SUBJECT: Designating foster parents as special education decision-makers

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Huberty, Bernal, Bohac, Dutton, Gooden, K. King, Koop, VanDeaver

0 nays

3 absent — Allen, Deshotel, Meyer

WITNESSES: For — Sarah Crockett, Texas CASA; Janna Lilly, Texas Council of Administrators of Special Education; (*Registered, but did not testify*: Chris Masey, Coalition of Texans with disabilities; Rachel Gandy, Disability Rights Texas; Kristin Tassin, Fort Bend ISD; Will Francis, National Association of Social Workers - Texas Chapter; Casey McCreary, Texas Association of School Administrators; Dax Gonzalez, Texas Association of School Boards; Mark Terry, Texas Elementary Principals and Supervisors Association; Colby Nichols, Texas Rural Education Association; Texas Association of Community Schools; Dee Carney, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Pamela McPeters, TexProtects (Texas Association for the Protection of Children); Aidan Utzman, United Ways of Texas; Linda Litzinger)

Against — (*Registered, but did not testify*: Nicole Hudgens, Texas Values Action)

On — Jamie Bernstein, Children's Commission; (*Registered, but did not testify*: Denise Brady, Department of Family and Protective Services; Kara Belew and Monica Martinez, Texas Education Agency)

BACKGROUND: The Individuals with Disabilities Education Act (IDEA) requires state and local education agencies to involve parents in decisions about their child's program of special education. Under Texas law, the foster parent is the preferred surrogate parent to make these decisions, but Education Code, sec. 29.015 sets a 60-day waiting period in state law before the foster

parent may perform these duties. Interested observers say there is a discrepancy between state and federal law and clarification is needed on how soon foster parents may be designated as the surrogate parent or the parent for the purpose of making special education decisions under IDEA for a child.

DIGEST:

CSHB 1556 would allow a foster parent to act as a parent of a child with a disability for the purpose of making special education decisions for a child. The bill would remove the current requirement that a foster child be placed with the foster parent for at least 60 days before the foster parent could act as the parent for the purpose of making special education decisions.

Under the bill, a foster parent could act as a parent of a child if they were appointed as the temporary or permanent managing conservator of the child, the rights and duties of the Department of Family and Protective Services (DFPS) to make decisions regarding special education for the child had not been limited by court order, and the foster parent agreed to participate in making special education decisions on the child's behalf and had completed a training program. DFPS would inform the school district within five days of the child enrolling in school if the child's foster parent was unwilling or unable to serve as a parent.

The foster parent would complete the training program within 90 days of beginning to act as the parent and before the next scheduled meeting of the child's admission, review, and dismissal committee. A foster parent would not need to retake a training program if the foster parent had completed a training program provided by DFPS, a school district, an education service center, or another federally funded entity that provided special education training.

The bill would allow a child with a disability to have a surrogate parent appointed for the child by the school district if the district was unable to identify and locate the child's parent and if the child's foster parent was unwilling or unable to serve as a parent. A surrogate parent would complete a training program and comply with other requirements in the

bill, including a requirement to visit the child and the school where the child was enrolled, review the child's educational records, attend meetings, and consult with people involved in the child's education.

The bill would specify that the surrogate parent could not be a state employee, a school district employee, or an employee of another agency involved in the education or care of the child. He or she also could not have any interest that conflicted with the interest of the child. A child's guardian ad litem or a court-certified volunteer advocate could be appointed as a child's surrogate parent.

If a court, rather than a school district, appointed a surrogate parent and that person was not properly performing their duties as specified in the bill, the school district would be required to consult with DFPS and appoint another person to serve as the child's surrogate parent. The bill would specify how a court could appoint a child's surrogate parent.

In addition to other requirements if the court required training for the court-appointed surrogate parent, the training program would have to comply with the minimum standards for training established by rule by the Texas Education Agency.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, SB 1881 by Menéndez, was reported favorably from the Senate Health and Human Services Committee on May 1.