

STUDENT-MISCELLANEOUS

Adopted: 6/6/2023

*Surrogate Parents for Special Education Students*First Reading: 6/6/2023

In accordance with state and federal law, and in order to ensure the rights of special education students are protected, the local education agency (LEA) shall appoint, as necessary, a surrogate parent to represent a child with exceptional needs. Such appointment shall be made not more than 30 days after the need has been identified.

A surrogate parent is an individual assigned to act as a surrogate for the parent/guardian.

The surrogate parent shall serve as the child's parent and shall have all the rights related to the child's education that a parent has with respect to special education.

Determining Need for a Surrogate Parent

The LEA shall appoint a surrogate parent to represent a student with disabilities under one or more of the following circumstances:

- No parent for the student can be identified;
- The LEA, after reasonable efforts, cannot discover the location of a parent/guardian.
- The child is adjudicated a dependent or ward of the court (pursuant to Welfare and Institutions Code (WIC) 300, 601 or 602), or upon referral of the child to the LEA for special education and related services, or if the child already has a valid IEP, and all of the following conditions are satisfied:
 - The court has specifically limited the right of the parent/guardian to make educational decisions for the child; and
 - The student has no responsible adult to represent him or her (pursuant to WIC 361 or 726 or EC 56055);
- The student is an unaccompanied homeless youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434(a).

Selection of Surrogate Parent

When appointing a surrogate parent, the LEA shall give first preference to a relative caretaker, foster parent, or court-appointed special advocate, if any one of these individuals exist and is willing and able to serve as a surrogate.

If none of these individuals are willing or able to act as a surrogate parent, the LEA shall select a surrogate parent of its choice.

If the child is subsequently removed from the home of the relative caretaker or foster parent who was appointed as a surrogate parent, the LEA shall appoint another surrogate parent.

The LEA must ensure that a person selected as a surrogate parent is not an employee of the California Department of Education, the LEA, or any other agency that is involved in the education of the child. The selected person must not have personal or professional interest that conflicts with the interest of the child. The person selected must have knowledge and skills that ensure adequate representation of the child.

Individuals who have a conflict of interest in representing the child shall not be appointed as a surrogate parent. A person with a conflict is defined as having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education (FAPE).

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transition shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents regardless of whether or not they are employed by the State Educational Agency, the LEA, or any other agency that is involved, until a surrogate parent can be appointed who meets the requirements.

As far as is practicable, the surrogate parent should be culturally sensitive to the child.

The surrogate parent must meet with the child at least one time.

Surrogate Parent Responsibilities

The surrogate parent appointed by the LEA shall represent the child in all matters relating 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 special education matters, including identification, assessment, instructional planning and development, educational placement, review and revision of the individual education program (IEP), and in other matters relating to the provision of a FAPE.

The representation of the surrogate parent shall include written consent to the IEP, including non-emergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Government Code 75760-7588.

The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information. The surrogate parent shall use discretion in the necessary sharing of information with appropriate persons for the purpose of furthering the interests of the child. Surrogate parents shall have access to the student's school records as necessary to fulfill their responsibilities as surrogate parents and in accordance with LEA policy and administrative regulations.

Termination of Surrogate Parent Appointment

The LEA must terminate a surrogate parent agreement under the following conditions:

- the child is no longer in need of special education;
- the minor reaches 18 years of age, and chooses to make educational decisions for himself or herself;
- another responsible adult is appointed to make educational decisions for the minor;
- the right of the parent or guardian to make educational decisions for the minor is fully restored;
- the surrogate parent is not properly performing his or her duties; or
- the surrogate parent has an interest that conflicts with the interests of the child entrusted to her or his care.

References: EC 56028
EC 56050
GC 3350
GC 5125
GC 7579.5

34 C.F.R. 300.519