

Surrogate Parents in Special Education

Oregon Department of Education
Office of Enhancing Student Opportunities

DRAFT DOCUMENT – PRELIMINARY VERSION FOR REVIEW

This document is a working draft and does not constitute official agency guidance. It is being shared for feedback purposes to refine content before final release.

DISCLAIMER: This document is intended solely for informational purposes and provides guidance to support implementation of relevant federal and state authorities. School districts retain discretion in how they implement federal and state requirements based on individual student circumstances and local context. Districts are encouraged to seek legal counsel to ensure compliance with state and federal law.

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Purpose and Audience

This guidance provides school districts with clear, practical direction on when and how to appoint surrogate parents for students with disabilities under the Individuals with Disabilities Education Act (IDEA).

This guidance is for:

- Special education directors and coordinators
- Case managers and IEP team chairs
- Homeless liaisons and foster care points of contact
- District administrative staff responsible for procedural compliance

What this guidance covers:

- Federal requirements for surrogate parent appointments
- When a surrogate parent is required
- How to identify, select, and appoint qualified surrogates
- District responsibilities for training and supporting surrogates

- Monitoring and reviewing surrogate appointments

Legal Foundation

Federal Requirements Under IDEA

IDEA requires states to ensure that surrogate parents are appointed when:

- No parent (as defined by IDEA) can be identified for a child
- A parent cannot be located after reasonable efforts by the school district
- The child is a ward of the state and there is reasonable cause to believe the child has a disability
- The child is an unaccompanied homeless youth under the McKinney-Vento Act

Legal citations: 34 CFR § 300.519; 20 U.S.C. § 1415(b)(2)

Key Definitions

Parent under IDEA means:

- A biological or adoptive parent
- A foster parent (unless prohibited by state law)
- A guardian generally authorized to act as the child's parent
- An individual acting in the place of a parent (such as a grandparent or stepparent with whom the child lives)
- An individual legally responsible for the child's welfare

Surrogate parent means: An individual appointed to represent the educational interests of a student with disabilities when no parent is available or can be located.

Ward of the state means: A child who is in the custody of a public child welfare agency due to court order.

Unaccompanied homeless youth means: A youth not in the physical custody of a parent or guardian, as defined by the McKinney-Vento Homeless Assistance Act.

Timeline Requirements

Districts must appoint a surrogate parent **within 30 days** of determining that one is needed.

When a Surrogate Parent Is Required

Trigger Situations

Appoint a surrogate parent when **any** of the following apply:

1. For children under age 18:

- **No parent can be identified**
 - Example: Child abandoned at hospital; biological parents unknown and no one has stepped forward as legal guardian

- **Parent cannot be located after reasonable efforts**
 - Example: Phone disconnected, letters returned undeliverable, emergency contacts report no knowledge of whereabouts, and home visits find residence vacant
- **Child is a ward of the state**
 - Child is in state custody through a child welfare agency
 - **Note:** A caseworker may serve as surrogate only if they meet all qualification standards and are formally appointed
- **Child is an unaccompanied homeless youth**
 - Youth is living independently or in a shelter without a parent or guardian
 - McKinney-Vento liaison confirms unaccompanied status

2. For adult students (age 18 or older):

A surrogate parent may be appointed when:

- Educational rights have transferred to the student at age 18
- The IEP team has determined the student cannot provide informed consent for their educational program, and
- No court-appointed guardian with educational authority exists.

What Does NOT Trigger a Surrogate Appointment

Do not appoint a surrogate parent simply because:

- A parent disagrees with the district's recommendations
- A parent is difficult to work with or "uncooperative"
- A parent is temporarily unavailable or slow to respond but can still be reached
- The district finds it more convenient to work with someone else
- A parent has limited English proficiency, literacy challenges, or communication differences (provide interpreters and accommodations instead)
- A parent has a disability (supported decision-making may be appropriate)

Key principle: A surrogate is a last resort when no parent exists or can be found—not a convenience or conflict-resolution tool.

Documenting Reasonable Efforts

Before appointing a surrogate parent due to inability to locate a parent, the district must document **reasonable efforts** to find them.

What Counts as Reasonable Efforts

Reasonable efforts include, at minimum:

- **Multiple phone calls** to all known numbers (cell, home, work)
- **Written correspondence** via certified mail to last known address
- **Electronic communication** (email, text message) if contact information is available
- **Home visits** (where feasible and safe)
- **Contact with emergency contacts** listed in school records
- **Coordination with other agencies** (child welfare, probation, previous schools, homeless liaison)

- **Inquiry with extended family** or other adults known to have contact with the student

How to Document

Create a record showing:

- Date and time of each attempt
- Method used (phone, mail, visit, etc.)
- Outcome (no answer, disconnected number, returned mail, etc.)
- Name of staff member making the attempt

Store this documentation in the student's confidential special education file.

Timeline

Reasonable efforts should be made **before initiating the surrogate appointment process** and must not delay provision of needed services. If evaluations or IEP meetings are time-sensitive, make documented attempts quickly (within 1-2 weeks) so a surrogate can be appointed within the 30-day requirement.

Qualifications and Conflict of Interest Standards

Who May Serve as a Surrogate Parent

A surrogate parent must:

- **Be at least 18 years old**
- **Not be an employee of:**
 - The school district or public agency providing education or care to the child
 - The state education agency (SEA)
 - Any agency involved in the education or care of the child
- **Have no personal or professional interest that conflicts** with representing the child's educational interests
- **Have knowledge and skills** that ensure adequate representation of the child, or be willing to acquire them through training

Federal Exception: Unaccompanied Homeless Youth

For unaccompanied homeless youth **only**, a staff member of an emergency shelter, transitional shelter, independent living program, or street outreach program may serve as a **temporary surrogate** until a qualified surrogate can be appointed.

This exception recognizes the urgency of ensuring these students receive services without delay.

Conflict of Interest: What to Watch For

A conflict of interest exists when the surrogate:

- Stands to gain financially from specific placements or services
- Is employed by an agency whose decisions are being challenged in the IEP process

- Has a relationship with the student's caregivers that could reasonably bias their judgment
- Has competing professional obligations that prevent them from advocating solely for the student

A conflict does NOT automatically exist if the surrogate:

- Is a parent of a child with a disability
- Has strong opinions about special education, as long as they can follow the law and respect IEP team process
- Is a former district employee (emphasis is on *current* employment)
- Receives reimbursement for mileage or training time, if offered uniformly

Qualification Verification

Use the *Surrogate Parent Appointment Sample Form* to verify and document:

- The surrogate's qualifications
- Completion of a conflict-of-interest statement
- Background check clearance
- Completion of initial training

Selecting and Appointing a Surrogate Parent

Selection Priorities

When selecting a surrogate, consider candidates in this general priority order:

1. Known, trusted adults with existing relationships to the student

- Non-conflicted relatives (grandparents, aunts, uncles, older siblings)
- Family friends or mentors who know the student well
- Former teachers or coaches (if no longer employed by agencies involved in the student's care)

2. Foster parents

- A foster parent may act as a parent if authorized and willing, eliminating the need for a surrogate

3. Trained community volunteers

- Individuals from your district or regional surrogate parent pool
- Community advocates with special education training

4. Temporary surrogates (for unaccompanied homeless youth only)

- Staff from emergency shelters, transitional housing programs, or street outreach programs

Key Selection Considerations

When identifying a surrogate, consider:

- **Student's expressed preferences** (especially for older students and young adults)
- **Existing relationship and trust** between the student and the proposed surrogate
- **Ability to attend meetings** and remain engaged throughout the student's time in special education
- **Cultural, linguistic, and communication compatibility** with the student and family (where applicable)
- **Geographic proximity** to facilitate meeting attendance
- **Willingness and capacity** to fulfill the role (consider their other obligations)

Appointment Process

Step 1: Determine Need

- Identify that a surrogate is required
- Document reasonable efforts (if applicable)
- Check whether student has any "parent" under IDEA definition who can act

Step 2: Identify Candidate

- Consider priority groups (known adults, volunteers, temporary surrogates)
- Conduct initial interview to assess interest, availability, and qualifications

Step 3: Verify Qualifications

- Confirm age, employment status, and absence of conflicts
- Complete background check if required by local policy
- Document using *Surrogate Parent Appointment Sample Form*

Step 4: Provide Training and Handbook

- Deliver initial surrogate parent training (see Section 6)
- Provide *Sample Surrogate Parent Handbook* (customized for your district)
- Provide copy of student's procedural safeguards notice

Step 5: Formalize Appointment

- Complete formal appointment documentation
- Notify the surrogate, student (as appropriate), caregivers, IEP team members, and other relevant staff
- Ensure the surrogate is added to all meeting invitation lists and notice distribution lists

Step 6: Introduce to Student and Team

- Facilitate introduction between surrogate and student (when appropriate to age/situation)
- Provide surrogate with access to student's educational records
- Schedule initial meeting between surrogate, case manager, and key staff

Training and Support for Surrogate Parents

Initial Training Requirements

All surrogate parents must receive training **before or immediately upon appointment**. Training should cover:

1. Legal Framework

- Overview of IDEA and key provisions
- Timeline requirements (evaluation, IEP development, annual review, reevaluation)
- Parent and student rights under IDEA
- Procedural safeguards and dispute resolution options

2. The IEP Process

- Who is on the IEP team and their roles
- How IEP meetings are conducted
- Key components of an IEP
- Difference between IEP goals, accommodations, modifications, and services
- Placement and least restrictive environment (LRE) considerations

3. The Surrogate Parent Role

- What surrogates do (and don't do)
- Authority limited to educational decisions only
- How to review records and prepare for meetings
- How to ask questions and advocate effectively
- Confidentiality requirements

4. Informed Consent and Supported Decision-Making

- What informed consent means
- When surrogate consent is required
- How to involve the student in decisions (age-appropriately)
- Supporting student voice and self-determination

5. Cultural Responsiveness

- Honoring the student's cultural background and family values
- Trauma-informed approaches
- Communicating with students who have experienced instability

Ongoing Support

Provide surrogates with:

- **A designated point of contact** (special education coordinator, case manager, or surrogate parent coordinator)
- **Access to ask questions** before and after IEP meetings
- **Periodic check-ins** to ensure they feel supported and effective
- **Refresher training** when laws, policies, or procedures change

- **Connection to other surrogates** (peer mentoring or support groups, where feasible)

Monitoring Engagement

District staff should monitor whether surrogates are:

- Attending IEP meetings and participating meaningfully
- Responding to communications in a timely manner
- Acting in the student's best educational interests
- Maintaining appropriate boundaries and confidentiality

If concerns arise, address them promptly through additional training, reassignment, or (if necessary) appointment of a new surrogate.

District Responsibilities

What Districts Must Do

Establish Procedures

- Develop and document local procedures for identifying need, appointing surrogates, training, and monitoring
- Make procedures accessible to staff, families, and community members

Maintain a Surrogate Pool (Recommended)

- Recruit and train community volunteers to serve as surrogates
- Keep a roster of qualified, trained individuals ready to be assigned
- Conduct outreach to community organizations, faith groups, civic clubs, and universities

Provide Timely Appointments

- Appoint surrogates within 30 days of determining need
- Do not delay evaluations or IEP meetings due to lack of a surrogate

Ensure Equal Participation

- Provide surrogates with all notices, documents, and meeting invitations that would go to a parent
- Give surrogates access to all educational records
- Include surrogates fully in IEP team meetings and decisions

Support and Monitor

- Train surrogates before their first appointment
- Provide ongoing support and answer questions
- Review surrogate appointments annually

Protect Student Rights

- Ensure surrogates understand and can exercise all parent rights under IDEA
- Ensure students participate in their own IEP process to the maximum extent appropriate
- Use supported decision-making principles even when a surrogate is appointed

Coordination with Other Agencies

Districts should coordinate with:

- **Child welfare agencies** (for wards of the state)
- **McKinney-Vento homeless liaisons** (for unaccompanied homeless youth)
- **Juvenile justice** (for youth in custody with special education needs)
- **Mental health or disability services agencies** (as appropriate)

Clarify roles and communication protocols through memoranda of understanding (MOUs) or interagency agreements where helpful.

Roles and Responsibilities of Surrogate Parents

What Surrogate Parents Do

Surrogate parents have the same rights and responsibilities as biological or adoptive parents **for educational decisions only**, including:

1. Learn About the Student

- Review the student's educational records and evaluations
- Meet with the student (when appropriate for age and situation)
- Understand the student's disability, strengths, needs, and goals
- Learn about the student's preferences and interests

2. Participate in the IEP Process

- Attend and actively participate in IEP meetings, evaluation planning meetings, and placement decisions
- Ask questions to clarify information
- Share observations and insights about the student
- Ensure the student's voice is included in discussions (when appropriate)

3. Provide or Withhold Informed Consent

- Give or refuse consent for initial evaluations
- Give or refuse consent for initial placement in special education
- Give or refuse consent for reevaluations
- Consent to IEP implementation (or request changes)

4. Monitor Progress and Advocate

- Review progress reports and report cards
- Communicate with teachers and service providers
- Request IEP meetings if concerns arise
- Ensure the student receives services as written in the IEP

5. Access Dispute Resolution

- Request mediation if disagreements arise
- File state complaints if procedural violations occur

- Request due process hearings if the student is denied FAPE

What Surrogate Parents Do NOT Do

Surrogate parents:

- Do NOT make medical, financial, or guardianship decisions
- Do NOT have authority over living arrangements, caregiving, or custody
- Do NOT make decisions outside of education (e.g., consent for non-educational services)
- Do NOT override the student's own expressed preferences without strong rationale tied to the student's inability to understand consequences
- Are NOT financially responsible for the student

Supported Decision-Making Principles

Even when a surrogate is appointed, the surrogate should:

- **Involve the student** in decisions at the highest level appropriate for their age and abilities
- **Honor the student's known preferences and values**
- **Use plain language and accessible formats** to explain options to the student
- **Support, not substitute** for the student's own voice wherever possible

Special Populations and Situations

Wards of the State

Considerations:

- Child welfare caseworkers are **not automatically** surrogate parents
- A caseworker may serve as a surrogate **only if:**
 - They meet all qualification requirements
 - They have no conflict of interest
 - They are formally appointed by the district
- Coordinate with child welfare agency to identify appropriate surrogates or to determine if a foster parent can act as "parent" under IDEA

Best practice

Establish MOUs with child welfare agencies clarifying roles, timelines, and communication protocols.

Unaccompanied Homeless Youth

Considerations:

- McKinney-Vento liaison should be involved in identifying need
- Temporary surrogate may be appointed from shelter or street outreach program staff if no other surrogate is immediately available
- Prioritize continuity if the youth changes placements or moves districts
- Ensure surrogate understands youth's trauma history and need for stability

Best practice

Train McKinney-Vento liaisons on surrogate parent requirements and keep them informed of youth's educational progress.

Early Childhood (Part C and Preschool)

Considerations:

- Surrogate parent procedures apply to IFSPs (Part C) and preschool special education (Part B, ages 3-5)
- For infants and toddlers, surrogate may need to coordinate with early intervention providers
- Transition planning from Part C to Part B should include surrogate involvement

Discipline and Manifestation Determinations

Surrogate parents must be involved when:

- The student faces disciplinary removal that constitutes a change of placement
- A manifestation determination review (MDR) is required
- The student is placed in an interim alternative educational setting (IAES)

The surrogate has the same rights as a parent to challenge disciplinary decisions through expedited due process.

Students Approaching Age of Majority

Considerations:

- Begin discussing transfer of rights at age 18 **at least one year in advance** (by age 16-17 IEP at the latest)
- If a surrogate is currently appointed for a minor, determine whether the student will need a surrogate after turning 18
- Explore **supported decision-making** as an alternative to continuing the surrogate relationship
- If the student lacks capacity to provide informed consent at age 18, coordinate with the existing surrogate or appoint a new one

Monitoring, Review, and Ending Appointments

Annual Review Requirement

Districts must review the need for a surrogate parent **at least annually**. At each annual IEP meeting (or at a designated review point), the IEP team should consider:

1. Is a surrogate still needed?

- Has a parent been located or come forward?
- Has legal guardianship or custody changed?

- Is the student now an adult who can provide informed consent?
- Has the student's status changed (e.g., no longer unaccompanied, no longer a ward of the state)?

2. Is the current surrogate appropriate?

- Is the surrogate attending meetings and fulfilling responsibilities?
- Have any conflicts of interest emerged?
- Does the surrogate have the capacity to continue serving?
- Has the student expressed concerns or preferences about a different surrogate?

When to End a Surrogate Appointment

A surrogate appointment should end when:

1. A parent or legal guardian becomes available

- A parent is located and can be reached
- Legal guardianship is awarded to a qualified individual
- A relative or other adult qualifies as a "parent" under IDEA

2. The student no longer requires special education

- The student is found no longer eligible
- The student exits special education
- The student graduates with a regular diploma (not a certificate or modified diploma)

3. The student moves to another district

- Coordinate transfer of records and surrogate information with the receiving district
- The receiving district may choose to continue the appointment or appoint a new surrogate

4. The surrogate can no longer serve

- Surrogate resigns
- Surrogate relocates or is no longer available
- Evidence emerges of conflict of interest or failure to act in the student's interests

5. The student reaches age of majority and can provide informed consent

- Educational rights transfer to the student
- Determine whether supported decision-making is appropriate instead of continuing a surrogate

Documentation of Termination

When ending a surrogate appointment:

- Document the reason and date in the student's file
- Notify the surrogate, student (if appropriate), caregivers, and IEP team
- If a new surrogate is needed, begin appointment process immediately
- Update district records and notification lists