

XVII. Surrogate Parents

IDEA Regulations: Surrogate Parents

Section 300.519 Surrogate parents

(a) General. Each public agency must ensure that the rights of a child are protected when—

1. No parent (as defined in §300.30) can be identified;
2. The public agency, after reasonable efforts, cannot locate a parent;
3. The child is a ward of the State under the laws of that State; or
4. 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)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

1. For determining whether a child needs a surrogate parent; and
2. For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

1. The public agency may select a surrogate parent in any way permitted under State law.

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92 NAC 51-009.10: Appointment of Surrogates

009.10A. Each school district or approved cooperative shall ensure that the rights of a child with a disability are protected if:

009.10A1. No parent can be identified;

009.10A2. The school district or approved cooperative, after reasonable efforts, cannot locate a parent;

009.10A3. The child is an unaccompanied homeless youth; or

009.10A4. The child is a ward of the State or court.

009.10A4a. In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements in 92 NAC 51-009.10D3.

009.10B. The duty of the school district or approved cooperative under 92 NAC 51-009.10A includes the assignment of an individual to act as a surrogate for the parents. This must include a method;

009.10B1. For determining whether a child needs a surrogate parent and,

009.10B2. For assigning a surrogate parent to the child.

009.10C. The school district or approved cooperative may select a surrogate parent in any way permitted under State law and the district or approved cooperative shall make reasonable efforts to ensure the assignment

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2. Public agencies must ensure that a person selected as a surrogate parent—

i. Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

ii. Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

iii. Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—

1. The identification, evaluation, and educational placement of the child; and
2. The provision of FAPE to the child.

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of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.

009.10D. In order to qualify, a surrogate must be a person who:

009.10D1. Has no personal or professional interest that conflicts with the interest of the child he or she represents;

009.10D2. Has knowledge and skills that ensure adequate representation of the child; and

009.10D3. Is not an employee of any public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

009.10D3a. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 92 NAC 51-009.10D3, until a surrogate parent can be appointed that meets all the requirements of 92 NAC 51-009.10D.

009.10E. The surrogate may represent the child in all matters relating to:

009.10E1. The identification, evaluation, and educational placement of a child; and

009.10E2. The provision of a free appropriate public education to the child.

009.10F. The services of the surrogate parent shall be terminated when:

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(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

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009.10F1. The child is no longer eligible for a surrogate parent under 92 NAC 51-009.10A;

009.10F2. A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

009.10F3. The surrogate parent fails to fulfill his or her duties as a surrogate parent.

009.10G. Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.

009.10H. The surrogate parent and the school district or approved cooperative which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

District Considerations for Policy and Procedure Development

Policy considerations

When parents are represented in special education policy, include “parent, guardian, or appointed surrogate” and then define surrogate within overall policy consistent with 34 CFR § 300.519 and 92 NAC 51-009.10.

Procedural considerations

- What is included in the surrogate training? How and when is it scheduled? What methods are used?
- What are the qualifications needed to be a surrogate? How are they selected for training?
- What training do school staff need to appropriately determine when a student may need an educational surrogate?
- What should school staff do if a student appears to need a surrogate? How would staff know if the student may need a surrogate?
- What is the procedure for assigning a surrogate to a child?
- What is needed at meetings to document the relationship to the child?
- How often is the assignment reviewed?

Guidance resources

- [OSEP Policy Documents Regarding the Education of Infants, Toddlers, Children and Youth with Disabilities: Surrogate Parents](#)