HB 1556: Surrogate Parent Updates

HB 1556 made these changes to Following Laws:

- amended TEC §29.015 *Special Education Decision-Making for Children in Foster Care*
- added TEC §29.0151 *Appointment of Surrogate Parent for Certain Children*
- amended Texas Family Code §107.031 (c) *Volunteer Advocates*
- amended Texas Family Code §263.0025 *Special Education Decision Making for Children in Foster Care*

**Effective 9/1/2017**

All changes affect Students Placed with **FOSTER PARENTS only**

If:

- Texas Department of Family and Protective Services (TDFPS) has temporary or permanent managing conservatorship without rights limited by a court order; and
- the student lives in *foster family home*

Then the following provisions of HB 1556 apply...

**Note:** Commissioner’s Rules (TAC) have not yet been updated to reflect these changes.
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Foster Parent as Parent (Not as Surrogate Parent):
- The foster parent can immediately act as the parent of the child (previously this was after the student had been in the home for 60 days).

The biggest change here is that the foster parent is immediately eligible to become a parent, eliminating the previous 60-day placement period.

This eliminates the need to track how long the student has been with the foster parent (and then reassess the need for a surrogate parent at 60 days), as well as eliminates the need to track foster parents completing surrogate parent responsibilities/duties.

- TDFPS must notify the school district no later than the 5th day after enrollment if the foster parent is unable or unwilling to serve as the parent.
  - If the district receives this notification, the district must appoint a surrogate parent...
    - Unless the district has received a form 2085-E with a court appointed surrogate parent (note: The court appointed surrogate parent MUST meet the criteria outlined in IDEA and may be the child’s guardian ad litem or the court-certified volunteer advocate.)
    - If the district has received a 2085-E form with a court-appointed surrogate parent, they must honor this surrogate parent, unless the surrogate parent does not meet the requirements in IDEA.
  - The district may appoint the child’s guardian ad litem or the court-certified volunteer advocate.
    - The volunteer advocate can be assigned if:
      - the foster parent is not acting as the parent; and
      - the volunteer advocate is serving as guardian ad litem of the child.

If the foster parent is unwilling or unable to serve as the parent, TDFPS must notify the LEA within 5 days of the student’s enrollment.

In this case, unless the LEA receives a 2085-E form with a court-appointed surrogate parent, the LEA must assign a surrogate parent. The LEA may assign the child’s guardian ad litem or the court-certified volunteer advocate, if they choose to do so (as can the court).
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Training Requirements:

- **The foster parent who qualifies as a parent** must still complete a training program but the timeline requirements now read that it must be completed:
  - Before the next scheduled ARD meeting for the child but no later than the 90th day after the date the foster parent begins acting as the parent.
  - Additionally, the law specifies that if the foster parent has already completed a training program, they cannot be required to retake the program to continue serving as the child’s parent or to serve as a surrogate parent for another child.

The biggest change here is that the foster parent is the training timeline for the foster parent, who is now a parent...the law specifies 90 calendar days (and TEA has always said sooner if needed) for all other surrogate parents, so Commissioners Rules may clarify this as being the same.

The rule about not requiring additional training mirrors existing language about not requiring a surrogate who has already taken training to take additional training (19 TAC 89.1047(b)(1)).

- **A court-appointed surrogate parent (identified on a form 2085-E) may be prescribed training by the court.** If the court prescribes training for a person who is appointed as a surrogate parent, the training must comply with TEA’s requirements.
  - If the court-appointed surrogate parent is a volunteer advocate, they must complete the training program prescribed by TEA within the state’s prescribed timelines (within 90 calendar days of date of assignment (sooner if needed)).

The timeline here remains the same as all other surrogate parents, and the same as previous law.
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Surrogate Parent Responsibilities (District-Appointed Surrogate Parent)

A surrogate parent appointed by the district must:

- be willing to serve in that capacity;
- exercise independent judgment in pursing the child’s interests;
- ensure that the child’s due process rights under applicable state and federal laws are not violated;
- complete a training program that complies with minimum standards established by TEA rule and within state timelines (need timelines here);
- visit the child and the school where the child is enrolled;
- review the child’s educational records;
- consult with person’s involved in the child’s education, including:
  - teachers;
  - caseworkers;
  - court-appointed volunteers;
  - guardian ad litem;
  - attorney ad litem;
  - foster parent; and
  - caregiver; and
- attend meetings of the child’s ARD committee.

These are not new responsibilities, but are presumably added to cover the new piece of TEC §29.0151 and ensure consistency among all surrogate parents. All of these requirements were already in place in TEC §29.001.
If a court-appointed surrogate parent does not perform his/her surrogate parent responsibilities:

The district must:

- Consult with TDFPS; and
- appoint another surrogate parent.

TDFPS must:

- promptly notify the court of the failure of the surrogate parent to perform his/her duties.

This is an entirely new provision of law. Previously, the LEA had no recourse under law if the court-appointed surrogate parent did not fulfill his/her surrogate parent responsibilities/duties.
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Don’t Forget
(not part of HB 1556)

TEC §25.007 (b)(9) Requires

For a student who is in foster care, the LEA must provide notice to the student’s educational decision-maker (this may be different than his/her foster parent/parent or surrogate parent) and his/her caseworker regarding events that may significantly impact the student’s education.

This includes (but is not necessarily exclusive to):
- Requests or referrals for an evaluation under Section 504 or special education;
- ARD committee meetings;
- Manifestation determination reviews (MDRs);
- Any disciplinary actions for which parental notice is required;
- Citations issued for a Class C misdemeanor offenses on school property or at school-sponsored events; and
- Reports of restraint and seclusion.

Educational decision makers are designated on the 2085-E form and are not always the same as the foster parent or surrogate parent.

This notice does not make these individual decision makers in these meetings, as the parent/surrogate parent is still the special education decision maker.