
By: Chairman, Economic and Environmental Affairs Committee (Departmental - Education)

Requested: October 4, 1995

Introduced and read first time: January 10, 1996

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Education - Parent Surrogates**

3 FOR the purpose of vesting local school systems with the authority to determine that a
4 child is eligible for a parent surrogate as well as to select individuals to serve as
5 parent surrogates, determine qualifications of individuals to represent children in
6 educational matters, appoint parent surrogates, and reject an individual unqualified
7 to serve as a parent surrogate; and generally relating to parent surrogates.

8 BY repealing and reenacting, with amendments,
9 Article - Education
10 Section 8-414
11 Annotated Code of Maryland
12 (1992 Replacement Volume and 1995 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Education**

16 8-414.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) "Child" means an individual under the age of 21 who:

19 (i) Has been determined through appropriate procedures to be
20 [handicapped] DISABLED and in need of special education; or

21 (ii) Is believed to be [handicapped] DISABLED and in need of special
22 education.

23 (3) "Educational decision making process" means all procedures relating to
24 the identification, evaluation, or educational placement of a child and the provision of a
25 free appropriate public education, including the appeal procedures provided for by §
26 8-415 of this article.

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1 (4) "LOCAL SCHOOL SUPERINTENDENT" MEANS THE SCHOOL SYSTEM
2 SUPERINTENDENT OR ANY INDIVIDUAL IN CHARGE OF A SYSTEM OR PROGRAM
3 THAT PROVIDES EDUCATIONAL SERVICES TO CHILDREN.

4 [(4)] (5) "Parent" means:

5 (i) A child's natural parents;

6 (ii) A guardian;

7 (iii) A person acting as a parent of a child such as a relative or a
8 stepparent with whom a child lives including those relatives or stepparents who are the
9 foster parents; or

10 (iv) Any other individual who is legally responsible for a child's
11 welfare.

12 Parent does not include a social worker or a foster parent, except as provided in
13 subparagraph (iii), unless appointed as a parent surrogate.

14 [(5)] (6) "Parent surrogate" means a person who is appointed by the [State
15 Superintendent] LOCAL SCHOOL SUPERINTENDENT to act in place of a parent of a
16 child in the educational decision making process.

17 [(6)] (7) "Public agency" includes the State Department of Education, local
18 education agencies, and other agencies that are responsible for providing education to
19 [handicapped] DISABLED children, including the Department of Health and Mental
20 Hygiene, Mental Hygiene Administration, the Mental Retardation Administration, the
21 Department of Juvenile Justice, and the Maryland School for the Deaf. For the purpose
22 of this section the Maryland School for the Blind shall be considered a public agency.

23 [(7)] (8) "Unavailable" means that a public agency, after reasonable efforts,
24 cannot discover the physical whereabouts of a child's parent.

25 [(8)] (9) "Unknown" means that a public agency, after reasonable efforts,
26 cannot identify the child's parent.

27 [(9)] (10) "Ward of the State" means a child for whom a State or county
28 agency or official has been appointed legal guardian, or who has been committed by a
29 court of competent jurisdiction to the legal custody of a State or county agency or official
30 with the express authorization that the State or county agency or official make
31 educational decisions for the child.

32 (b) A public agency shall request that the [State Superintendent] LOCAL
33 SCHOOL SUPERINTENDENT appoint a parent surrogate to represent a child AT ANY
34 POINT in the educational decision making process IF IT IS SUSPECTED THAT THE CHILD
35 MAY BE DISABLED AND if:

36 (1) The child is a ward of the State; or

37 (2) The parents of the child are unknown or unavailable.

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1 (c) Any request to the [State Superintendent] LOCAL SCHOOL
2 SUPERINTENDENT for the appointment of a parent surrogate under subsection (b) shall
3 include:

4 (1) The name, date of birth, sex, legal domicile, and present residence of the
5 child;

6 (2) A statement that the child is eligible for the appointment of a parent
7 surrogate in accordance with subsection (b) of this section;

8 (3) Documentation, as applicable, of the efforts made to identify the parent
9 if unknown or to locate the parent if unavailable; and

10 (4) The name and qualifications of the proposed parent surrogate whom the
11 public agency considers to be qualified to represent the child in the educational decision
12 making process.

13 (d) (1) The public agency requesting the appointment of a parent surrogate
14 shall insure that the person proposed:

15 (i) Has no interest that conflicts with the interests of the child to be
16 entrusted to that person; and

17 (ii) Has knowledge and skills that insure adequate representation of
18 the child.

19 (2) A parent surrogate may not be an employee of a public agency involved
20 in the CARE AND education of the child entrusted to that parent surrogate, EXCEPT
21 THAT A FOSTER PARENT SHALL NOT BE CONSIDERED AN EMPLOYEE OF A PUBLIC
22 AGENCY FOR THE PURPOSES OF THIS SECTION SOLELY BECAUSE THE FOSTER
23 PARENT RECEIVES PUBLIC FUNDS FOR THE CARE OF THE CHILD.

24 (e) (1) If a public agency files a request for the appointment of a parent
25 surrogate, the [State Superintendent] LOCAL SCHOOL SUPERINTENDENT shall appoint
26 a parent surrogate if [the Superintendent] THAT SUPERINTENDENT finds [that]:

27 (i) The child is eligible for the appointment of a parent surrogate in
28 accordance with subsection (b) of this section; and

29 (ii) The proposed parent surrogate is qualified to represent the child
30 in the educational decision making process in accordance with subsection (d) of this
31 section.

32 (2) If the [State Superintendent] LOCAL SCHOOL SUPERINTENDENT
33 finds that the child is not eligible for the appointment of a parent surrogate in accordance
34 with subsection (b) of this section, the LOCAL SCHOOL [Superintendent]
35 SUPERINTENDENT shall notify the requesting public agency of this finding and specify
36 the reasons in writing.

37 (3) If the [State Superintendent] LOCAL SCHOOL SUPERINTENDENT
38 finds that the proposed parent surrogate is not qualified to represent the child in the
39 educational decision making process in accordance with subsection (d) of this section, the
40 LOCAL SCHOOL [Superintendent] SUPERINTENDENT may:

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1 (i) Request the public agency to propose another parent surrogate
2 who is qualified; or

3 (ii) Select and appoint a parent surrogate who is qualified.

4 (4) The [State Superintendent] LOCAL SCHOOL SUPERINTENDENT shall
5 make a final selection or rejection of a parent surrogate within 10 days after it receives a
6 request which includes appropriate eligibility documentation from a public agency.

7 (5) THE LOCAL SCHOOL SUPERINTENDENT SHALL NOTIFY, IN WRITING,
8 THE STATE SUPERINTENDENT OF THE PARENT SURROGATE APPOINTMENT. THIS
9 NOTICE MUST OCCUR WITHIN 30 DAYS OF THE APPOINTMENT. THE NOTIFICATION
10 SHALL INCLUDE THE CHILD'S NAME, THE NAME OF THE PARENT SURROGATE, AND
11 ANY OTHER INFORMATION DEEMED APPLICABLE.

12 (f) (1) A child entrusted to a parent surrogate shall be represented by that
13 parent surrogate in the educational decision making process.

14 (2) A parent surrogate is not liable to the child entrusted to that parent
15 surrogate or to the parent of that child for any damages that result from acts or omissions
16 of that parent surrogate constituting ordinary negligence.

17 (3) This immunity does not apply to liability covered by any applicable
18 insurance, to the extent of that coverage, or to acts or omissions constituting gross, willful,
19 or wanton negligence.

20 (g) (1) A PUBLIC AGENCY MAY REQUEST THAT THE LOCAL SCHOOL
21 SUPERINTENDENT TERMINATE THE APPOINTMENT OF A PREVIOUSLY ASSIGNED
22 PARENT SURROGATE FOR GOOD CAUSE.

23 (2) WHEN A PUBLIC AGENCY REQUESTS THAT THE LOCAL SCHOOL
24 SUPERINTENDENT TERMINATE THE APPOINTMENT OF THE PARENT SURROGATE,
25 THAT AGENCY SHOULD STATE THE REASONS FOR THE ACTION AND SUBMIT THE
26 NAME AND QUALIFICATIONS OF ANOTHER INDIVIDUAL WHO IS PROPOSED TO BE
27 ASSIGNED AS THE NEW PARENT SURROGATE.

28 (H) The State Board shall adopt rules and regulations in accordance with the
29 Administrative Procedure Act on the qualifications, selection, appointment, training,
30 compensation, removal, and replacement necessary to implement this section.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 July 1, 1996.