

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

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

Date: January 22, 2015

Staff/Office: Mitch Kruska and Claudette Rushing, Office of Learning- Student Services

New Rule **Amend Existing Rule** **Repeal Rule**
Hearing Date: _____ **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: Minor changes are necessary for this rule in order to fully comply with federal requirements in respect to state supervision of surrogacy and one updated state rule citation.

BACKGROUND:

- The ODE is required to create administrative rules to implement the Individuals with Disabilities Education Act (IDEA).
- One of these required rules is found in the federal regulations at 34 CFR 300.519 Surrogate Parents, describes what districts and the state must do in respect to appointing a surrogate parent for some children related to protecting their rights in respect to their special education needs.
- This regulation requires that state education agencies (SEAs) must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that a child needs a surrogate parent at 34 CFR 300.519(h).
- The previously used ODE rule in respect to IDEA’s surrogate parents requirements can be found in OAR 581-015-2320, and has been in place since 2007. Minor adjustments were made to the rule this summer to eliminate confusion in the field with respect to when a surrogate should be appointed for students in correctional facilities.
- The Office of Learning- Student Services is continuing to improve the quality and ease of use of this administrative rule.
- The rule cited in 581-015-2320(1) to define “parent”, specifically OAR 581-015-2005(20) is no longer in use and OAR 581-015-2000 now defines the term “parent” and was accordingly inserted in the rule’s last revisions. ODE now seeks to remove the outdated definition which remains cited in section(1)(a).

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK – There have been no issues or concerns regarding these minor changes to update the rule and align it more closely with other state and federal standards.

CHANGED SINCE LAST BOARD MEETING?

- N/A; first read—hasn’t been before board
 No; same as last month

Yes – As follows:

FISCAL IMPACT: None

STAFF RECOMMENDATION:

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

Comments: NA

Surrogate Parents

(1) 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) with legal rights in respect to a student's educational decision making can be identified or located after reasonable efforts and additionally:

~~(a) No parent (as defined in OAR 581-015-2005(20)) be identified or located after reasonable efforts;~~

~~(b)~~ (a) 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.

(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.

(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.

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