

SURROGATE PARENT PROCEDURES

Definition of a Parent Under the Individuals with Disabilities Education Act (IDEA)

The IDEA and state law defines a parent for special education purposes as follows:

- A biological or adoptive parent of a child;
- A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state), including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code;
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 or 20 U.S.C. § 1439(a)(5), or when a parent cannot be identified, and the school district cannot discover the whereabouts of a parent.

(34 C.F.R. § 300.30, Ed. Code § 56028)

Definition of a Surrogate Parent

A “surrogate parent” is an adult appointed by the District to represent a student aged 0-21¹, for the purpose of their individualized education program (IEP) to ensure that the rights of the student in all educational matters related to the provision of a free appropriate public education (FAPE) are protected, when the biological parents, or the parents as defined by IDEA and state law, cannot be found, or the courts have removed their educational rights and those rights have not been assigned to another.

¹ Students who reach the age of majority – age 18 – are authorized to make decisions regarding his/her own education. Generally, a District has no authority to appoint a surrogate parent for an adult student. In some cases, a student who is over the age of 18 may give permission for another person to act on his/her behalf or have a conservator who will act on the student's behalf for decisions about special education and related services. Districts must examine conservatorship documents to determine whether the District needs to appoint a surrogate parent for a student over age 18.

When to Appoint a Surrogate Parent

The District shall appoint a surrogate parent for a child in accordance with 34 C.F.R. section 300.519 under one or more of the following circumstances:

- No parent can be identified;
- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of the State or the adult student is a ward of the court and has been found to be incompetent;
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)); or

A child may need an interim surrogate parent when he/she is initially placed in a SELPA, in order to meet the requirements for an immediate educational placement, while the status or location of the child's parent is researched. These children may be living in:

- Foster homes;
- Private group homes;
- State hospitals and other health facilities;
- Correctional facilities; or
- Residential treatment centers.

Reasonable efforts to contact parents include, but are not limited to, the following measures:

- Documented phone calls;
- Letters, certified letters with return receipts;
- Documented visits to the parents' last known address; and/or
- Notification from the placing agency or a court order that terminates parents' rights.

If the efforts above fail to locate the parent or to obtain parent status notification from the placing agency, an interim surrogate parent appointment may be necessary. A surrogate parent shall be appointed not more than 30 days after the District determines that a student needs a surrogate parent. (California Government Code section 7579.5 (a). This appointment will facilitate timely IEP review or establish consent for special education assessment, or both.

When a Surrogate Parent is Not Needed

If the location of a student's parent(s) is known, but the parent(s) fails or refuses to participate in an IEP meeting, the District may not appoint a surrogate parent. Instead, the District may need to

document its reasonable efforts to convince the parent to attend an IEP meeting, and request a due process hearing to obtain approval for the District's offer of a free appropriate public education.

Who to Appoint as a Surrogate Parent

Individuals who may serve as surrogate parents must have knowledge and skills that ensure adequate representation of the student. Surrogate parents may include, but are not limited to, foster care providers, retired teachers or retired school district administrators, social workers, and probation officers who are not employees of the California Department of Education, the District, or any other public or private agency that is involved in the education or care of the child. An individual who would have a conflict of interest, for the purposes of this section, means a person having any personal or professional interest that might restrict or bias his or her ability to represent the interest of the child the surrogate parent represents.

A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the District solely because he or she is paid by the District to serve as a surrogate parent.

When appointing a surrogate parent, the District shall, as a first preference, select a relative caretaker, foster parent, or Court-Appointed Special Advocate if any of these individuals exists and is willing and able to serve. If none of these individuals are willing or able to act as a surrogate parent, the District shall select the surrogate parent. If the child is moved from the home of the relative-caretaker or foster parent who has been appointed as a surrogate parent, the District shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

All individuals who are interested in serving as a surrogate parent shall be fingerprinted, trained, and provide documentation of a clear tuberculosis test prior to being appointed.

Responsibilities/Expectations of a Surrogate Parent

The surrogate parent shall serve as the child's parent for the purpose of the IEP process and shall have the rights relative to the child's education that a parent has. The surrogate parent may represent the child in matters relating to special education and related services, including:

- Identification;
- Assessment;
- Instructional Planning and Development of the IEP;
- Educational Placement;
- Reviewing and Revising the IEP; and,

- Other matters related to a FAPE.

The surrogate parent serves as the child's parent and has parental rights relative to the child's education.

Monitoring Surrogate Parents

If a surrogate parent is not performing the duties in an appropriate manner, or if the surrogate has a conflict of interest, then the District shall terminate the appointment. The surrogate parent may represent the child until:

- The child is no longer in need of special education;
- The student reaches 18 years of age;
- The biological parent is found, or the court restores educational rights to the parent; or
- The child ceases to be a resident of the District.

The District should inform the sites when a student is in need of a surrogate parent. The District should also be notified when a surrogate is no longer representing a student. The District should also inform the student's new local educational agency that a surrogate parent was previously appointed so the former surrogate parent may provide important information concerning the child's educational needs to the new LEA and any new surrogate parent that may need to be appointed.

Surrogate Parent Safeguards

A surrogate parent:

- Is held harmless by the State of California during execution of duties except when actions are found to be wanton, reckless or malicious;
- May inspect and have copies of all student educational records;
- Has permission to request changes when inappropriate or inaccurate information is contained in the student's records;
- Should be informed about assessment procedures, tests and all results;
- May seek an Independent Educational Evaluation;
- Participates fully in the planning of the student's IEP;
- May decide if the proposed offer of FAPE is appropriate for the student by either signing or refusing to sign the IEP;

- Should receive progress reports and regular routine communications;
- May request a teacher conference, new evaluation or IEP, as deemed necessary by the surrogate;
- Should be notified in writing when the school proposes any educational changes;
- May file a compliance complaint or initiate due process proceedings over a dispute regarding a child's special education program;
- Should be informed if any due process proceedings have been initiated;
- Receives information about all other state and local agencies that provide services to special education students.
(Ed. Code, § 56050(b))

Identifying a Surrogate Parent

When the District identifies the need for a surrogate parent to be appointed for a student, the District shall:

- Review the list of Surrogate Parents.
- Maintain a list of Surrogate Parents who have been fingerprinted and participated in this training.
- Contact the surrogate parents listed who have been fingerprinted and participated in the training, to confirm availability to be appointed for a student.
- Complete the Surrogate Parent Authorization Form.