

STATE OF NEW YORK

4546

2007-2008 Regular Sessions

IN SENATE

April 18, 2007

Introduced by Sen. KRUGER -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the family court act and the social services law, in relation to establishing a limited guardian for educational purposes for a child in foster care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1027 of the family court act is amended by adding a
2 new subdivision (i) to read as follows:

3 (i) At the conclusion of a hearing where it has been determined that a
4 child should be removed from his or her parent or other person legally
5 responsible, an order appointing a limited guardian for special educa-
6 tion and early intervention decision-making pursuant to section one
7 thousand thirty-a of this part may be made in assistance of or as a
8 condition of any other order made under this section.

9 § 2. Section 1028 of the family court act is amended by adding a new
10 subdivision (g) to read as follows:

11 (g) At the conclusion of a hearing where it has been determined that a
12 child should not be returned to his or her parent or other person legal-
13 ly responsible, an order appointing a limited guardian for special
14 education and early intervention decision-making pursuant to section one
15 thousand thirty-a of this part may be made in assistance of or as a
16 condition of any other order made under this section.

17 § 3. The family court act is amended by adding a new section 1030-a to
18 read as follows:

19 § 1030-a. Limited guardianship of a child for special education and
20 early intervention decision-making. (a) An application for the appoint-
21 ment of a limited guardian of a child for special education and early
22 intervention decision-making may be initiated by a social services

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 district having care and custody or guardianship and custody of a child,
2 or a law guardian on behalf of a child or by the court on its own motion
3 regarding a child who has been removed from his or her parent or other
4 person legally responsible under this article or section three hundred
5 fifty-eight-a of the social services law. Upon receipt of an application
6 pursuant to this section or on its own motion, the court shall schedule
7 a hearing within fifteen days of receipt of such application or motion
8 and shall order that service be made upon the petitioner, respondent
9 parent, non-respondent parent and law guardian in any proceeding regard-
10 ing the child under this article or article ten-A of this act or under
11 section three hundred fifty-eight-a of the social services law where the
12 child has been removed from his or her home, and the school district or
13 early intervention program in which the child is currently enrolled or
14 for which the child is potentially eligible. Such hearing may be
15 combined with any other hearing pending before the court or previously
16 scheduled, for the purposes of meeting the time frames required by this
17 section.

18 (b) For purposes of determination by the court whether to appoint a
19 limited guardian for special education and early intervention decision-
20 making, where the court finds that the parent or parents of a child are
21 unable by reason of physical or mental incapacity to exercise decision-
22 making authority for special education and early intervention evalu-
23 ations and services; or where the parent or parents are unwilling to
24 exercise decision-making authority for special education and early
25 intervention evaluations and services for the child; or where neither
26 parent of the child can be located after documented reasonable efforts
27 to locate the parent or parents have been made and the school district
28 or early intervention program has not otherwise appointed a surrogate
29 parent; and where based upon the physical or mental incapacity, unwill-
30 ingness or documented unavailability to exercise decision-making author-
31 ity for special education or early intervention evaluations and
32 services, the court finds that the child is not receiving appropriate
33 evaluations, services and education and that the best interests of the
34 child require that such an order be made, the court may appoint a limit-
35 ed guardian for special education and early intervention decision-mak-
36 ing.

37 (c) Such limited guardian shall, for the time period set by the court,
38 have the authority to exercise all rights afforded to parents under the
39 federal individuals with disabilities education improvement act. Such
40 authority shall be reviewed, and thereafter terminated or continued,
41 during each permanency hearing held pursuant to article ten-A of this
42 act. Review of such authority may also be combined with any other hear-
43 ing pending before the court or previously scheduled. The petitioner,
44 respondent parent or non-respondent parent or law guardian may at any
45 other time make an application to terminate the appointment of a limited
46 guardian for special education and early intervention decision-making.
47 The court may terminate the appointment of the limited guardian upon
48 finding that it is in the best interests of the child.

49 (d) In determining who may be appointed a limited guardian for special
50 education and early intervention decision-making for a child, the court
51 shall consider an appropriate individual with an on-going relationship
52 with the child including, but not limited to, a relative or foster
53 parent. The court shall determine whether such person is available,
54 willing to serve and has no other interest which could conflict with the
55 exercise of special education and early intervention decision-making on
56 behalf of the child. Provided, however, such limited guardian may not be

1 an officer, employee or agent of the local school district or social
2 services district, unless such officer, employee or agent is an individ-
3 ual with a pre-existing relationship with the child or is providing
4 day-to-day care for the child.

5 (e) The order of the court appointing a limited guardian for special
6 education and early intervention decision-making shall supersede any
7 other appointment of a surrogate parent by a school district or early
8 intervention program or a person in parental relation pursuant to title
9 fifteen-A of article five of the general obligations law; provided,
10 however, an appointment of a person in parental relation pursuant to
11 such title may be considered by the court as evidence of an ongoing
12 relationship with the child for purposes of subdivision (d) of this
13 section.

14 § 4. Paragraph (v) of subdivision (a) of section 1052 of the family
15 court act, as amended by chapter 1039 of the laws of 1973, is amended
16 and a new paragraph (vi) is added to read as follows:

17 (v) placing the respondent under supervision in accord with section
18 one thousand fifty-seven[+] of this part; or

19 (vi) appointing a limited guardian of the child for educational deci-
20 sion-making. An order appointing a limited guardian for special educa-
21 tion and early intervention decision-making pursuant to section one
22 thousand thirty-a of this article may be made in assistance of or as a
23 condition of any other order made under this section or section one
24 thousand fifty-five of this part.

25 § 5. Clause (G) of subparagraph (vii) of paragraph 2 of subdivision
26 (d) of section 1089 of the family court act, as added by section 27 of
27 part A of chapter 3 of the laws of 2005, is amended and a new clause (H)
28 is added to read as follows:

29 (G) where a child has or will before the next permanency hearing reach
30 the age of fourteen, the services and assistance necessary to assist the
31 child in learning independent living skills; [and]

32 (H) where a limited guardian of a child for special education and
33 early intervention decision-making has previously been appointed pursu-
34 ant to section one thousand thirty-a of this act, termination or contin-
35 uation of the appointment of the limited guardian of the child for
36 special education and early intervention decision-making; and

37 § 6. Subparagraph (viii) of paragraph 2 of subdivision (d) of section
38 1089 of the family court act is amended by adding a new clause (I) to
39 read as follows:

40 (I) The court may appoint a limited guardian of the child for special
41 education and early intervention decision-making pursuant to section one
42 thousand thirty-a of this act.

43 § 7. Section 358-a of the social services law is amended by adding a
44 new subdivision 13 to read as follows:

45 (13) At the conclusion of a hearing where it has been determined that
46 a petition for approval of an instrument shall be granted, an order
47 appointing a limited guardian for special education and early inter-
48 vention decision-making pursuant to section one thousand thirty-a of the
49 family court act may be made in assistance of or as a condition of any
50 other order made under this section.

51 § 8. This act shall take effect on the ninetieth day after it shall
52 have become a law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4546

SPONSOR: KRUGER

TITLE OF BILL:

An act to amend the family court act and the social services law, in relation to establishing a limited guardian for educational purposes for a child in foster care

PURPOSE:

This bill would establish a process for the court to grant a limited guardianship of a child for educational decision-making for children in foster care.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends Family Court Act (FCA) § 1027 to permit the court to appoint a limited guardian for special education and early intervention decision making in accordance with FCA § 1030-a for a child who is removed from his or her home.

Section 2 of the bill amends FCA § 1028 to permit the court to appoint a limited guardian for special education and early intervention decision-making in accordance with FCA § 1030-a where the court determines not to return a child who was temporarily removed from home.

Section 3 of the bill adds a new FCA § 1030-a establishing a procedure for the appointment of a limited guardian for special education and early intervention decision making for a child in foster care where: (1) both parents are unable by reason of mental or physical incapacity to exercise decision-making authority or are unwilling or cannot be located after documented reasonable efforts to locate the parents have been made; and (2) the school district or early intervention program has not otherwise appointed a surrogate parent to act on behalf of the child with respect to special education or early intervention services for the child. The court would appoint such a limited guardian where it determines that the child is not receiving appropriate evaluations, services and education, and such an appointment is in the best interests of the child. Review of the appointment of a limited guardian for a child would be required in conjunction with every permanency hearing for the child and upon application of the parent or law guardian of a child at any time.

Section 4 of the bill amends FCA § 1052(a) to permit the appointment of a limited guardian of a child for special education and early intervention decision-making as part of the court's order at the disposition of a FCA Article 10 proceeding.

Section 5 of the bill amends FCA § 1089(d) to require the court during a permanency hearing under Article 10-A to terminate or continue the appointment of a limited guardian for special education and early intervention decision-making for a child who remains in foster care for whom such an appointment was previously made.

Section 6 of the bill amends FCA § 1089(d) to permit the court to appoint a limited guardian for special education and early intervention decision-making during a permanency hearing under Article 10-A, for a child who remains in foster care.

Section 7 of the bill adds a new Social Services Law (SSL) § 358-a (13) to permit the court to appoint a limited guardian for special education and early intervention decision-making as part of the court's order approving a voluntary placement instrument.

Section 8 of the bill provides for an effective date of 90 days after enactment.

EXISTING LAW:

FCA § 1027 sets forth the preliminary orders that the court may make to protect the child after a petition is filed alleging that the child is abused, neglected or abandoned pending a final order of disposition. FCA § 1028 governs an application by the parent or other person legally responsible for the return of a child who was temporarily removed from home.

FCA § 1052 sets forth the dispositions that the court may order upon conclusion of a dispositional hearing in a child protective proceeding. FCA § 1089 sets forth the procedures for permanency hearings for certain children in foster care and the court's findings and order at the conclusion of the permanency hearing.

SSL § 358-a governs the procedures for the voluntary placement of a child by a parent into the custody and guardianship of a social services official.

LEGISLATIVE HISTORY:

This proposal was a part of similar legislation introduced as S.8324 in 2006 and passed in the Senate.

STATEMENT IN SUPPORT:

Parental consent is required in a number of circumstances in the educational process, and must be obtained for a child to be evaluated for and receive special education services under the Federal Individuals with Disabilities Education Act (20 U.S.C. §§ 1401-1445), early intervention services under the Child Abuse Prevention and Treatment Act (42 U.S.C § 5106a) and the Federal Individuals with Disabilities Education Improvement Act (IDEA). Under amendments enacted by the 2004 IDEA, a parent may refuse to consent to special education services and such decision is final, unless the parent's right to make such decisions have been terminated or "subrogated" by a court. Under the State Education Department regulations recently promulgated in response to the 2004 IDEA amendments for special education services, if the parent refuses to consent, this is the last step in the process and relieves the local education agency of the statutory obligation to provide a free and appropriate education. However, parental consent is not the last step if parental rights have been terminated or there is a judicial determination "subrogating" the parent's right to consent. There currently exists no specific statutory authority permitting a Court to subrogate a parent's rights to special education or early intervention decision making.

A refusal of appropriate services by a parent may have enormous consequences to a child with respect to that child receiving a free and appropriate education or early intervention services designed to prepare a child for school. A refusal of appropriate special education services also may unfairly penalize a child in the disciplinary process by permitting penalties that would not be otherwise imposed upon the child if he or she were receiving services and a determination was made that the behavior was a manifestation of the child's disability.

This proposal would permit an application to the Family Court to determine whether a parent's special education and early intervention educational decision-making rights should be subrogated by the court to permit a time-limited appointment of a limited guardian for special education and early intervention decision-making". A limited guardian would be appointed where the court finds that the parent of a child is unable due to mental or physical incapacity or is unwilling to exercise decision-making regarding special education or early intervention services for the child, or where neither parent can be located after documented reasonable efforts have been made to locate the parent(s), if the school district or early intervention program has not otherwise appointed a surrogate parent. If the court finds that the child is not receiving an appropriate education as a result of the parent's inability or unwillingness to exercise decision-making and it is in the child's best interests, the court may appoint the limited guardian. In making the appointment determination, the court must consider an appropriate individual with an ongoing relationship with the child, including a relative or foster parent who has no other interest which could conflict with his or her duties as limited guardian.

A social services district having care and custody, or custody and guardianship of a child, a law guardian or the court on its own motion may institute a proceeding for appointment of the limited guardian. The appointment of a limited guardian for special education and early intervention decision-making may be made where appropriate. Upon removal of a child from his or her home in an Article 10 proceeding, in the context of an Article 10 dispositional hearing, upon approval of an instrument which results in the removal of a child from his or her home in a proceeding under SSL § 358-a, or in a permanency hearing under Article 10-A. At each permanency hearing subsequent to the appointment of a limited guardian for a child, if the child is not returned to the parent, the court must review the appointment of the limited guardian and determine whether to continue or terminate the appointment. An application may also be made at any time by the parent, law guardian or the petitioner to terminate the appointment of a limited guardian. To terminate the appointment, the court must find that it is in the child's best interests to terminate the appointment.

The ability for the court to subrogate a parent's right to special education and early intervention decision-making and to permit the appointment of a limited guardian is necessary because a social services district and its employees are specifically prohibited by IDEA from acting as the parent or being appointed a surrogate parent for purposes of special education and early intervention services, if the parent cannot or will not provide consent or where the parent is unavailable. Studies have shown that foster children's educational needs are not being met in many instances and this failure will lead to lifelong ramifications for these children. Zetlin and Weinberg, *Understanding the Plight of Foster Youth and Improving their Educational Opportunities*, 28 *Child Abuse and Neglect*, pp.917-923 (2004); *Assessing the Effects of Foster Care, Early Results From the Casey National Alumni Study*, Casey Family Programs (2003); *Are We Ignoring Foster Youth with Disabilities?*

An Awareness Document for Parents, Professionals and Youth, Foster Futures Project (2003). Adding the ability for the court to thoughtfully address the need to subrogate a parent's special education and early intervention decision-making in those instances where appropriate is a small step toward helping children who have had their lives interrupted, continue to, or begin to, get the educational services and assistance they need to lead productive, successful adult lives.

BUDGET IMPLICATIONS:

The cost for changes to the CONNECTIONS Automated Case and Financial Management System is estimated at \$32,000

EFFECTIVE DATE:

This act shall take effect on the ninetieth day after it shall have become a law.
