

## **SURROGATE PARENT PROCEDURES**

### **Definition of a Parent under IDEA**

The 2006 IDEA Part B regulations, (34 CFR §300.30) clarify that a parent is:

- A biological or adoptive parent of a child.
- A foster parent--unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
- 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).
- 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.
- A surrogate parent who has been appointed in accordance with when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.
- A surrogate parent may also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institution Code, and is referred to special education or already has an IEP. For additional information please see the section of this Procedural Guide titled, "Surrogate Parent."

### **Definition of a Surrogate Parent**

A "surrogate parent" is an adult appointed by a Local Education Agency (LEA)/district or Special Education Local Plan Area (SELPA) to represent a pupil aged 0-21, for the purpose of their Individualized Education Program (IEP) to ensure that the rights of the pupil to a Free Appropriate Public Education (FAPE) are protected, when the biological parents, or the parents as defined by IDEA, cannot be found, or the courts have removed their educational rights and those rights have not been assigned to another.

### **When to Appoint a Surrogate Parent**

An LEA/district shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the Code of Federal Regulation (CFR) under one or more of the following circumstances:

- No parent (as defined in §300.30) 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
- The child is referred for Special Education.

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 home
- Private group home
- State hospitals and other health facilities
- Correctional facilities



- 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
- The placement of an agency notice of 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 LEA/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**

The following are instances in which a surrogate parent does not need to be appointed.

- The parent's educational rights pertaining to the student have not been removed by a court.
- The parent maintains educational rights and has appointed their own educational representatives for their child.
- A court has appointed a guardian for the student.
- The student was voluntarily placed in a residential facility.
- The student is 18 years of age, or older, and he/she does not have a conservator or guardian, regardless of the individual's functional level.
- The student is an emancipated minor.
- The student is married.
- The student has a legal guardian.
- The student has someone "acting" as the child's parent such as a grandparent or other family member and the child resides with this person and is defined as a "parent" according to 34 CFR §300.30.

### **Who to Appoint as a Surrogate Parent**

Individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers or school district administrators, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child. A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides non-educational care for the child. An individual, who would have a conflict of interest, for the purposes of this section, means a person having any interest that might restrict or bias his or her ability to advocate for all of the services required to ensure that student has a free appropriate public education.

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

When appointing a surrogate parent, the LEA/district shall as a first preference, select a relative caretaker, foster parent, or Court-Appointed Special Advocate (CASA), 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 LEA/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 LEA/district shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

To find an approved list of surrogate parents who have been fingerprinted and trained, please refer to the list located in the SEIS Document Library.

### **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 under Title 20 (Commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. 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
- Other matters related to a free and appropriate public education (FAPE)

The surrogate parent serves as the child's parent and has parental rights relative to the child's education under Title 20 Section 1400 and part 300 of the Code of Federal Regulation. The surrogate parent should be culturally sensitive to the needs of the child.

### **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 LEA/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 the age of majority;
  - The age of majority is the legally defined age at which a person is considered an adult, with all the attendant rights and responsibilities of adulthood.
- The biological parent is found, or the court restores educational rights to the parent.

The LEA/district should inform the SELPA when a student is in need of a surrogate parent. The SELPA should also be notified when a surrogate is no longer representing a student.

### **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 (IEE).
- Shall participate fully in the planning of the student's IEP.
- Can 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 initiate due process proceedings.
- 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 (California Education Code Section 56050(b)).

