

**STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY**

**Title/OAR #:** Surrogate Parents / OAR 581-015-2320

**Date:** August 21, 2014

**Staff/Office:** Mitch Kruska/ Student Services

New Rule     Amend Existing Rule     Repeal Rule  
**Hearing Date:** July 23, 2014     Hearings Officer Report Attached  
**Prompted by:**  State law changes     Federal law changes     Other

**Action Requested:**

First Reading/Second Reading     Adoption     Adoption/Consent Agenda

**PROPOSED/AMENDED RULE SUMMARY:**

- Amends OAR 581-015-2320 to align language in state rules to language contained in federal regulations and federal written guidance to states from the Office of Special Education Programs.

**BACKGROUND:**

OAR 581-015-2320 Surrogate Parents, was implemented to comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically found at 34 CFR 300.519 Surrogate Parents and written guidance provided by the Office of Special Education Programs (OSEP), memo 10.04.06.

The current language in OAR 581-015-2320 is inconsistent with the language found in 34 CFR 300.519 and has thus created confusion among agencies and educational entities that have the statutory requirement to consider the assigning of surrogate parents to children with disabilities who are wards of the state. The current language in OAR 581-015-2320 has wording that is not consistent with the federal regulations and has led to confusion in the field resulting in agencies and educational entities believing that surrogate parents **must always be** assigned when a child is a ward of the state. Further, it is also creating complications with educational decision making when both biological parents with legal rights and institutionally appointed surrogates are present at meetings where educational decisions are made. This is inconsistent with federal regulations 34 CFR 300.519 and the written guidance provided for the states by OSEP. Therefore, the recommended amendment is needed to clarify the existing language in OAR 581-015-2320 regarding the process in determining when there is a need to assign a surrogate parent when a child is a ward of the state and bring the language in state rule into alignment with 34 CFR 300.519 and the written guidance from OSEP.

Current language reads: “School districts must ensure that the rights of a child with a disability, or suspected of having a disability, are protected by appointing a surrogate parent not more than 30 days after a determination that the child needs a surrogate because:

- (a) No parent (as defined in OAR 581-015-2000(21)) can be identified or located after reasonable efforts;

(b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or

(c) The child is an unaccompanied homeless youth.

The recommended language which aligns with federal regulations reads: “Each public agency must ensure that the rights of a child are protected by determining the need for, and when appropriate, assigning a surrogate parent when no parent (as defined in OAR 581-015-2000(21)) can be identified or located after reasonable efforts and additionally:

(a) If the child is a ward of the state and there is reasonable cause to believe that the child has a disability; or

(b) The child is an unaccompanied homeless youth.

This specific action was before the board in May for the first reading.

**ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:**

Current OAR 581-015-2320 Surrogate Parents, requires changes to more accurately align it with federal regulations and written guidance which will clarify the process to be followed in assigning surrogate parents when children are a ward of the state.

**CHANGED SINCE LAST BOARD MEETING?**

- N/A; first read—hasn’t been before board
- No; same as last reading
- Yes – As follows:

**FISCAL IMPACT:**

These changes will have no known fiscal impact.

**STAFF RECOMMENDATION:**

- Adopt administrative rule as prepared this month
- Adopt administrative rule next month
- No recommendation at this time (rarely used)

**581-015-2320**

**Surrogate Parents**

- (1) ~~School districts must ensure that the rights of a child with a disability, or suspected of having a disability, are protected by appointing a surrogate parent not more than 30 days after a determination by the district that the child needs a surrogate because:~~ Each public agency must ensure that the rights of a child are protected by determining the need for, and when appropriate, assigning a surrogate parent when no parent (as defined in OAR 581-015-2000(21)) can be identified or located after reasonable efforts and additionally:
- (a) If the child is a ward of the state and there is reasonable cause to believe that the child has a disability; or
  - (b) The child is an unaccompanied homeless youth.
- (2) The school district may not appoint a surrogate solely because the parent or adult student to whom rights have transferred is uncooperative or unresponsive to special education needs.
- (3) Each school district must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The school district must ensure that each person approved to serve as a surrogate:
- (a) Is not an employee of the school district or the Department or any other agency that is involved in the education or care of the child;
  - (b) Is free of any personal or professional interest that conflicts with representing the child's special education interests; and
  - (c) Has knowledge and skills that ensure adequate representation of the child in special education decisions.
- (4) For an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent without regard to subsection (3)(a) until a surrogate can be appointed that meets all of the requirements of subsection (3).
- (5) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.
- (6) A surrogate is not considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.
- (7) The duties of the surrogate parent are to:
- (a) Protect the special education rights of the child;
  - (b) Be acquainted with the child's disability and the child's special education needs;
  - (c) Represent the child in all matters relating to the identification, evaluation, IEP and educational placement of the child; and
  - (d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.

(8) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2360, and the procedures regarding hearings in OAR 581-015-2340 through 581-015-2385 apply.

(9) A parent, or an adult student to whom rights have transferred, may give written consent for a surrogate to be appointed.

(a) When a parent or an adult student requests that a surrogate be appointed:

(A) The parent or adult student retains all parental rights to receive notice under OAR 581-015-2190, 581-015-2195, 581-015-2310, and 581-015-2315 and all of the information provided to the surrogate.

(B) The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent or adult student revokes consent for the surrogate's appointment.

(b) The parent or adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(10) The school district may change or terminate the appointment of a surrogate when:

(a) The person appointed as surrogate is no longer willing to serve;

(b) Rights transfer to the adult student or the child graduates with a regular diploma;

(c) The child is no longer eligible for special education services;

(d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;

(e) A foster parent is identified who can carry out the role of parent under OAR 581-015-2000(20);

(f) The parent, who previously could not be identified or located, is now identified or located;

(g) The appointed surrogate is no longer eligible;

(h) The child moves to another school district; or

(i) The child is no longer a ward of the state or an unaccompanied homeless youth.

(11) A person appointed as surrogate will not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.519

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 23-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0099, ODE 10-2007, f. & cert. ef. 4-25-07