



Pennsylvania Department of Education

# Surrogate Parent Guidelines for IDEA-Eligible or Thought-to-Be Eligible Students

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# Introduction

The guidelines were developed to assist local educational agencies (LEAs), placing agencies – both private and public – and other service providers in the implementation of the requirements pertaining to the appointment of surrogate parents for special education process and procedures.

Special education process and procedures require parent participation. Specifically, the Individuals with Disabilities Education Act (IDEA) authorizes parents to provide informed written consent related to the evaluation of and provision of special education services. However, there are certain situations in which a child may not have a parent to serve as an education decision maker. Whenever parents of a child are not known, cannot be located after reasonable efforts, the child is a ward of the state or an unaccompanied homeless youth, a surrogate parent must be appointed. This is a legal obligation for LEAs, including school districts and public charter schools. This duty encompasses developing methods for (1) determining when a student requires a surrogate parent and (2) assigning a surrogate parent to a student in need of such an appointment.

Information related to federal directives pertaining to parental participation and procedural safeguards for a student's evaluation and development of an Individualized Education Program (IEP) are outlined throughout the guidelines.

The guidelines cover the major considerations under federal law when surrogate parent appointments are made for children ages 3 through 21 as covered by Part B in IDEA including:

- The identification of children in need of a surrogate parent,
- The appointment process,
- The rights, responsibilities, and requirements of surrogate parents,
- The recruitment of surrogate parents,
- The training of surrogate parents, and
- The responsibilities and roles of agencies in this process.

The purpose of the guidelines is to provide references to statutes and regulations, sample forms, and other information regarding this appointment of surrogate parents. The information in the guidelines is designed to assist LEAs and other public agencies to develop surrogate parent programs. Compliance with relevant statutes, regulations, and Office of Special Education Programs (OSEP) letters are required.

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# Surrogate Parents in Pennsylvania

## Overview of the Surrogate Parent Requirement

This section provides an overview of federal requirements and describes surrogate parents and other persons who have the legal authority to act on behalf of an IDEA-eligible or thought-to-be eligible child in the special education process. The guidelines outline the obligations of LEAs to appoint surrogate parents. In addition, we note that under Pennsylvania's Juvenile Court Procedural Rules (PA. R.J.C.P. 147 and 1147) courts are authorized to appoint Educational Decision Makers (EDMs) for all children – eligible for special education or not – who lack an adult to make education decisions for them. The IDEA independently authorizes courts to appoint surrogate parents for students who are or may be eligible for special education who lack a “parent” under the IDEA.

## What is the Definition of a Parent Under the IDEA?

Under the IDEA, a parent is defined as:

- A biological or adoptive parent of a child;
- A foster parent;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (with limited exceptions, Child Welfare case-workers are not permitted, by federal law, to serve in this role);
- An individual acting in the place of the 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 (such as a person with an order granting that person custody of the child); or
- A surrogate parent who has been appointed in accordance with 34 CFR §300.519 or Section 615(a)(2) of the IDEA.

Whenever the biological or adoptive parent is “attempting to act as the parent,” that person is presumed to be the IDEA parent unless the biological or adoptive parent does not have legal authority to make educational decisions for

the child. So, if the biological or adoptive parent is “attempting to act as the parent” and has not been divested by a court of his/her legal authority to make education decisions for the child, that parent is the child's special education decision maker or IDEA parent.

In addition, if a judicial decree or order identifies a person or persons to act as the “parent” for a child or to make educational decisions on behalf of a child, then such person or persons shall be the “parent.”

Finally, a foster parent may fulfill the role as education decision maker under IDEA. If the biological or adoptive parent cannot be located, the LEA may treat the foster parent as the child's IDEA education decision maker. The appointment of a surrogate parent is not required in this case since under the definition of parent in IDEA, foster parent is listed as an individual that may act in place of a biological or adoptive parent.

Since the IDEA includes a surrogate parent within the definition of parent, a surrogate parent, once appointed, has all the procedural rights provided to the parent. It is the surrogate parent's responsibility to assert these rights on behalf of the assigned child.

## When Must a Surrogate Parent Be Appointed?

State Educational Agencies (SEAs) are required to establish procedures to protect the rights of the child when no parent can be located or identified. The SEA must also make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after an LEA determines that the child needs a surrogate parent.

As part of this responsibility, the Pennsylvania Department of Education (PDE) has issued a Basic Education Circular (BEC), and this guidance explains the duties and responsibilities of LEAs to appoint surrogate parents in a timely manner. Most importantly, LEAs are required to ensure that the rights of a child are protected when: (1) the LEA cannot, after reasonable efforts, identify or locate a biological or adoptive parent, or appointed educational maker; (2) the child is in the custody of Children and Youth and does not have a foster parent, or other appointed guardian or parent who may make educational decisions; or (3) the child is an

unaccompanied homeless youth. An LEA must appoint a surrogate parent for any IDEA eligible or thought-to-be eligible child in Pennsylvania who meets this criteria and who does not have an IDEA parent/education decision maker to act on the child's behalf.

However, an LEA cannot appoint a surrogate parent if the biological or adoptive parent is disinterested and refuses to participate in the special education process. See Letter to Perryman, 211 IDELR (OSEP 1987). Also, LEAs are not permitted to appoint a surrogate parent when, in the opinion of the LEA, the biological or adoptive parent acts in a manner that is opposed to, or inconsistent with, the best interest of the child. In its publication of the 2006 IDEA regulations, 71 Fed. Reg. 46540 (August 2006), the United States Department of Education (USDE) provided clarification related to the appointment of surrogate parents. Specifically, the USDE noted on page 46689 of the regulations that: "[t]here is no statutory authority to permit the appointment of a surrogate parent when a parent is either unable or unwilling to attend a meeting in which a decision is made relating to a child's educational placement. In section 615 (b)(2) of the Act, a public agency does not have the authority to appoint a surrogate parent where a child's parent is available or can be identified and located after reasonable efforts, but refuses, or is unable to attend a meeting or otherwise represent the child."

Public agencies (such as school districts and public charter schools) must develop a method for:

- Determination of the need for surrogate parent; and,
- Assignment of surrogate parent to the child.

In the case of a child who is a ward of the state as defined in the IDEA, (see below), the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate is not an employee of an agency that is involved in the education or care of the child.

Public agencies may consider the following options to ensure that the student eligible for special education and related services, or thought-to-be eligible child, has an educational decision maker. These options include, but are not limited to:

- Use alternative methods such as individual or conference telephone calls when a parent can be identified, but is unable to attend meetings regarding an eligible child's education.
- If, despite efforts to engage the parent, he/she is not "attempting to act as the parent" in the

special education process, first check whether the child has a foster parent. If so, and if that foster parent is willing to serve in this role, treat the foster parent as the child's parent for special education matters.

- Collaborate with other parties, such as child welfare staff, regarding a court appointment of an educational decision maker. Check whether the court has already appointed an Educational Decision Maker (EDM) for the child. If a judicial decree or order identifies a person or persons to act as the parent of a child or to make educational decisions on behalf of that child, then that person must be treated by the LEA as the child's parent for all matters related to special education.
- Request that the court appoint an EDM or surrogate parent for the child.
- If the child is an "unaccompanied homeless youth," shelter staff can be temporarily appointed to and may serve as the surrogate parent only until a fully qualified surrogate parent can be appointed for the child.
- Investigate the student's residential placement to determine whether there is an individual acting in the place of the biological or adoptive parent with whom the child resides and who is willing to act as the educational decision maker/parent.

### What are the Requirements for a Surrogate Parent?

A surrogate parent is an individual who represents the student determined eligible for special education services under IDEA, or thought-to-be eligible student, in matters relating to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE).

Federal regulations define a surrogate parent and delineate the requirements that must be met when a public agency selects and assigns a surrogate parent for a child. Specifically, federal law requires the Pennsylvania Department of Education to establish and maintain procedures for assigning a surrogate parent to any child whenever no parent can be identified, after reasonable efforts no biological or adoptive parent can be located, the child is an unaccompanied homeless youth, or the child is a ward of the state under the laws of that state (this last criterion does not apply in Pennsylvania, which has no such state law definition).

The surrogate parent must not be an employee of any public agency involved in the education or care of the child. For more information on this topic see Chapter 3.

A surrogate parent is an individual who meets specific qualifications and volunteers to perform the duties of a parent or guardian in the special education process. Surrogate parents can be appointed by a judge or a public agency, which in Pennsylvania means a school district, public charter school or an intermediate unit, to make decisions related to the special education process.

A surrogate parent must:

- Not be an employee of a public or private agency involved in the education or care of the child. This includes an employee of PDE, the LEA, or any other agency that is involved in the education or care of the child, and includes public and private child welfare caseworkers, group home parents, and staff of residential placements;
- Not have a personal or professional interest that conflicts with the interest of the child whom he or she represents; and,
- Have the knowledge and skills that ensure adequate representation of the child.

Notably, a person otherwise qualified 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.

In the case of a child who is an unaccompanied homeless youth, staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as **temporary** surrogate parents (even if that person is an employee of an agency involved in the care of education of the youth) until a surrogate parent can be appointed that meets all of the requirements described above.

The surrogate parent assigned to a child may represent that child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

While not directive, some additional qualifications for a surrogate parent may include being a resident of Pennsylvania or residing in close enough proximity to the LEA to assure that he or she will be available to make educational decisions for the child and being at least 18 years old. In addition,

because a surrogate parent must have knowledge and skills to ensure adequate representation of a child, the LEA **must** provide training to surrogate parents.

### Who Can Appoint a Surrogate Parent to Fulfill the IDEA Requirement?

An IDEA-eligible or thought-to-be-eligible child's school district of residence or the public charter school is responsible for providing FAPE, and, in most cases, for appointing a surrogate parent when needed. When a nonresident child is in a noneducational placement in a residential facility such as a group home or a residential treatment facility, the school district (host district) in which the facility is located is responsible for FAPE and for appointing surrogate parents to children, when necessary.

For IDEA-eligible or thought-to-be-eligible children in the dependency system who are considered wards of the state under the IDEA (i.e., a child in the custody of a public child welfare agency who does not have a foster parent); can have a surrogate parent appointed by the judge overseeing the child's case. As more fully described in Chapter 3 under the heading "How are Wards of the State Assigned Surrogate Parents?," when a Court makes the appointment of a surrogate parent for a ward of the state, it does not need to comply with all the same criteria for selection of a surrogate as an LEA would for appointing a surrogate parent. However, even a judge cannot appoint a person who is employed by an agency involved in the education or care of the child to serve as a surrogate parent under the IDEA. Thus, a judge cannot appoint a child's caseworker to serve as the child's IDEA surrogate parent.

The only exception to this restriction to a court's power to appoint a surrogate parent is when the child is not living with a parent or a foster parent, and the parents' rights to make education decisions have been suspended by a judge. Then the judge can appoint any individual, including a person employed by an agency that is involved in the care or education of the child, to consent to the initial special education evaluation only. If a child is deemed eligible for special education services following the evaluation, the caseworker or other person appointed by the court cannot authorize the provision of special education and related services. Rather, a surrogate parent appointed by an LEA or a judge must consent in writing to provision of special education and related services, and make any other decisions relating to the child's special education needs.



## Can the Foster Parent Act as a Parent?

Yes. The definition of parent includes foster parents (34 CFR §300.30). In instances where there is no biological or adoptive parent who is “attempting to act as the parent,” and the foster parent is willing to serve in the capacity, the LEA should treat the foster parent as the child’s IDEA parent, and there is no need to appoint a surrogate parent.

## Can a Guardian Make Educational Decisions?

A guardian with a limited appointment that does not authorize the individual to act as the child’s parent or as the EDM of the child, is not considered to be an IDEA parent. In some cases, the role of the guardian is limited to representing the interests of the child in court proceedings and acting as an advisor to the court on the child’s behalf. The extent of a guardian’s authority to act as an EDM is limited by the terms of his or her appointment order.

## What are the Rights of a Parent Once a Surrogate Parent is Selected?

There is nothing in IDEA that terminates the rights of the student’s natural or adoptive parents from participating in the educational process of their child after a surrogate parent is appointed, unless there is a court order terminating or limiting the parent’s educational rights. Where there is a biological or adoptive parent attempting to make educational decisions, he or she must be considered the parent for purposes of the IDEA, unless there is a court order terminating educational rights.

## Who Cannot Serve as a Surrogate Parent?

Federal regulations prohibit employees of the SEA, the LEAs, or any other agency involved in the education or care of the child from serving as a surrogate parent. In addition, any individual who has personal or professional interests that conflict with the interest of the child cannot serve as a surrogate parent. For example, public and private agency caseworkers, and group home “parents” cannot make special education decisions for children with disabilities. Neither public nor private agency caseworkers can be appointed as a surrogate parent for children in the care of the agency.

While caseworkers may have relevant information related to the student, the caseworker may not participate as a parent in the special education process. Similarly, probation officers cannot be appointed as surrogate parents for those children they supervise. Also, staff for residential facilities that are involved in the care of the child may not serve as

surrogate parents for those children. The reason for this is the IDEA prohibition and the potential conflict between the interest of the child and the interest of the agency because some educational decisions might have an impact on the SEA or other governmental agencies.

However, there are two important exceptions to this rule. These exceptions were created to ensure that children who are thought-to-be-eligible for services and who are not living with their parent or a foster parent are promptly evaluated and that provision of special education and related services are not delayed due to the absence of an IDEA parent. These limited exceptions to the general prohibition are as follows:

- **Certain children in child welfare custody:** If a child is not living with a parent or a foster parent, the LEA can conduct an initial evaluation without the parent’s consent if: (1) despite reasonable efforts the LEA cannot locate the child’s parents or, (2) the parent’s rights have been terminated under State law, or (3) the parents’ rights to make educational decisions have been suspended by a judge, and an individual has 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 the LEA or a surrogate or EDM appointed by a judge.
- **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 can be appointed.

## How Long Can an Individual Serve as a Surrogate Parent?

Federal regulations do not address the length of time that a surrogate parent may serve. To ensure minimum disruption to the child, however, the LEA should take steps to ensure that the individual appointed as a surrogate parent can serve in that capacity over the period of time that the child

needs a surrogate parent, and, whenever possible, continue to serve as the child's surrogate parent if the child moves to another school district, at least until a new surrogate parent is appointed.

### When Must a Surrogate Parent be Appointed?

The LEA must make a reasonable effort to discover the whereabouts of an IDEA parent (as defined in 34 CFR §300.30) before assigning a surrogate parent. If the LEA cannot locate a biological, adoptive parent, or a foster parent, a surrogate parent must be appointed. The LEA must make efforts to ensure that a surrogate parent is assigned **not more than 30 calendar days after the public agency determines that the child needs a surrogate parent.**

Reasonable efforts to locate a parent include, but are not limited to, the following:

- Documented telephone calls;
- Letters;
- Certified letters with return receipts;
- Documented visits to the parents' last known address; and,
- Request the court order that terminated parental educational rights and/or appointed the educational decision maker (EDM)

Students eligible for special education in state correctional facilities do not have an automatic right to a surrogate parent solely by reason of their confinement at a correctional facility. Public agencies must make a case-by-case determination in accordance with 34 CFR §300.519 to determine whether the student has a parent to act as an educational decision maker under IDEA. When a student confined in a state correctional facility is considered to be a ward of the state pursuant to the IDEA, that child's rights must be protected through an appointment of a surrogate parent. However, all rights accorded to parents under the IDEA transfer to students with disabilities who have attained the age of majority, and who are incarcerated in an adult, state juvenile, or local correctional institution, and who have not been found to be incompetent. 34 CFR §300.520(a)(2).

If there is some doubt about who should act as a surrogate parent or whether a student requires a surrogate parent, the LEA or public agency should consult with its solicitor regarding the unique facts related to the individual student's status.

The surrogate parent directive applies to IDEA-eligible or thought-to-be-eligible students. LEAs should not assume

that a student in general education will never require the appointment of a surrogate parent. If a child has no parent, as defined by the IDEA, a surrogate parent should be appointed for children who are thought-to-be-eligible and who may require an evaluation to determine whether they have a disability and require specially designed instruction (SDI). However, if all reasonable efforts to locate a biological, adoptive, or foster parent have been exhausted, the school district has two options: it can appoint a surrogate parent to provide written consent for the initial evaluation, or it can work with the child welfare agency to secure a court order authorizing another person to consent to the initial evaluation pending the assignment of a surrogate parent to the child. Following an initial evaluation, however, a surrogate parent must be appointed to provide consent for the initial provision of special education and related services, and that person assumes the responsibilities of a parent under 34 CFR §300.519.

### Who Can Request or Challenge the Appointment of a Surrogate Parent?

Anyone who believes that a child with a disability or thought-to-be-eligible child is in need of a surrogate parent can request that one be appointed, including caseworkers or probation officers. It is up to the LEA to determine whether a surrogate parent is needed. If the LEA refuses to appoint a surrogate parent, anyone can file a written complaint with the Pennsylvania Department of Education, Bureau of Special Education.

Under Chapter 14 and Chapter 711 of the Pennsylvania Code, the district of residence, or the public charter school is required to provide FAPE, which includes IEP development, notice, and consent for evaluations/special education services, and, if necessary, appointment of a surrogate parent. However, if the child is in a non-educational placement in a residential setting, the school district (host district) in which the facility is located has all of these responsibilities, including appointing a surrogate parent when one is needed.

**Remember:** The failure to appoint a surrogate parent may result in the denial of FAPE and thus may entitle a child to compensatory education services.

### What is the Age of Majority for Consent Requirements in Pennsylvania?

Generally, the Age of Majority in Pennsylvania is 21. 1 Pa. C.S. §1991. Once a student reaches the age of 21, he or she can make his or her own educational decisions subject to the limitations contained in 34 CFR §300.520.

# Rights, Responsibilities, and Requirements for Surrogate Parents

### What is the Surrogate Parent's Role?

The surrogate parent's role is to participate as an educational decision maker in the special education process and to stand in for the parent.

### What is the Authority of the Surrogate Parent?

The surrogate parent represents the student in all matters relating to identification, evaluation, and educational placement, as well as the provision of FAPE, including submitting a dispute to mediation or due process for resolution. It is important to note that a surrogate parent for the purposes of the IDEA is not a replacement for a parent in any other sense, or for non-IDEA decision making.

### What is the Relationship of the Surrogate Parent to Other Agencies?

There is nothing in the IDEA that would prohibit an LEA from collaborating with judges and child advocates in establishing a process for assigning surrogate parents. In fact, such practices are advantageous. However, when LEAs involve other parties in determining whether a surrogate parent is needed, the LEA must ensure that the confidentiality of personally identifiable data, information, and records are protected according to the provisions of the Family Education Rights and Privacy Act (FERPA), as amended by the Uninterrupted Scholars Act. As is set out below, recent amendments to FERPA permit LEAs to share the educational records of children in dependent care with authorized representatives of child welfare agencies without the need for written parental consent or the consent of the child at age 18.

### What are the Rights of the Surrogate Parent to Access Educational Records?

State and federal regulations protect confidentiality of all student records and limit the disclosure of such records. FERPA is a federal law that, in most cases, prohibits schools from disclosing personally identifiable information from a student's education records to a third party unless the

parent (or the student at age 18) provides written consent. Notably, the definition of parent under FERPA does not reference "surrogate parent" or "IDEA parent" as an individual authorized to consent to the release of personally identifiable information. However, state and federal regulations expressly permit the surrogate parent to access education records and state that the surrogate parent has the same rights under the IDEA as the biological or adoptive parent, or court appointed guardian. Accordingly, a surrogate parent has the right to review and inspect any records collected, maintained, and used by an agency to make decisions affecting the child's educational program, when appropriate.

### Child Welfare Agencies' Access to Education Records: The Uninterrupted Scholars Act

The Uninterrupted Scholars Act (P.L. 112-278) made key revisions to FERPA that make it easier for child welfare agencies to access educational records. This amendment creates an exception under FERPA that authorizes an agency caseworker or other representative of a state or local child welfare agency, or tribal organization to have access to the student's educational records without having to obtain written parental consent or a court order. This exception applies to children for whom the public child welfare agency has legal responsibility for their care and protection, specifically those children in the legal custody of the agency.

Typically, those who have the right to access the child's education records, include the following:

- The child's caseworker from the public children and youth agency;
- The child's caseworker from a private children and youth agency with whom the public agency contracts; and,
- The supervisors or managers of such agencies.

Therefore, a parent or surrogate parent is not needed to consent to the transfer of records under these limited circumstances.

### **What are the Rights of the Surrogate Parent Regarding Suspensions, Expulsions and Other Changes in Placement for Disciplinary Reasons?**

The surrogate parent assigned to an eligible or thought-to-be-eligible child who is being considered for suspension or expulsion is entitled to participate in the discipline proceedings as the parent. The LEA must adhere to the procedural safeguards and federal and state regulations

related to suspension and expulsion, including those set out in the IDEA and 22 Pa. Code Chapters 14 and 711. Accordingly, an LEA must include a surrogate parent in an IEP team meeting regarding a manifestation review determination (conducted within 10 days of the incident), any suspension or expulsion proceeding, or a hearing that involves a change in placement.



# When to Appoint Surrogate Parents

### What are the Basic Criteria for Appointing a Surrogate Parent?

Each public agency must ensure that an IDEA-eligible or thought-to-be-eligible child, including unaccompanied homeless youth and wards of the state, has a parent to represent him or her in all matters relating to the identification, evaluation, educational placement and provision of FAPE. The public agency must ensure that the rights of the child are protected when:

- No parent, as defined in 34 CFR §300.30, can be identified;
- The LEA, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of the State (Pennsylvania does not have a state law definition of “ward of state” so this provision does not apply in Pennsylvania); or,
- The child is an unaccompanied homeless youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)(6)).

### How and When are Children in the Custody of Child Welfare Assigned Surrogate Parents?

The identification and timely assignment of surrogate parents is especially critical for children in dependent care. When the IDEA was substantially amended in 2004, Congress took steps to ensure students assigned to child welfare agencies would involve a parent in the educational decision making, or that surrogate parents are promptly assigned to children who need them. This means that states and LEAs must ensure that all children suspected of having a disability are identified, located, and evaluated. In addition, states and LEAs must ensure that the rights of children are protected throughout the special education process, and that they receive special education and related services.

The LEA cannot assign a surrogate parent to a child who is the custody of a child welfare agency if there is a biological

or adoptive parent who can be identified and whose rights to make educational decisions for the child have not been terminated. The LEA should also not assign a surrogate parent if the child has a foster parent who is willing to act as the child’s IDEA parent, or if a court has assigned an EDM to serve in this role for a thought-to-be-eligible or eligible child.

Courts overseeing a child’s case can appoint surrogate parents for children who lack a parent or guardian or for a child whose birth or adoptive parent can be located but the court believes that appointing another EDM will be in the child’s best interest. When a Court makes the appointment, not all of the criteria for selection of an IDEA-surrogate apply. However, the person selected still cannot be an employee of an agency involved in the education or care of the child.

### How are Surrogate Parents Assigned to Children Residing in Group Homes, Residential Treatment Facilities, and/or Institutions?

Decisions by the courts and child welfare agencies to place a child in a residential facility can occur outside the scope of the IEP team. Children can be placed in many types of congregate care settings, which include group homes, residential treatment facilities, juvenile justice facilities, county prisons, or state correctional institutions. The school district (host district) in which these residential facilities are located is responsible for the educational program. In many cases, students that are in the legal custody of a child welfare agency or juvenile justice agency, and that are placed in congregate care settings, are likely to need a surrogate parent because the biological parent or foster parent may be difficult to locate. The school district can provide educational services or enter into a written agreement with a private contractor or the intermediate unit; however, the final responsibility to provide FAPE rests with the school district in which the facility is located. Therefore, the school district in which the facility is located is also the LEA responsible for appointing a surrogate parent when the conditions described above are met.

## How are Unaccompanied Homeless Youth Assigned Surrogate Parents?

Unaccompanied homeless youth are young people who lack a fixed night time residence and are not in the care of a parent or guardian. They may have run away from home or been forced to leave by their parents. Unaccompanied youth live in a variety of temporary situations, including shelters, the homes of friends or relatives ("couch surfing"), cars, campgrounds, public parks, abandoned buildings, motels, and bus or train stations.

A temporary surrogate parent may be appointed for an IDEA-eligible or thought-to-be-eligible child who is an unaccompanied homeless youth. The surrogate parent could include staff of emergency shelters, transitional shelters, independent living programs, and street outreach

programs until a surrogate parent can be appointed who meets all the appointment requirements. The Act does not specify how long a temporary surrogate parent can represent the child. The need for a surrogate parent will depend on the specific and unique circumstances faced by each unaccompanied homeless youth. However, attempts should be made to appoint permanent surrogate parents for the students.

In addition to an LEA's duty to appoint a surrogate parent for unaccompanied homeless youth, an LEA may also need to appoint a surrogate parent for a child who falls within the definition of "homeless" child "awaiting foster care placement." These children who are in the custody of child welfare and living in a temporary situation may also lack an IDEA parent. In this situation, the surrogate parent appointed must meet all IDEA criteria.

# The Appointment Process

### What are the Steps in Getting Started?

To fulfill its duty of assigning surrogate parents, the LEA must develop and implement a method to ensure the assignment of a surrogate parent not more than 30 calendar days after the LEA determines that the child needs a surrogate parent. Any child who has been referred for an initial evaluation because of a suspected disability, who is already eligible for special education services, or who is enrolled in special education may need a surrogate parent. If documented reasonable efforts do not locate the parent (or if a parent's right to make educational decisions has been terminated by a court), there is no current foster parent or relative caregiver (relative with whom the child lives) to serve this role, the child is an unaccompanied homeless youth, and/or the child does not have a court-appointed EDM or surrogate parent, the LEA should appoint a surrogate parent.

#### Step 1: Contacting Parents

Efforts to locate the parent should begin immediately upon enrollment. Time is important. First, a series of actions with specific timelines begins upon enrollment related to identification, evaluation, educational placement, and provision of FAPE. Since a parent must participate in educational decisions, the determination of the surrogate parent appointment must be made promptly, within 30 calendar days. LEAs should continue to send notices to the parent whose educational rights have not been terminated.

Reasonable efforts to contact the parent may include, but are not limited to, the following:

- Documented telephone calls;
- Letters;
- Certified letters with return receipts;
- Documented visits to the parents' last known address; and,
- Request, if applicable, a copy of the court order that terminated parental rights or extinguished the parent's right to make educational decisions or appointed an alternate EDM.

If reasonable efforts to locate a parent fail to locate the parent or to obtain parent status notification from the placing agency, there is no other IDEA parent (such as a foster parent) able to perform this role, and the child does not have a court-appointed EDM or surrogate parent, the LEA must appoint a surrogate parent.

The appointment of a surrogate parent should facilitate consent for a special education evaluation, IEP development, and educational placement.

#### Step 2: Selecting Surrogate Parents

When appointing a surrogate parent, the LEA should give first preference to a relative, friend, or other person already in the child's life. If none of these individuals is willing or able to act as a surrogate parent, the LEA must be prepared to appoint another qualified responsible adult to act in that capacity. The child welfare caseworker may be a source for identifying a potential surrogate parent who already knows and has a relationship with the child. Because the surrogate parent must have knowledge and skills to ensure adequate representation of a child, the LEA must provide training to surrogate parents.

#### Step 3: Identification of Surrogate Parents

Appropriate community groups should be contacted for purposes of recruiting surrogate parents. It is recommended that such groups be given a clear explanation of the roles and responsibilities of a surrogate parent, as well as an overview of the time commitments involved in making special education decisions for children who have special and sometimes unique needs. They must be willing to be trained to act as educational representatives for students requiring a surrogate parent.

Some examples of community groups that could assist in identifying surrogate parent volunteers include the following:

- CASAs;
- Big Brothers/Big Sisters;
- Fresh air groups;

- Local Parent-Teacher organizations;
- Local Task Force;
- Retired business men's/women's organizations;
- Men's/Women's organizations;
- Retired educators' groups; and,
- Service clubs.

An application process should be used to obtain specific information related to potential surrogate parents:

- Facts that show that the applicant does not have any interests that will conflict with the students;
- Assurance that the applicant has or is willing to acquire knowledge about the special educational interest of the student and the qualities and skills necessary to fulfill the role of educational representative;
- Facts that show that the applicant is not an employee of a public, non-public, or private agency involved in the education or care of the student; and,
- Assurance that the applicant is willing to commit the time and energy necessary to effectively present and advance the best interest of students in educational matters.

#### **Step 4: Screening for Conflict of Interest**

The LEA must ensure that a person selected as a surrogate parent:

- Is not an employee of the SEA, LEA, or any other agency that is involved in the education or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and,
- Has knowledge and skills that ensure adequate representation of the child.

Remember, staff of residential facilities where the child is living are involved in the "care" of the child and are not eligible to serve as surrogate parents.

(NOTE: A person who is qualified 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.)

#### **Step 5: Training of Potential Surrogate Parents**

While LEAs are primarily responsible for the recruitment, selection, training, and assignment of surrogate parents, intermediate units may be a resource that performs these functions. The surrogate parent training must provide each individual with the knowledge and skills to adequately represent the child in all aspects of the special education process. The training sessions must be comprehensive and, at a minimum, should include the following areas:

- Legal Rights and Responsibilities
  - Introduction to the IDEA and State Special Education Laws
  - Introduction to the surrogate parent provisions of state and federal laws
  - Responsibilities of the educational agency to students and surrogate parents
- The Special Role of the Surrogate Parent
  - Rights and responsibilities of the surrogate parent
  - Building relationships with the child and school staff
  - Monitoring and recording student progress
  - Obtaining and reviewing student records (confidentiality)
  - Discussion of resources available to support surrogate parents, including reimbursement, technical assistance, and legal assistance
- Developing an Effective Special Education Program
  - Identification: Understanding the student's disability/disabilities
  - Evaluations: Preparing for the evaluation process and development of the IEP
  - IEP: Developing goals and objectives and other sections of the IEP
  - Special program concerns: Behavior support, assistive technology, transition services, and related services



- Understanding Procedural Safeguards, Mediation, and Due Process
  - Overview of IDEA and state procedural safeguards
  - Mediation and other dispute resolution alternatives
  - Administrative complaint procedures and due process
- Questions and Responses
  - Review and receipt of the Surrogate Parent Manual
  - Questions and responses

Once volunteers have been trained to act as surrogate parents, many intermediate units maintain a list of surrogate parents. The LEAs may contact intermediate unit staff when a surrogate parent is needed. If an intermediate unit does not have a surrogate parent available, this does not extinguish the LEAs duty to appoint one.

### **Step 6: Additional Procedures**

LEAs must:

- Have a process to determine whether a student requires a surrogate parent;
- Develop methods to recruit surrogate parents;
- Ensure that there is an adequate number of surrogate parents to represent students when necessary;
- Ensure that surrogate parents have the same educational rights as other parents of students with disabilities in the LEA;

- Review the training provided to surrogate parents to ensure that surrogate parents have sufficient knowledge and skills; and,
- Ensure that surrogate parents are appointed within 30 calendar days of the determination that a surrogate parent is necessary to represent the student.

It is suggested that the following procedures be considered:

- Match the student's needs to the strengths of the potential surrogate parent;
- Introduce the student and the potential surrogate parent;
- Obtain a written agreement from the surrogate parent to serve the specific student in his or her IEP process and to maintain the student's and the family's rights to confidentiality; and,
- Inform all involved persons and agencies responsible for the residential care and education of the student of the surrogate parent's appointment.

To assist the appointment process, the LEA is provided with the following sample forms in the Appendix section of this manual:

- Surrogate Parent Determination Form
- Surrogate Parent Request Form
- Agreement to Serve as a Surrogate Parent
- Application to Serve as a Surrogate Parent
- Personal Assurance Statement
- Notification of Assignment as a Surrogate Parent

# Appointment Terms and Termination of Appointment

### When Should the Services of a Surrogate Parent Be Terminated?

The surrogate parent may not represent the child when any of the following are determined:

- The child is no longer in need of special education or is no longer eligible for such services;
- Another adult is appointed by a court to make educational decisions for the child;
- The rights of the parent or guardian to make educational decisions for the minor are fully restored by a court;
- The child is adopted; or,
- A child with no birth or adoptive parent moves from a residential setting (such as a group home) to a foster family placement, and the foster parent serves as the IDEA parent.

If the new LEA is in agreement, the surrogate parent can continue to serve when a child moves from one LEA to another unless and until a new surrogate parent is appointed.

The LEA must terminate the appointment of the surrogate parent if either of the following applies:

- The person is not performing the duties of a surrogate parent; or,
- The person has an interest that conflicts with the interest of the child for whom he or she is appointed as surrogate parent.

The LEA may not terminate the appointment of a surrogate parent because it disagrees with the decisions of the surrogate parent.

### What is the Role of Public Non-Educational Agencies and Foster Care Providers?

Prior to placing an IDEA-eligible child or thought-to-be-eligible child, the placing agency should notify the LEA in which the student will be placed and the receiving agency to which the child is being transferred whether the child is in need of a surrogate parent.

### How are the Parents' Educational Rights Determined?

In the case of a child in a non-educational placement, if parental rights have not been limited or terminated by the courts, the placing agency should provide any additional information related to the address, telephone numbers, and location of the parents. If the placing agency does not provide this information, the LEA should specifically request it. The LEA should make a reasonable effort to contact the parents. While the surrogate parent is responsible for participation in educational matters, the placing agency representative remains responsible for all other aspects of the placement, including the provision of day-to-day supervision, care, and services as agreed upon by the placing agency. Placing a child in a residential facility does not limit the right of biological or adoptive parents to serve as their child's IDEA parent.

### How are State Complaints and Due Process Complaints Handled?

If an individual disagrees with an LEA's failure to appoint a surrogate, the individual may file a State Complaint with the PDE, Bureau of Special Education. A surrogate parent may also file a complaint pursuant to 34 C.F.R. §300.151 – 300.153 and may also request mediation or file a due process complaint on behalf of the student. If the SEA receives a written complaint as per federal regulations, the SEA must follow through in a timely manner.

# The Role of the Intermediate Unit in the Surrogate Parent Process

### What is The Role of the Intermediate Unit in the Surrogate Parent Process?

According to 24 PS §13-1372(4), Classes for Exceptional Children "...The intermediate unit shall have power, and it shall be its duty, to provide, maintain, administer, supervise, and operate such additional classes or schools as are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for..."

Although the school districts in which children live are responsible for ensuring that students are timely assigned surrogate parents, the PDE encourages intermediate units to assist with the appointment of surrogate parents. In assisting with the surrogate parent requirements, the intermediate unit may assist in the following areas:

- Assigning a surrogate parent coordinator;
- Developing policies and procedures for the surrogate parent process;
- Developing materials and forms;
- Identifying district personnel contacts;
- Developing and implementing a monitoring procedure;
- Developing plans for district referrals;
- Developing agreements among districts and agencies;
- Developing and implementing an ongoing surrogate recruiting process, including:
  - Conducting public awareness activities, and
  - Screening potential surrogate parents;
- Providing training for district staff;
- Developing and providing training for surrogate parents;
- Providing school districts with a list of surrogate parents; and,
- Maintaining up-to-date records.



## Conclusion

The surrogate parent plays an important role in the special education process. The surrogate parent is, in essence, the parent for a student who receives special education services and for whom a parent is not available or cannot be located. The surrogate parent has the same rights as the biological parent, adoptive parent, or appointed guardian in all aspects of the special education process. For additional information related to the surrogate parent appointment process or requirements, you may contact:

Pennsylvania Department of Education  
Bureau of Special Education  
333 Market Street, 7th Floor  
Harrisburg, PA 17126  
717.783.2311





# Appendix

## Sample Forms

- Surrogate Parent Determination Form
- Surrogate Parent Request Form
- Agreement to Serve as a Surrogate Parent
- Application to Serve as a Surrogate Parent
- Personal Assurance Statement
- Notification of Assignment as Surrogate Parent

## Guide to the Laws and Regulations

## Surrogate Parent Determination Form

Student Name (Last, First, M.I.)

Date of Birth

District of Residence

School

Age

Teacher

Grade

Disability Category

If any one of the following situations results in a "YES," a surrogate parent is deemed necessary.

YES	NO	SITUATION
		No parent, guardian, current foster parent, or relative caregiver (relative acting in place of the parents with whom the child lives) can be located (need documentation of efforts to locate).
		Parents' right to make educational decisions for the child have been terminated by the court, and no guardian, current foster parent, or relative caregiver (relative with whom the child lives) can be located (need letter from agency or court order) and the child does not have a court-appointed education decision maker or surrogate parent.
		The child is an unaccompanied homeless youth (a youth without a fixed residence and not under the supervision of a parent).

Person completing this form

Position

## Surrogate Parent Request Form

Date: \_\_\_\_\_

Student Name (Last, First, M.I.) \_\_\_\_\_

Date of Referral \_\_\_\_\_

Date of Birth \_\_\_\_\_

District of Residence \_\_\_\_\_

Name of Caretaker or Resident Provider (foster parent, home, etc.) \_\_\_\_\_

School \_\_\_\_\_

Age \_\_\_\_\_

Street Address \_\_\_\_\_

Teacher \_\_\_\_\_

Grade \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Disability Category \_\_\_\_\_

Telephone Number \_\_\_\_\_

Special Education Assignment:

\_\_\_\_\_ Full-Time

\_\_\_\_\_ Supplemental

\_\_\_\_\_ Itinerant

\_\_\_\_\_ District Class

\_\_\_\_\_ Out of District Placement

Program Supervisor: \_\_\_\_\_

Caretaker Status: \_\_\_\_ Foster Parent \_\_\_\_ Agency

Social Agencies (if more than one, list both):

Agency \_\_\_\_\_

Agency \_\_\_\_\_

Contact Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone \_\_\_\_\_

Phone \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

**Recommendation(s) for possible surrogate parent:**

Name \_\_\_\_\_

Relationship \_\_\_\_\_

Phone Number \_\_\_\_\_

Address \_\_\_\_\_

### **Surrogate Parent Request Form (continued)**

If no conflicts of interest exist (i.e., employed by the local education agency (LEA) or agency) are you recommending the caretaker to be the surrogate parent? Circle: Yes or No

#### **A surrogate parent cannot be appointed by the LEA when:**

**There is a parent, guardian, current foster parent or relative caregiver (relative with whom the child lives) who can be located and whose right to make educational decisions has not been terminated by a court, or if a court has already appointed an education decision maker or surrogate parent for that child.**

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Primary school contact for Surrogate Parent Coordinator  
(e.g., Caseworker, Home & School Visitor, Supervisor,  
District Coordinator)

---

Referred by

---

Signature – Program Supervisor

#### **Return Form to:**

LEA Name  
LEA Address  
City, State Zip

Attn: Surrogate Parent Coordinator



## Agreement to Serve as a Surrogate Parent

(Date)

(Surrogate Parent Name)  
(Surrogate Parent Address)  
(City, State, Zip Code)

Dear (Surrogate Parent's Name):

You are invited to serve as surrogate parent for (Student Name).

As a surrogate parent, you will be expected to participate in training; request and participate in all applicable meetings relating to the provision of special education services and placement of the child, including IEP meetings, evaluation reviews, manifestation determination reviews, etc.; ensure that the child receives a free appropriate public education in the least restrictive environment; respond promptly to school requests; communicate with the school and student on an ongoing basis; and, assert the student's rights to due process when appropriate.

The Surrogate Parent Coordinator, (Coordinator's Name), is available to assist you in understanding your responsibilities and can be reached at (Coordinator Phone Number). Please return this form, the Application to Serve as a Surrogate Parent form, and the Personal Assurance Statement in the enclosed self-addressed stamped envelope.

Sincerely,

(Coordinator Name)  
\_\_\_\_\_  
Coordinator  
Surrogate Parent Program

---

### Response

Please check one, sign, and return to the Intermediate Unit

\_\_\_\_\_ I do agree to serve as a surrogate parent.

\_\_\_\_\_ I do not wish to serve as a surrogate parent at this time.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Application to Serve as a Surrogate Parent

Date: \_\_\_\_\_

\_\_\_\_\_  
Last Name First Name Middle Initial

\_\_\_\_\_  
Street City State Zip Code Telephone Number

\_\_\_\_\_  
Date of Birth Occupation

\_\_\_\_\_  
Place of Employment, if different from home

\_\_\_\_\_  
Employment Address Business Telephone

\_\_\_\_\_  
Children, if any, and ages

\_\_\_\_\_  
Education (highest level attained)

Do you have a child with a disability in your family? \_\_\_\_\_ Yes \_\_\_\_\_ No

Have you ever had any involvement with a child with a disability? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please explain: \_\_\_\_\_

\_\_\_\_\_  
List and/or explain any activities or experiences that you have had that you feel would enhance your ability to serve as a surrogate parent. \_\_\_\_\_

\_\_\_\_\_  
Why do you want to be a surrogate parent? \_\_\_\_\_

\_\_\_\_\_  
Are you applying to be a surrogate parent only for a particular child? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please state the child's name and your relationship to the child. \_\_\_\_\_

\_\_\_\_\_  
If you become a surrogate parent, would you be willing to commit yourself to a period of at least one year?

\_\_\_\_\_ Yes \_\_\_\_\_ No

**Application to Serve as a Surrogate Parent (continued)**

List two references, at least one who is not a relative, who have first-hand knowledge of your character, personality, interests, etc:

Name	Relationship or Occupation
Address	Phone Number

Name	Relationship or Occupation
Address	Phone Number

## Personal Assurance Statement

I hereby affirm that:

1. I am a person of good character;
2. I am at least 18 years of age;
3. I possess reasonable abilities to make decisions regarding a student's educational needs;
4. I am committed to acquainting myself with a student's educational needs, the student's rights under the Individuals with Disabilities Education Act, and the Pennsylvania educational system;
5. I am committed to advocating a free appropriate public education for the child in the least restrictive environment and agree to fulfill the responsibilities listed below;
6. I have no vested interest that would conflict with the interests of the student;
7. I am not an employee of any agency responsible for the education or care of the child; and,
8. I live within geographic proximity to the student, which will enable me to discharge my obligations as a surrogate parent.

RESPONSIBILITIES OF SURROGATE PARENT (initial indicating your understanding that each of the following is a component of your role as a surrogate parent):

- |   |   |
|---|---|
| <input type="checkbox"/> Participate in the surrogate training session(s)   | <input type="checkbox"/> Assert student's rights to due process and to compliance with the IEP as appropriate   |
| <input type="checkbox"/> Request and participate in all applicable meetings relating to the provision of services and educational placement of the child (including individualized education program (IEP) meetings, evaluation reviews and manifestation determinations, etc.) | <input type="checkbox"/> Contact the surrogate parent trainer if further assistance is required or if I no longer wish to assume the educational responsibility for the child |
| <input type="checkbox"/> Approve or disapprove of the student's IEP   | <input type="checkbox"/> Ensure the child receives a free appropriate public education in the least restrictive environment   |
| <input type="checkbox"/> Engage in ongoing communication, verbally or in writing with the student, the student's teacher and the student's school   |   |

---

Signature

Return completed form to (Coordinator's Name), Surrogate Parent Coordinator.

## Notification of Assignment as Surrogate Parent

(Date)

(Surrogate Parent Name)  
(Surrogate Parent Address)  
(City, State, Zip Code)

Dear (Surrogate Parent's Name):

You have been assigned to serve as surrogate parent for (Student Name). This assignment will be reviewed annually. Kindly retain a copy of this letter in the event that you require proof of your assignment as surrogate parent for (Student Name).

The Surrogate Parent Coordinator, (Coordinator Name), is always available to discuss your assignment. Questions regarding your new role can be answered by calling (Coordinator Phone Number).

We are sincerely grateful for your willingness to assist in the educational process.

Sincerely,

(Coordinator Name)  
\_\_\_\_\_  
Coordinator  
Surrogate Parent Program

cc: District Superintendent/  
Charter School Chief Executive Officer



# Guide to the Laws and Regulations

## 20 U.S.C. § 1401 Definitions

Except as otherwise provided, in this chapter:

### (23) Parent

The term “parent” means—

- (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- (B) a guardian (but not the State if the child is a ward of the State);
- (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (D) except as used in sections 1415 (b)(2) and 1439 (a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

## 34 CFR § 300.30 Parent

### (a) **Parent means—**

- (1) A biological or adoptive parent of a child;
  - (2) 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;
  - (3) 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);
  - (4) 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
  - (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a) (5) of the Act.
- (b) (1) Except as provided in paragraph (b) (2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

## 20 USC § 1415 Procedural safeguards

### (b) **Types of procedures**

The procedures required by this section shall include the following:

(2) (A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

(i) 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 of this paragraph; and

(ii) an unaccompanied homeless youth as defined in ... 42 U.S.C. § 11434a (6) , ... the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

## 34 CFR § 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.

(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.

(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.

### **34 CFR § 300.33 Public agency**

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

### **34 CFR § 300.45 Ward of the State**

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is—

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 300.30.

### **34 CFR § 300.111 Child find**

(a) General. (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

## 20 USC § 1412 State eligibility

### (a) In general

A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions—

#### (3) **Child find**

##### (A) In general

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

#### (11) **State educational agency responsible for general supervision**

##### (A) In general

The State educational agency is responsible for ensuring that—

(i) the requirements of this part are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency; and

(iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

##### (B) Limitation

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

## 42 USC § 11434A McKinney-Vento Homeless Assistance Act, Education for Homeless Children and Youths – Definitions

### (2) **The term “homeless children and youths”—**

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or, are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and,

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

### (6) **The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.**

## 24 P.S. §13-1306 Nonresident Students in Institutions

School age children are sometimes placed in residential programs for reasons not related to the child's educational needs. This may occur, for example, under the auspices of a county mental retardation program, mental health program, children and youth agency, or through a local court. The PA Public School Code considers these residential programs for the “care or training” of the children and youth who reside in “children’s institutions.” The educational rights of students who are residing in a “children's institution” whose parents are not residents of the school district in which the institution is located are set out in School Code (24 P.S. §13-1306), and the students are referred to in BEC 24 P.S. §13-1306) as “§1306” students. Children’s institutions

include, among other residential settings, residential treatment facilities, licensed shelters, group homes, drug and alcohol treatment centers, and detention homes. (22 PA Code §11.18)

This means that, when a "non-educational" placement is made, such placement is presumed to determine where the child lives, and where the child may receive non-educational services, but this residential placement is not presumed to determine where the child will be educated. Rather, the presumption is that the student will receive his or her education in a regular public school unless the parents/guardians and appropriate public officials determine that such an educational placement is unwise for the child or improper. In the case of children with a disability, this determination is made through the special education system's Individualized Education Program (IEP) process, or through a Service Agreement, unless a court order explicitly prescribes how educational services are to be provided.

Under Section 1306 of the Pennsylvania School Code, the host school district (the school district where the children's institution is physically located) is required to allow a non-resident student in a children's institution to attend the public schools of the host school district until the student receives a diploma or completes the school term in which the student turns 21. The host district is responsible for providing the educational program for students, including students with disabilities who are placed in that facility, and for ensuring the provision of a "free appropriate public education" for eligible children with Individualized Education Programs (IEPs) in accordance with the Individuals with Disabilities Education Act (IDEA) and for "qualified handicapped students" with Service Agreements in accordance with § 504 of the Rehabilitation Act of 1973 and 22 PA Code Chapter 15.

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