

Below, you will find the proposed changes to the Oregon Department of Education's rule(s) relating to Surrogate Parents. Proposed new text is bold, and the proposed text to remove is in bracketed italics.

Rule Number: 581-015-2320

Rule Title: Surrogate Parents

(1) Each public agency must ensure that the rights of a child and, as determined appropriate under OAR 581-015-2325, adult student with a disability are protected by determining the need for, and when appropriate assigning, a surrogate parent when no parent (as defined in OAR 581-015-2000) with legal rights in respect to a student's educational decision making can be identified or located after reasonable efforts and additionally:

(a) 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) Notwithstanding section (1) of this rule, each school district must have a method for determining whether a child or adult student, as determined appropriate under OAR 581-015-2325, needs a surrogate parent and for assigning a surrogate parent to the child or adult student, as determined appropriate under OAR 581-015-2325. 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 or adult student, as determined appropriate under OAR 581-015-2325;

(b) Is free of any personal or professional interest that conflicts with representing the child's or adult student's, as determined appropriate under OAR 581-015-2325, special education interests; and

(c) Has knowledge and skills that ensure adequate representation of the child or adult student, as determined appropriate under OAR 581-015-2325 in special education decisions.

(4) If the Juvenile Court appoints a surrogate parent for a child or adult student under ORS 419B.220 or 419C.220, within 10 school days of receipt of the ODHS Child Welfare School Notification, the school district must:

(a) Recognize and document the court-appointed surrogate as the student's educational decisionmaker;

(b) Secure and retain a copy of the appointment order; and

(d) Not override, terminate, or replace the court-appointed surrogate unless ordered by the Juvenile Court or upon receipt of a new court order.

(5) [(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).

(6) [(5)] An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.

(7) [(6)] A surrogate is not considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.

(8) [(7)] The duties of the surrogate parent are to:

(a) Protect the special education rights of the child or adult student, as determined appropriate under OAR 581-015-2325;

(b) Be acquainted with the child's or adult student's, as determined appropriate under OAR 581-015-2325, disability and the child's or adult student's, as determined appropriate under OAR 581-015-2325, special education needs;

(c) Represent the child or adult student, as determined appropriate under OAR 581-015-2325, in all matters relating to the identification, evaluation, IEP and educational placement of the child or adult student, as determined appropriate under OAR 581-015-2325; and

(d) Represent the child or adult student, as determined appropriate under OAR 581-015-2325, in all matters relating to the provision of a free appropriate public education to the child or adult student, as determined appropriate under OAR 581-015-2325.

(e) The surrogate, parent, or adult student, as appropriate, may request review or termination of the surrogate appointment at any time.

(9) [(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.

(10) [(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:

(i) 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.

(ii) The surrogate, alone, is responsible for all matters relating to the special education of the child or adult student 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.

(11) [(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, unless determined to continue to require a surrogate under OAR 581-015-2325, or the child or adult student, as determined appropriate under OAR 581-015-2325, graduates with a regular diploma;

(c) The child or adult student, as determined appropriate under OAR 581-015-2325, is no longer eligible for special education services;

(d) The legal guardianship of the child or adult student, as determined appropriate under OAR 581-015-2325, 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 or adult student, as determined appropriate under OAR 581-015-2325, moves to another school district; or

(i) The child or adult student, as determined appropriate under OAR 581-015-2325, is no longer a ward of the state or an unaccompanied homeless youth.

(12) [(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 or adult student, as determined appropriate under OAR 581-015-2325.

(13) [(12)] When it is determined that a surrogate parent is needed to protect the rights of a student with a disability as outlined above, the surrogate must be appointed not more than 30 days after the determination that the student needs a surrogate.

(14) [(13)] The necessity of a surrogate parent must be reviewed at least every 365 days or when requested by the adult student or surrogate parent.

Statutory/Other Authority: ORS 343.041, ORS 343.045, ORS 343.055 & ORS 343.155

Statutes/Other Implemented: ORS 343.155 & 34 CFR 300.519

History:

ODE 33-2025, temporary amend filed 06/16/2025, effective 06/17/2025 through 12/12/2025

ODE 32-2025, temporary amend filed 06/16/2025, effective 06/16/2025 through 06/16/2025

ODE 6-2015, f. & cert. ef 3-11-15

Renumbered from 581-015-0099, ODE 10-2007, f. & cert. ef. 4-25-07

ODE 2-2003, f. & cert. ef. 3-10-03

ODE 23-1999, f. & cert. ef. 9-24-99

EB 11-1995, f. & cert. ef. 5-25-95

EB 9-1992, f. & cert. ef. 4-7-92

1EB 5-1980, f. 2-22-80, ef. 2-23-80

1EB 18-1979(Temp), f. & ef. 11-15-79