

Surrogate Parents

20 U.S.C. §1415

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Purpose

The purpose of this Basic Educational Circular is to provide guidance regarding the duty of the local educational agency (LEA) to appoint a surrogate parent. A surrogate parent is defined as a person who acts in the place of the parent to make educational decisions on behalf of children who are or may be eligible for special education services under the Individuals with Disabilities Education Act (IDEA) in all matters relating to the identification, evaluation, educational placement, and provision of a free appropriate public education (FAPE).

Background

IDEA, as amended in 2004, mandates procedures that protect the rights of a child whenever the parents of a child are unknown. The LEA must assign an individual to act as a surrogate for the parents and authorize this individual to make educational decisions relating to the provision of special education services for a child.

Recognizing that not all children have a birth or adoptive parent, or another legally authorized adult to serve as the educational decision maker, IDEA imposes specific duties on LEAs, including charter schools, to ensure the prompt appointment of a surrogate parent for children who need them. The duty to appoint a surrogate parent is critical because, under IDEA, every child who is thought-to-be or has been determined to be eligible for special education services must have a parent or other legally authorized adult to make educational decisions relating to the provision of special education services.

Authority

The LEA is required to assign a surrogate parent whenever: 1) a birth or adoptive parent is unknown or cannot be located; 2) parental rights to make educational decisions have been limited or terminated, and there is no foster parent, guardian, or other individual acting in the place of a parent with whom the child lives; or 3) the child is an unaccompanied homeless youth. To fulfill this obligation, the LEA must develop a method for identifying any child who needs a surrogate parent and must assign a surrogate parent within 30-calendar days of determining that a child needs a surrogate parent.

Procedures

Because the parent under IDEA participates in all educational decisions relating to the child's special education, the LEA must identify a parent who serves in this role for a particular child.

A parent (now referred to as an IDEA parent) is defined under IDEA as:

- A biological or adoptive parent of a child;
- A foster parent;
- A guardian authorized to act as the child's parent, or authorized by a court to make educational decisions for the child (Note: with limited exceptions as discussed in the Special Circumstances Section of this Basic Education Circular, this does not include a representative of a child welfare agency);
- An individual acting as a parent in the place of the biological or adoptive parent with whom the child lives (including a grandparent, stepparent, or other relative) or a person who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed by an educational agency or an educational decision maker appointed by a court in accordance with IDEA. (Note: Apart from two limited exceptions as discussed in the Special Circumstances Section of this Basic Education Circular, federal law prohibits anyone employed by an agency that is involved in the care or education of the child from serving as a surrogate parent.)

Whenever a birth or adoptive parent has retained legal rights to make educational decisions and is contacting the LEA to act as the parent on behalf of his/her child in the special education process, the school must treat the birth or adoptive parent as the educational decision maker. However, whenever a court order specifies a particular person as the educational decision maker, the school must treat that person as the only person authorized to make special education decisions for the child.

Appointment of the Surrogate Parent

For a child who is eligible or thought-to-be eligible for special education services, the LEA such as a school district or public charter school must ensure that a surrogate parent is appointed to represent the child in all matters related to identification, evaluation, placement, and the provision of FAPE when:

- No IDEA parent can be identified;
- The local educational agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the State as defined by State law (Pennsylvania does not have a state law definition of ward of the State so this provision does not apply in Pennsylvania); or
- The child is an unaccompanied homeless youth as defined in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434(a)(6)) (i.e., youth who lack a fixed nighttime residence and are not in the care of a parent or guardian).

Vigilance in identifying children who need surrogate parents is particularly important for dependent children and youth placed in congregate care settings. For many of these children, parental rights have been terminated or the parents cannot be located, and this group of children does not have foster parents to serve in the role of IDEA parents. Accordingly, it is critical that LEAs reach out to residential facilities within their boundaries to ensure that these children have an authorized IDEA parent to represent them in the special education process.

The LEA cannot appoint a surrogate parent for a child when there is another person in the child's life who qualifies as a parent under IDEA and whose rights to make educational decisions for the child have not been terminated. In addition, the LEA cannot appoint a surrogate parent because school staff disagrees with the decision of the child's parent. Rather, the LEA's recourse would be to request resolution of a dispute through the special education hearing process.

Only a court can appoint an alternate educational decision maker when there is an otherwise qualified IDEA parent to act for the child. A court can appoint an educational decision maker whenever the judge believes such an appointment is in the best interest of the child. The IDEA rights of a court-appointed educational decision maker or surrogate parent trump the IDEA rights of all other potential IDEA parents including those of the birth or adoptive parent.

Surrogate Parent for Students Placed in Group Homes or Residential Facilities

In the absence of any IDEA parent or a person appointed by a court, it is the legal obligation of the LEA to appoint a surrogate parent. The LEA in which the child is enrolled, or the host school district where the child is placed in a residential treatment facility (RTF) or group home, is responsible for the appointment of a surrogate parent. While the LEA may obtain the assistance of an intermediate unit to identify and assign a surrogate parent, the obligation to ensure the appointment of a surrogate parent remains with the LEA responsible for the education of the child.

Collaboration with Juvenile Courts and Child Welfare Agencies

Under Pennsylvania Juvenile Court Procedural Rules 147 and 1147, judges must consider whether a child in dependency or delinquency proceedings requires the appointment of an educational decision maker due to the absence of a parent or guardian or in order to serve the best interests of the child. If a judge appoints an educational decision maker for a child who is or may be eligible for special education services, the person appointed cannot serve as an IDEA parent if he or she is an employee of an agency that is involved in the education or care of the child.

While considering the Juvenile Court's increased attention to this issue, it is important for LEAs to inquire as to whether a court has appointed an educational decision maker or surrogate parent (sometimes also referred to as an "Educational Guardian" or "Educational Surrogate"). If a judicial decree or order identifies a person to act as the child's educational decision maker, the LEA must treat that person as the child's IDEA parent, and the LEA cannot appoint a surrogate parent for that child.

The LEAs are encouraged to collaborate with child welfare agencies and to coordinate efforts to appoint surrogate parents. However, the LEA should never delay the assignment of a surrogate parent for a child who needs one. Rather, all LEAs must comply with the 30-calendar day timeline that is triggered once the LEA determines that a child needs a surrogate parent.

Selection of a Surrogate Parent

A surrogate parent may be a relative of the child, a prior foster parent, a person who knows the child, a Court Appointed Special Advocate, or a Guardian ad Litem also known as a child advocate. If there is no one in the child's life who is willing or able to serve in this role, another individual must be appointed to be the surrogate parent for special education matters. All surrogate parents must have the knowledge and skills necessary to serve the best interests of the child.

A surrogate parent may not be an employee of a child welfare agency (including a case manager, an employee of a private child welfare agency with whom a public agency contracts, a group home parent, or staff in a residential facility), or an employee of an educational agency that is involved with the child (such as the child's teacher, a board member, or a school district employee). In addition, a surrogate parent appointed by the LEA must not have a personal or professional interest that conflicts with the interest of the child the surrogate parent represents.

The Surrogate Parent's Role

A surrogate parent stands in the place of the parent and can make all of the special education decisions that are usually made by the biological or adoptive parent. For example, surrogate parents may review a child's educational records, request and/or consent to evaluations and reevaluations, approve or disapprove Individualized Education Programs (IEPs) and changes in educational placement, and disagree or dispute the recommendations of the local educational agency by asking for mediation or by requesting a due process hearing. A surrogate parent under IDEA does not have any rights outside of the special education system unless awarded by a court.

Exceptions

There are two exceptions to the rule that the LEA must appoint a surrogate parent for a child who does not have an IDEA parent. The exceptions ensure that children who are thought-to-be eligible for special education services and who are not living with their parent are promptly evaluated and the provision of services, if determined eligible, are not delayed due to the absence of an IDEA parent. The limited exceptions for the appointment of a surrogate are as follows:

1. Child in child welfare custody: If a child is not living with a parent or a foster parent, the local educational agency can conduct an initial evaluation without the parents' consent if:
 - a. despite reasonable efforts the local educational agency cannot locate the child's parents, or
 - b. the parents' rights have been terminated under State law, or
 - c. the parents' rights to make educational decisions have been suspended by a judge, and an individual has not been appointed by the judge to consent to the initial evaluation.

NOTE: A person who is appointed in the third situation can be someone who is employed by an agency involved in the education or care of the child. However, once a child is found to be eligible for special education services, a school cannot provide any such services without the written permission of the child's IDEA parent which may be a surrogate parent appointed by a local educational agency or a surrogate or educational decision maker appointed by a judge.

2. Unaccompanied Homeless Youth: In the case of a child who is an “unaccompanied homeless youth”, the staff of an emergency shelter, transitional shelter, independent living program, or street outreach program may be appointed as a “temporary surrogate parent” (even if that person is an employee of an agency involved in the care or education of the youth) until such time as a surrogate parent who meets the requirements of an IDEA parent can be appointed.

Appointment Process and Timing of the Surrogate Parent

Under IDEA, the LEA must establish policies for determining when a child needs a surrogate parent and must assign a surrogate parent to a child within 30-calendar days of a determination that a surrogate parent is needed. Such policies should address: how to ensure surrogate parents for all children residing within a school district, including children in group homes and residential facilities; coordination of efforts with the school district’s McKinney-Vento liaison for children who are homeless; and collaboration with child welfare agencies and the courts.

In addition, because a surrogate parent must have knowledge and skills to ensure adequate representation of a child in all aspects of the special education process, the local educational agency must provide training to surrogate parents. The training should include a discussion of the surrogate parent’s rights and responsibilities, the child’s rights under IDEA, and how to enforce the child’s rights through due process or other dispute resolution mechanisms. Although local educational agencies may contract with an intermediate unit or another entity to provide the training, the local educational agency remains responsible. Because the LEA has a deadline within which to assign surrogate parents, it is important for LEAs, which includes charter schools, to maintain a pool of trained surrogate parents. Local educational agencies are also strongly encouraged to develop an interagency agreement with their local child welfare agency to facilitate the identification of children who need surrogate parents as well as the identification of individuals who might be willing to serve as surrogate parents such as former foster parents, Court Appointed Special Advocates or guardian’s ad litem.

LEA Role and Responsibility Emphasis

It is imperative that LEAs understand their role and responsibilities in identifying unaccompanied homeless youth with disabilities and the need to promptly appoint surrogate parents for these students. LEAs are encouraged to adhere to the following:

1. It is necessary that temporary surrogate parents (appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs) are appointed in a timely fashion to unaccompanied homeless youth with disabilities until qualified permanent

- surrogate parents are appointed, which should be within 30 days of the LEA's determination that a child needs a surrogate parent.
2. The importance of communication between McKinney-Vento liaisons (the local liaison serves as the LEA's lead homeless education contact and is required to fulfill the duties of the position as established in the Act [42 U.S.C § 11432(g)(6)(A)]) and the LEA special education office.
 3. The importance of maintaining disaggregated data and the ability to readily provide reports identifying unaccompanied homeless youth with disabilities in addition to tracking the appointment of surrogate parents for these students.

References

20 U.S.C. §§1401(23) and 1415(2)34 C.F.R. §§300.30, 300.45, 300.51934 C.F.R. §300.111(a)(1)(c)(2)Pa. R.J.C.P. No. 147Pa. R.J.C.P. No. 1147

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