

ASSEMBLY BILL NO. 156—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON
CHILD WELFARE AND JUVENILE JUSTICE)

FEBRUARY 15, 2019

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing the education of a child who is in need of protection. (BDR 38-458)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to child welfare; requiring a court to appoint an educational decision maker for a child for whom a petition is filed alleging that the child is in need of protection; prescribing the duties of such an educational decision maker; requiring an agency acting as the custodian of a child to include certain educational information in a report submitted to the court before a hearing to review the placement of the child; requiring the court to take certain actions if such an agency fails to include the required information in such a report; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a court to appoint an educational surrogate parent for a child with a known or suspected disability if: (1) a parent is not identified, unavailable or unwilling or unable to make decisions relating to the education of the child; and (2) such an appointment is in the best interests of the child. (NRS 432B.462) **Section 2** of this bill instead requires a court to appoint an educational decision maker for any child for whom a petition is filed alleging that the child is in need of protection. **Section 2** establishes a rebuttable presumption that it is in the best interests of the child for the court to appoint a parent or guardian as the educational decision maker for the child but authorizes the court to appoint a person other than a parent or guardian if the court determines that: (1) the parent or guardian is unwilling or unable to act as the educational decision maker; or (2) it is not in the best interests of the child for the parent or guardian to act as educational



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13 decision maker. **Section 2** prescribes the duties of an educational decision maker,
14 including meeting with the child, ensuring that the child receives a free and
15 appropriate education in accordance with federal and state law and participating in
16 meetings regarding the education of the child and child welfare proceedings.
17 **Sections 2 and 4** of this bill require an agency which provides child welfare
18 services to consult with the educational decision maker for a child who is in foster
19 care when determining whether it is in the best interests of the child to remain at his
20 or her school of origin. **Section 1** of this bill requires a court to: (1) ensure that an
21 educational decision maker is involved in and notified of any plan for the
22 placement of the child; and (2) allow the educational decision maker to testify at
23 any child welfare hearing to determine the placement of the child.

24 Existing law requires a court that places a child who is in need of protection in
25 the custody of a person other than a parent or guardian to review the placement at
26 least semiannually. Before any hearing for review of the placement of the child, an
27 agency acting as the custodian of the child is required to submit to the court a report
28 that contains certain information concerning the child. (NRS 432B.580) **Section 3**
29 of this bill revises the educational information that an agency is required to include
30 in such a report. **Section 3** also requires a court to hold an administrative agency
31 that fails to provide the required educational information in contempt and impose
32 an administrative assessment against such an agency.

33 Existing law requires a court to provide each person who is entitled to notice of
34 a hearing to review the placement of a child with such a notice and the opportunity
35 to participate in an annual hearing concerning the permanent placement of the
36 child. (NRS 432B.590) Therefore, **section 3** requires a court to provide an
37 educational decision maker with notice of such an annual hearing.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 432B.457 is hereby amended to read as
2 follows:

3 432B.457 1. If the court or a special master appointed
4 pursuant to NRS 432B.455 finds that a person has a special interest
5 in a child, the court or the special master shall:

6 (a) Except for good cause, ensure that the person is involved in
7 and notified of any plan for the temporary or permanent placement
8 of the child and is allowed to offer recommendations regarding the
9 plan; and

10 (b) Allow the person to testify at any hearing held pursuant to
11 this chapter to determine any temporary or permanent placement of
12 the child.

13 2. For the purposes of this section, a person "has a special
14 interest in a child" if:

15 (a) The person is:

16 (1) A parent or other relative of the child;

17 (2) A foster parent or other provider of substitute care for the
18 child;

19 (3) A provider of care for the medical or mental health of the
20 child; ~~{or}~~



(4) *An educational decision maker appointed for the child pursuant to NRS 432B.462; or*

(5) A teacher or other school official who works directly with the child; and

(b) The person:

(1) Has a personal interest in the well-being of the child; or

(2) Possesses information that is relevant to the determination of the placement of the child.

Sec. 2. NRS 432B.462 is hereby amended to read as follows:

432B.462 1. ~~{Any person who is a party to a proceeding pursuant to this chapter may file a petition requesting}~~ *As soon as possible after a petition is filed alleging that a child is in need of protection pursuant to NRS 432B.490 but no later than the date on which the disposition hearing is held pursuant to subsection 5 of NRS 432B.530, the court ~~{to}~~ shall appoint an educational ~~{surrogate parent}~~ decision maker for ~~{a}~~ the child . ~~{with a known or suspected disability.}~~*

2. *There is a rebuttable presumption that it is in the best interests of the child for the court to appoint a parent or guardian of the child as the educational decision maker for the child. The court may appoint ~~{an}~~ a person other than a parent or guardian as an educational ~~{surrogate parent}~~ decision maker for a child ~~{with a known or suspected disability if a parent, as defined in 34 C.F.R. § 300.30, is:~~*

— (a) Not identified;

— (b) Unavailable; or

— (c) Unwilling or unable to make decisions relating to the education of the child and such an appointment is in the best interest of the child.

— 2. ~~The}~~ *if, upon a motion from any party, the court finds that:*

(a) *The parent or guardian of the child is unwilling or unable to act as the educational decision maker for the child; or*

(b) *It is not in the best interests of the child for the parent or legal guardian to act as the educational decision maker for the child.*

3. *If the court ~~{may}~~ makes a finding described in subsection 2, the court must appoint ~~{a person as}~~ an educational ~~{surrogate parent if the}~~ decision maker for the child who has the knowledge and skills to act in the best interests of the child in all matters relating to the education of the child. Such a person may include, without limitation:*

(a) *A relative of the child within the fifth degree of consanguinity;*

(b) *The foster parent or other provider of substitute care for the child;*



(c) A fictive kin of the child, as that term is defined in subsection 10 of NRS 432B.390;

(d) The guardian ad litem appointed for the child pursuant to NRS 432B.500; or

(e) Another person whom the court determines is qualified to perform the duties of an educational decision maker prescribed by this section.

4. If possible, a person ~~is~~:

~~—(a) Has not caused the abuse or neglect of the child;~~

~~—(b) Does not have any interest that conflicts with the best interests of the child;~~

~~—(c) Has the knowledge and skill to adequately represent the interests of the child; and~~

~~—(d) Is not an employee of a public agency involved in the education of the child.]~~ appointed as an educational decision maker for a child pursuant to subsection 3 must be the permanent caregiver recommended for the child in the plan for permanent placement adopted pursuant to NRS 432B.553.

5. The fact that a person other than the parent or guardian of a child is appointed as an educational decision maker pursuant to this section must not be used in any proceeding as evidence that the person is an unfit parent or unfit to be the guardian of the child.

6. An educational ~~[surrogate parent]~~ decision maker appointed pursuant to this section shall not be deemed to be an employee of a public agency involved in the education of the child.

~~[3.] 7. An educational [surrogate parent shall represent the child with a known or suspected disability in all matters relating to the identification of the child, the assessment of any special educational needs of the child, the educational placement of the child and the provision of a free appropriate program of public education to the child.~~

~~—4.]~~ decision maker shall:

(a) Have an initial meeting with the child and then shall meet with the child as often as he or she deems necessary to carry out the duties prescribed by this section in accordance with the best interests of the child;

(b) Address any disciplinary issues relating to the education of the child with the child and the school in which the child is enrolled;

(c) Ensure that that the child receives a free and appropriate education in accordance with federal and state law, including, without limitation:



(1) Any special programs of instruction or special services for pupils with disabilities to which the child is entitled by federal or state law; and

(2) If the child is at least 14 years of age, educational services to assist the child in transitioning to independent living;

(d) Consult with the agency which provides child welfare services concerning a determination about whether the child should change schools pursuant to NRS 388E.105, if applicable;

(e) Participate in any meeting relating to the education of the child, including, without limitation, a meeting regarding any individualized education program established for the pupil pursuant to 20 U.S.C. § 1414(d) or special program of instruction or special service provided to the pupil; and

(f) Appear at any proceeding held pursuant to this section and NRS 432B.410 to 432B.590, inclusive, and make specific recommendations to the court as appropriate concerning the educational placement of the child, the educational services provided to the child and, if the child is at least 14 years of age, the services needed to assist the child in transitioning to independent living.

8. A court may revoke the appointment of an educational ~~[surrogate parent]~~ decision maker if the court determines the revocation of the appointment is in the best interests of the child.

~~[5.—If the court does not appoint an educational surrogate parent or if the court revokes such an appointment, the selection of an educational surrogate parent must be made pursuant to applicable state and federal law.]~~ If the court revokes such an appointment, the court must appoint a new educational decision maker for the child.

9. An educational decision maker appointed for a child pursuant to this section shall be deemed to be a surrogate parent for the purposes of 34 C.F.R. § 300.519.

Sec. 3. NRS 432B.580 is hereby amended to read as follows:

432B.580 1. Except as otherwise provided in this section and NRS 432B.513, if a child is placed pursuant to NRS 432B.550 other than with a parent, the placement must be reviewed by the court at least semiannually, and within 90 days after a request by a party to any of the prior proceedings. Unless the parent, guardian or the custodian objects to the referral, the court may enter an order directing that the placement be reviewed by a panel appointed pursuant to NRS 432B.585.

2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes:



(a) An evaluation of the progress of the child and the family of the child and any recommendations for further supervision, treatment or rehabilitation.

(b) Information concerning the placement of the child in relation to the child's siblings, including, without limitation:

(1) Whether the child was placed together with the siblings;

(2) Any efforts made by the agency to have the child placed together with the siblings;

(3) Any actions taken by the agency to ensure that the child has contact with the siblings; and

(4) If the child is not placed together with the siblings:

(I) The reasons why the child is not placed together with the siblings; and

(II) A plan for the child to visit the siblings, which must be presented at the first hearing to occur after the siblings are separated and approved by the court. The plan for visitation must be updated as necessary to reflect any change in the placement of the child or a sibling, including, without limitation, any such change that occurs after the termination of parental rights to the child or a sibling or the adoption of a sibling.

(c) Information concerning the child's education, including:

(1) A copy of any academic plan or individual graduation plan developed for the child pursuant to NRS 388.155, 388.165, 388.205 or 388.227;

(2) The grade and school in which the child is enrolled;

(3) The name of each school the child attended before enrolling in the school in which he or she is currently enrolled and the corresponding dates of attendance;

(4) Whether the child has not completed or passed any course of instruction that the child should have completed or passed by the time the report is submitted, which has resulted in the child having a deficiency in credits;

(5) A copy of any individualized education program developed for the child;

(6) A copy of any plan developed in accordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794;

(7) A summary of any special education services received by the child;

(8) *A copy of the most recent report card of the child;*

(9) *A statement of the number of credits earned by the child during the most recent semester, if applicable;*

(10) *A statement of the number of times the child has been absent from school during the current or most recent school year for which the child was enrolled in school;*



(11) *The scores the child received on any academic assessments or standardized examinations administered to the child;*

(12) *Any information provided by the educational decision maker appointed for the child pursuant to NRS 432B.462; and*

(13) Whether a request that the child receive special education services has been made and, if so, the outcome of such a request. ~~}; and~~

~~(9) Whether, in the opinion of the agency, it is necessary to appoint a surrogate parent to represent the child in all matters relating to the provision of a free and appropriate public education to the child.]~~

(d) A copy of any explanations regarding medication that has been prescribed for the child that have been submitted by a foster home pursuant to NRS 424.0383.

3. Except as otherwise provided in this subsection, a copy of the report submitted pursuant to subsection 2 must be given to the parents, the guardian ad litem and the attorney, if any, representing the parent or the child. If the child was delivered to a provider of emergency services pursuant to NRS 432B.630 and the parent has not appeared in the action, the report need not be sent to that parent.

4. After a plan for visitation between a child and the siblings of the child submitted pursuant to subparagraph (4) of paragraph (b) of subsection 2 has been approved by the court, the agency which provides child welfare services must request the court to issue an order requiring the visitation set forth in the plan for visitation. Upon the issuance of such an order, the court shall provide each sibling of the child with the case number of the proceeding for the purpose of allowing the sibling to petition the court for visitation or enforcement of the order for visitation. If a person refuses to comply with or disobeys an order issued pursuant to this subsection, the person may be punished as for a contempt of court.

5. The court or the panel shall hold a hearing to review the placement, unless the parent, guardian or custodian files a motion with the court to dispense with the hearing. If the motion is granted, the court or panel may make its determination from any report, statement or other information submitted to it.

6. Except as otherwise provided in subsection 7 and subsection 5 of NRS 432B.520, notice of the hearing must be given by registered or certified mail to:

(a) All the parties to any of the prior proceedings;

(b) Any persons planning to adopt the child;

(c) A sibling of the child, if known, who has been granted a right to visitation of the child pursuant to this section or NRS 127.171 and his or her attorney, if any; ~~[and]~~



(d) Any other relatives of the child or providers of foster care who are currently providing care to the child ~~and~~;

(e) The educational decision maker appointed for the child pursuant to NRS 432B.462.

7. The notice of the hearing required to be given pursuant to subsection 6:

(a) Must include a statement indicating that if the child is placed for adoption the right to visitation of the child is subject to the provisions of NRS 127.171;

(b) Must not include any confidential information described in NRS 127.140;

(c) Need not be given to a parent whose rights have been terminated pursuant to chapter 128 of NRS or who has voluntarily relinquished the child for adoption pursuant to NRS 127.040; and

(d) Need not be given to a parent who delivered a child to a provider of emergency services pursuant to NRS 432B.630.

8. The court or panel may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 6 a right to be heard at the hearing.

9. The court or panel shall review:

(a) The continuing necessity for and appropriateness of the placement;

(b) The extent of compliance with the plan submitted pursuant to subsection 2 of NRS 432B.540;

(c) Any progress which has been made in alleviating the problem which resulted in the placement of the child; ~~and~~

(d) The date the child may be returned to, and safely maintained in, the home or placed for adoption or under a legal guardianship ~~and~~;

(e) The information described in paragraph (c) of subsection 2 to determine whether the child is making adequate academic progress and receiving the educational services or supports necessary to ensure the academic success of the child.

10. The provision of notice and a right to be heard pursuant to this section does not cause any person planning to adopt the child, any sibling of the child or any other relative, any adoptive parent of a sibling of the child or a provider of foster care to become a party to the hearing.

11. *If the court determines that the agency acting as the custodian of the child has failed to provide the report required by subsection 2, the court shall:*

(a) Hold the agency in contempt; and

(b) Collect from the agency an administrative assessment of \$500. Any money so collected must be paid by the clerk of court to the State Treasurer on or before the fifth day of each month for



the preceding month for credit to the Normalcy for Foster Youth Account created by NRS 432B.174.

12. As used in this section, “individualized education program” has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).

Sec. 4. NRS 388E.105 is hereby amended to read as follows:

388E.105 1. When a child enters foster care or changes placement while in foster care, the agency which provides child welfare services to the child shall determine whether it is in the best interests of the child for the child to remain in his or her school of origin. In making this determination, there is a rebuttable presumption that it is in the best interests of the child to remain in his or her school of origin.

2. In determining whether it is in the best interests of a child in foster care to remain in his or her school of origin, the agency which provides child welfare services, in consultation with the local education agency ~~and~~ *and the educational decision maker appointed for the child pursuant to NRS 432B.462*, must consider, without limitation:

- (a) The wishes of the child;
- (b) The educational success, stability and achievement of the child;
- (c) Any individualized education program or academic plan developed for the child;
- (d) Whether the child has been identified as an English learner;
- (e) The health and safety of the child;
- (f) The availability of necessary services for the child at the school of origin; and
- (g) Whether the child has a sibling enrolled in the school of origin.

➔ The costs of transporting the child to the school of origin must not be considered when determining whether it is in the best interests of the child to remain at his or her school of origin.

3. If the agency which provides child welfare services determines that it is in the best interests of a child in foster care to attend a public school other than the child’s school of origin:

- (a) The agency which provides child welfare services must:
 - (1) Provide written notice of its determination to every interested party as soon as practicable; and
 - (2) In collaboration with the local education agency, ensure that the child is immediately enrolled in that public school; and
- (b) The public school may not refuse to enroll the child on the basis that the public school does not have:
 - (1) A certificate stating that the child has been immunized and has received proper boosters for that immunization;



1 (2) A birth certificate or other document suitable as proof of
2 the child's identity;

3 (3) A copy of the child's records from the school the child
4 most recently attended; or

5 (4) Any other documentation required by a policy adopted by
6 the public school or the local education agency.

7 **Sec. 5.** This act becomes effective on July 1, 2019.

