
96 to that 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
108 to who holds the right to make educational decisions for the
109 child. The court at the shelter hearing or any subsequent
110 hearing may refer the child to the district school board for
111 appointment of a surrogate parent under s. 1003.572 or may
112 itself appoint a surrogate parent under s. 39.0017.

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

115 39.701 Judicial review.--

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

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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
145 district school board for appointment of a surrogate parent
146 under s. 1003.572 or may itself appoint a surrogate parent under
147 s. 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
158 care of the child, including the reason for failure to comply if
159 such 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
 170 or inability of the parent to become a party to a case plan. The
 171 court and the citizen review panel shall determine if the
 172 efforts of the social service agency to secure party
 173 participation in a case plan were sufficient.

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 (1)~~(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
 186 a 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.

189 1003.572 or appointed by order of a court with jurisdiction over
 190 a child under s. 39.0017.

191 (8) "Surrogate parent" means an individual appointed to
 192 act in the place of a parent in educational decisionmaking and
 193 in 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:

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

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

225 released to the following persons or organizations without the
226 consent of the student or the student's parent:

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

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

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

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

246 5. Individuals or organizations conducting studies for or
247 on behalf of an institution or a board of education for the
248 purpose of developing, validating, or administering predictive
249 tests, administering student aid programs, or improving
250 instruction, if the studies are conducted in a manner that does
251 not permit the personal identification of students and their
252 parents by persons other than representatives of such

253 organizations and if the information will be destroyed when no
 254 longer needed for the purpose of conducting such studies.

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

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

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

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

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

279 11.a. A court of competent jurisdiction in compliance with
 280 an order of that court or the attorney of record in accordance

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281 with a lawfully issued subpoena, upon the condition that the
282 student and the student's parent are notified of the order or
283 subpoena in advance of compliance therewith by the educational
284 institution or agency.

285 b. A person or entity in accordance with a court of
286 competent jurisdiction in compliance with an order of that court
287 or the attorney of record pursuant to a lawfully issued
288 subpoena, upon the condition that the student, or his or her
289 parent if the student is either a minor and not attending a
290 postsecondary educational institution or a dependent of such
291 parent as defined in 26 U.S.C. s. 152 (s. 152 of the Internal
292 Revenue Code of 1954), is notified of the order or subpoena in
293 advance of compliance therewith by the educational institution
294 or agency.

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

301 13. Parties to an interagency agreement among the
302 Department of Juvenile Justice, school and law enforcement
303 authorities, and other signatory agencies for the purpose of
304 reducing juvenile crime and especially motor vehicle theft by
305 promoting cooperation and collaboration, and the sharing of
306 appropriate information in a joint effort to improve school
307 safety, to reduce truancy and in-school and out-of-school
308 suspensions, and to support alternatives to in-school and out-

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309 of-school suspensions and expulsions that provide structured and
310 well-supervised educational programs supplemented by a
311 coordinated overlay of other appropriate services designed to
312 correct behaviors that lead to truancy, suspensions, and
313 expulsions, and that support students in successfully completing
314 their education. Information provided in furtherance of the
315 interagency agreements is intended solely for use in determining
316 the appropriate programs and services for each juvenile or the
317 juvenile's family, or for coordinating the delivery of the
318 programs and services, and as such is inadmissible in any court
319 proceedings before a dispositional hearing unless written
320 consent is provided by a parent or other responsible adult on
321 behalf of the juvenile.

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

327
328 This paragraph does not prohibit any educational institution
329 from publishing and releasing to the general public directory
330 information relating to a student if the institution elects to
331 do so. However, no educational institution shall release, to any
332 individual, agency, or organization that is not listed in
333 subparagraphs 1.-14., directory information relating to the
334 student body in general or a portion thereof unless it is
335 normally published for the purpose of release to the public in
336 general. Any educational institution making directory

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337 information public shall give public notice of the categories of
338 information that it has designated as directory information for
339 all students attending the institution and shall allow a
340 reasonable period of time after the notice has been given for a
341 parent or student to inform the institution in writing that any
342 or all of the information designated should not be released.

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

345 1003.01 Definitions.--As used in this chapter, the term:

346 (12) "Child or youth who is experiencing homelessness,"
347 for programs authorized under Subtitle B, Education for Homeless
348 Children and Youth, of Title VII of the McKinney-Vento Homeless
349 Assistance Act, 42 U.S.C. ss. 11431 et seq., means a child or
350 youth who lacks a fixed, regular, and adequate nighttime
351 residence and includes:

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

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

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

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

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

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

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

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

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

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

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

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

389 1003.21 School attendance.--

390 (1)

391 (f) A child or youth who is experiencing homelessness

392 ~~Homeless children~~, as defined in s. 1003.01, or a child who is

393 in foster care until the time of achieving reunification or a
 394 permanent placement must have access to a free public education
 395 and must be admitted to school in the school district in which
 396 he or she or his or her family lives ~~they or their families~~
 397 ~~live~~. School districts shall assist such homeless children and
 398 youth to meet the requirements of subsection (4) and s. 1003.22,
 399 as well as local requirements for documentation.

400 (4) Before admitting a child to kindergarten, the
 401 principal shall require evidence that the child has attained the
 402 age at which he or she should be admitted in accordance with the
 403 provisions of subparagraph (1)(a)2. The district school
 404 superintendent may require evidence of the age of any child whom
 405 he or she believes to be within the limits of compulsory
 406 attendance as provided for by law. If the first prescribed
 407 evidence is not available, the next evidence obtainable in the
 408 order set forth below shall be accepted:

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

420 shall be given temporary exemption from this section for 30
 421 school days.

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

424 1003.22 School-entry health examinations; immunization
 425 against communicable diseases; exemptions; duties of Department
 426 of Health.--

427 (1) Each district school board and the governing authority
 428 of each private school shall require that each child who is
 429 entitled to admittance to kindergarten, or is entitled to any
 430 other initial entrance into a public or private school in this
 431 state, present a certification of a school-entry health
 432 examination performed within 1 year prior to enrollment in
 433 school. Each district school board, and the governing authority
 434 of each private school, may establish a policy that permits a
 435 student up to 30 school days to present a certification of a
 436 school-entry health examination. A ~~homeless~~ child or youth who
 437 is experiencing homelessness, as defined in s. 1003.01, or a
 438 child who is in foster care until the time of achieving
 439 reunification or a permanent placement shall be given a
 440 temporary exemption for 30 school days. Any district school
 441 board that establishes such a policy shall include provisions in
 442 its local school health services plan to assist students in
 443 obtaining the health examinations. However, any child shall be
 444 exempt from the requirement of a health examination upon written
 445 request of the parent of the child stating objections to the
 446 examination on religious grounds.

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

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

465 Section 10. Section 1003.572, Florida Statutes, is created
 466 to read:

467 1003.572 Appointment of surrogate parent.--

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

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

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

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476 The district school board must appoint the surrogate parent
477 within 30 days after notice that the child meets the criteria in
478 paragraph (a) or paragraph (b).

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

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

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

488 (b) A surrogate parent must have no personal or
489 professional interests that conflict with the interests of the
490 child.

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

492 (d) A person may not serve as a surrogate parent if he or
493 she is an employee of the Department of Education, the local
494 school district, a community-based care provider, the Department
495 of Children and Family Services, or any other public or private
496 agency involved in the education or care of the child; however,
497 a person who acts in a parental role to a child, such as a
498 foster parent or relative caregiver, is not prohibited from
499 serving as a surrogate parent if employed by such agency. Group
500 home staff and therapeutic foster home parents are deemed
501 employees who are not acting in a parental role for this
502 purpose.

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

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

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

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

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

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

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