

SURROGATE PARENTS

Definition

A surrogate parent is a person appointed by the court or district to act as the parent for a student for special education purposes.

Legal Requirements

Conditions for Appointing a Surrogate

Districts shall appoint a surrogate parent to represent a student with disabilities under one or more of the following circumstances:

1. No parent or guardian for the student can be identified.
2. The district, after reasonable efforts, cannot discover the location of a parent or legal guardian of the student.
3. The student is adjudicated a dependent or ward of the court pursuant to Welfare and Institutions Code §§ 300, 601, or 602 and all of the following conditions are satisfied:
 - a. The court has referred the student for special education and related services or the student has a valid IEP (IEP).
 - b. The court has specifically limited the right of the parent or guardian to make educational decisions for his/her student.
 - c. The student has no responsible adult to represent him or her pursuant to Welfare and Institutions Code §§ 361 or 726 or EC § 56055.
4. The student is an unaccompanied homeless youth not in the custody of a parent/guardian, as defined in 42 USC § 11434.

Districts must have a method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student.

Selection of a Surrogate Parent

Districts shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 calendar days after there is a determination by the district that a student needs a surrogate parent. When appointing surrogate parents, the district shall give first preference to a relative caretaker, foster parent, or court-appointed special advocate, provided any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the district shall select the surrogate parent of his/her choice. If the student is moved from the home of the relative caretaker or foster parent who was appointed as the student's surrogate parent, the district shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the student.

The district will ensure that a person selected to act as a surrogate parent:

1. Is not an employee of the state education agency (SEA) or district, or any other agency that is involved in the education or care of the student:
 - a. An employee of a NPA that only provides non-educational care is not considered an employee as defined above.
 - b. A person is not considered an employee of the district solely because he or she is paid by the district to act as a surrogate parent.
2. Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents. An individual who would have a conflict of interest means a person

having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the student has a free appropriate public education (FAPE).

3. Has knowledge and skills that ensure adequate representation of the student.

Except for individuals who have a conflict of interest in representing a student, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers and probation officers who are not employees of the state department of education, the district, or any other agency that is involved in the education or care of the student.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and outreach programs may be appointed as “temporary” surrogates until a surrogate parent meeting the above requirements can be appointed.

Duties of Surrogate Parent

Surrogate parents shall serve as the student’s parent and have all the rights relative to the student's education that a parent has under the prior written notice (PWN) pursuant to 20 USC §§ 1414-1482 and 34 CFR §§300.1-300.756. Surrogate parents may represent the student in matters relating to special education and related services, including identification, assessment, instructional planning and development, educational placement, review and revision of the IEP, and in all other matters relating to the provision of a free and appropriate public education for the student. This representation shall include the provision of written consent to the IEP, including nonemergency medical services, mental health treatment services, and occupational or physical therapy services.

Surrogate parents are required to meet with the student at least one time. He or she may meet on additional occasions, attend IEP meetings, review the student’s educational records, consult with persons involved with the student’s education and sign any consent relating to IEP purposes. Surrogate parents should be sensitive to the student’s cultural background. Surrogate parents shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the student.

Period of Representation

The surrogate parent may represent the student until:

1. The student is no longer in need of special education;
2. The minor reaches 18 years of age, unless the student chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent;
3. Another responsible adult is appointed to make educational decisions for the student; or
4. The right of the parent to make educational decisions for the student is fully restored.

Termination of Appointment

districts shall terminate the appointment of a surrogate parent under the following conditions:

1. The person is not properly performing the duties of a surrogate parent.
2. The person has an interest that conflicts with interests of the student entrusted to his or her care.

Surrogate parents may resign from their appointment only after he/she gives notice to the district.

Hold Harmless

Surrogate parents and the districts appointing them shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless or malicious.

Legal References

EC 56050, GC 7579.5, 34 CFR 300.519

Timelines

A surrogate parent will be appointed within 30 calendar days of the district's determination that a student is in need of a surrogate parent.

Local Procedures

Because the 2004 amendments to the IDEA changed the definition of parent and the courts have begun appointing educational representatives for student adjudicated as dependents or wards of the court, there should be few times when it is necessary to appoint a surrogate parent. But when the situation arises, the district must be prepared to take appropriate action.

When to Appoint a Surrogate Parent

The district should appoint a surrogate parent whenever one of the following scenarios occurs:

1. Neither the biological nor adoptive parent can be identified or located and the student is not a dependent or ward of the court and the student is not homeless.
2. Neither the biological nor adoptive parent can be identified or located and the student is a dependent or ward of the court and the court has not limited the parent's right to make educational decisions. The distinction here is when the court limits the right of a parent to make educational decisions, the foster parent is considered to be the parent, or the court appoints a third party to hold educational rights.
3. The biological or adoptive parent can be identified and located and the student is a dependent or ward of the court and the court has limited the parent's right to make educational decisions, but the student is not in a permanent living situation in a foster home.
4. The student is an unaccompanied homeless youth not in the custody of a parent or guardian. Appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as "temporary" surrogates until a surrogate parent meeting the necessary requirements can be appointed.

In order to determine whether a court order specifically limits the rights of a parent to make educational decisions, the district should contact the student's caseworker and obtain a copy of the court order. If the order does not specifically limit the rights of the parent, the district must assume that the parent maintains those rights and involve him/her in all matters related to special education.

How to Appoint the Surrogate Parent

Districts shall provide a list of perspective candidates to serve as surrogate parents to the SELPA. The SELPA shall provide training in identification, assessment, IEP development and procedural safeguards to surrogate parents so that they can adequately represent the interests of their students. The SELPA shall maintain a list of persons qualified to act as surrogate parents for districts.

It can be difficult to find qualified persons who are willing to act as surrogate parents. If the district is unable to identify someone through the SELPA, the district will have to locate someone else on their own. Retired teachers or a current parent of a student with a disability are the best places to start looking.

In either case, make sure that the surrogate parent puts their title next to their name on all official special education documents.

Surrogate Parent Duties

Surrogate parents may represent the student in matters relating to special education and related services, including identification, assessment, instructional planning and development, educational placement, review and revision of the IEP, and in all other matters relating to the provision of a free and appropriate public education for the student. They can sign any consent related to the IEP, including consent for non-emergency medical services, mental health treatment services, and occupational or physical therapy services.

In addition to the above, surrogate parents are also required to meet with the student at least one time. He or she may meet on additional occasions, attend IEP meetings, review the student's educational records and consult with teachers and other persons involved with the student's education. Upon request, the district should make these people available to the surrogate parent. In accommodating such requests, however, the district should schedule meetings in a manner that does not interfere with the instructional day.

Termination of Appointment

The district should terminate the appointment of a surrogate parent under any of the following conditions:

1. The person is not properly performing the duties of a surrogate parent.
2. The person has an interest that conflicts with interests of the student entrusted to his or her care.

The district has the right to determine when a surrogate parent is not performing their duties properly. Surrogate parents may resign from their appointment only after he or she gives notice to the district.

Recruitment and Training

The district should provide a list of prospective candidates to serve as surrogate parents to the SELPA. The SELPA will provide training in identification, assessment, IEP development and procedural safeguards to surrogate parents so that they can competently represent the interests of their students. The SELPA shall maintain a list of persons qualified to act as surrogate parents for districts to draw from.

Reimbursement of Surrogate Parent

Surrogate parents should be considered volunteers to the district and serve without compensation. The district may, however, reimburse them for mileage and other incidental expenses directly associated with their duties as surrogate parents. For example, the district might give a small stipend for certain tasks, i.e., attending IEP meetings, consults with the student, etc.

FAQs

Can a current district staff member, the current CWS caseworker or social worker, or probation officer act as the surrogate parent?

No, they cannot. They are employees of an agency that is responsible for the education, care, and/or custody of the student.

What do I do if the surrogate parent becomes unreasonable and or acts in a manner that is counterproductive to the needs of the student?

It is the responsibility of the district to terminate the appointment of a surrogate parent who is not fulfilling his/her duties properly.

REMINDERS

- The conditions for appointing a surrogate parent are limited. Always check first.
- There are strict limitations on who can act as a surrogate parent. Always check first.
- In the case of foster children, always check the court order to see if the parent's rights have been limited.
- In the case of foster children, always check to see if the foster home is a permanent living situation.
- Make sure the person assigned to act as a surrogate parent is qualified.
- The SELPA will train perspective surrogate parents.
- The district can terminate the assignment of a surrogate parent.
- The surrogate parent has the right to meet with the student, meet with staff, review records, attend IEP meetings and provide signed consent.