

CHAPTER 91
FORMERLY
SENATE BILL NO. 86

AN ACT TO AMEND TITLES 10 AND 13 OF THE DELAWARE CODE RELATING TO ABUSED, DEPENDENT, NEGLECTED, AND DELINQUENT CHILDREN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter II, Chapter 9, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 930. Education decision maker for abused, dependent, neglected, or delinquent children or children in the Department's custody.

(a) At a proceeding or upon a motion involving a child found in this State who is alleged to be abused, dependent, neglected, or delinquent, the Court may appoint an education decision maker for the child if it finds any of the following:

(1) The child has no parent or guardian.

(2) A parent or guardian of the child voluntarily consents to the appointment of an education decision maker.

(3) After notice to the parent or guardian and an opportunity for a parent or guardian to be heard, that the child is an abused child, dependent child, neglected child, or delinquent child and it is in the child's best interests to limit a parent's or guardian's right to make decisions regarding the child's education.

(b) The Court may limit the authority of a parent or guardian to make education decisions only to the extent necessary to protect the child's best interests and may cancel, reinstate, or change the education decision maker at any proceeding or upon a motion if the Court makes specific findings that it is in the child's best interests to do so.

(c) The Court shall determine whether there is a responsible adult who is a relative or other adult known to the child who is available and willing to serve as the child's education decision maker. The Court may appoint the child's attorney or Court Appointed Special Advocate volunteer to serve as the education decision maker. The Court may not appoint the child's defense attorney in a delinquency proceeding to serve as the education decision maker.

(d) The Court shall provide notice to an education decision maker of all Court proceedings involving the child to which the education decision maker is appointed.

(e) Unless a child qualifies for special education services under 20 U.S.C. § 1400 et. seq., 34 C.F.R. § 104.3 (j), Chapter 31 of Title 14, and corresponding Department of Education regulations, the child's education decision maker must do all of the following:

(1) Make appropriate inquiries and take appropriate action regarding all of the following:

a. The child's educational stability or educational placement.

b. All school discipline matters.

c. Transition planning for independent living.

d. Education services and accommodations that will allow the child to meet state standards.

(2) Notify the Division of Family Services (“DFS”) if a child who is in the custody of the Department under Chapter 25 of Title 13 is suspected of having a disability. Upon notification, DFS shall request an educational surrogate parent for special education purposes from the Department of Education under § 3132 of Title 14.

(3) Consent to or prohibit the release of information from the child’s school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974).

(f)(1) An education decision maker may serve as an educational surrogate parent if the education decision maker meets the qualifications under § 3132 of Title 14.

(2) If a child is already assigned an educational surrogate parent, the Court may appoint an education decision maker to make all educational decisions relating to the child that are not the responsibility of the educational surrogate parent in accordance with state and federal law.

(g) An education decision maker must make all education decisions based on the best interests of the child.

Section 2. Amend § 2521, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2521. Powers and duties of the DSCYF as custodian of the child. [Effective Mar. 5, 2017]

Upon the Court granting custody to DSCYF, DSCYF shall be vested with the following powers and duties:

(4) To consent to educational decisions, subject to applicable state and federal law, including ~~but not limited to~~, disciplinary proceedings and consequences, and academic ~~needs~~, needs; and to request the appointment of an education decision maker under § 930 of Title 10 or an educational surrogate parent under § 3132 of Title 14 when appropriate. DSCYF shall make reasonable efforts to obtain the consent of the parent, and to notify the child's attorney and Court Appointed Special Advocate volunteer, prior to making any educational decisions on behalf of the child;

Approved July 21, 2017