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**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

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: January 23, 1996

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CHAPTER \_\_\_\_

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

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

3 (3) "Educational decision making process" means all procedures relating to  
4 the identification, evaluation, or educational placement of a child and the provision of a  
5 free appropriate public education, including the appeal procedures provided for by §  
6 8-415 of this article.

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

10 [(4)] (5) "Parent" means:

11 (i) A child's natural parents;

12 (ii) A guardian;

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

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

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

20 [(5)] (6) "Parent surrogate" means a person who is appointed by the [State  
21 Superintendent] LOCAL SCHOOL SUPERINTENDENT to act in place of a parent of a  
22 child in the educational decision making process.

23 [(6)] (7) "Public agency" includes the State Department of Education, local  
24 education agencies, and other agencies that are responsible for providing education to  
25 [handicapped] DISABLED children, including the Department of Health and Mental  
26 Hygiene, Mental Hygiene Administration, the Mental Retardation Administration, the  
27 Department of Juvenile Justice, and the Maryland School for the Deaf. For the purpose  
28 of this section the Maryland School for the Blind shall be considered a public agency.

29 [(7)] (8) "Unavailable" means that a public agency, after reasonable efforts,  
30 cannot discover the physical whereabouts of a child's parent.

31 [(8)] (9) "Unknown" means that a public agency, after reasonable efforts,  
32 cannot identify the child's parent.

33 [(9)] (10) "Ward of the State" means a child for whom a State or county  
34 agency or official has been appointed legal guardian, or who has been committed by a  
35 court of competent jurisdiction to the legal custody of a State or county agency or official  
36 with the express authorization that the State or county agency or official make  
37 educational decisions for the child.

38 (b) A public agency shall request that the [State Superintendent] LOCAL  
39 SCHOOL SUPERINTENDENT appoint a parent surrogate to represent a child AT ANY

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1 POINT in the educational decision making process IF IT IS SUSPECTED THAT THE CHILD  
2 MAY BE DISABLED AND if:

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

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

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

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

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

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

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

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

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

21 (ii) Has knowledge and skills that insure adequate representation of  
22 the child.

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

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

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

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

36 (2) If the [State Superintendent] LOCAL SCHOOL SUPERINTENDENT  
37 finds that the child is not eligible for the appointment of a parent surrogate in accordance  
38 with subsection (b) of this section, the LOCAL SCHOOL [Superintendent]

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1 SUPERINTENDENT shall notify the requesting public agency of this finding and specify  
2 the reasons in writing.

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

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

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

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

13 (5) ~~(I)~~ THE LOCAL SCHOOL SUPERINTENDENT SHALL NOTIFY, IN  
14 WRITING, THE STATE SUPERINTENDENT OF THE PARENT SURROGATE  
15 APPOINTMENT. ~~THIS~~

16 ~~(II)~~ THE NOTICE ~~MUST SHALL~~ OCCUR WITHIN 30 DAYS ~~OF AFTER~~  
17 THE DAY ON WHICH THE APPOINTMENT IS MADE.

18 ~~(III)~~ THE NOTIFICATION SHALL INCLUDE THE CHILD'S NAME, THE  
19 NAME OF THE PARENT SURROGATE, AND ANY OTHER INFORMATION DEEMED  
20 APPLICABLE.

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

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

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

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

32 (2) WHEN A PUBLIC AGENCY REQUESTS THAT THE LOCAL SCHOOL  
33 SUPERINTENDENT TERMINATE THE APPOINTMENT OF THE PARENT SURROGATE,  
34 ~~THAT THE AGENCY SHOULD SHALL~~ STATE THE REASONS FOR THE ACTION AND  
35 SUBMIT THE NAME AND QUALIFICATIONS OF ANOTHER INDIVIDUAL WHO IS  
36 PROPOSED TO BE ASSIGNED AS THE NEW PARENT SURROGATE.

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

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