

Policy for the Appointment of Surrogate Parents for Special Education Services

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Michigan Department of Education
Office of Special Education



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Policy for the Appointment of Surrogate Parents for Special Education Services

The "Policy for the Appointment of Surrogate Parents for Special Education Services" (Policy) applies to public agencies engaged in the education or care of individuals covered under the *Individuals with Disabilities Education Act* (IDEA) 2004. The Policy is intended to interpret federal provisions and the laws of the state as they may pertain to the provision of special education programs and services where those respective state and federal jurisdictions coincide.

I. Policy

It is the policy of the State Board of Education (SBE) that each public agency, within the meaning of the IDEA, shall ensure that the rights of a child are protected when:

1. No parent, as defined in 34 C.F.R. § 300.30, can be identified; or
2. The public agency, after reasonable efforts, cannot locate a parent; or
3. The child is a ward of the State under the laws of the state; or,
4. The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

The duty of a public agency, under the aforementioned laws, includes the assignment of an individual to act as a surrogate parent, and requires the development of a method for:

1. Determining whether a child needs a surrogate parent; and
2. Assigning a surrogate parent to the child.

The surrogate parent may represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child; and
2. The provision of a free appropriate public education (FAPE) to the child (34 C.F.R. § 300.519(g)).

II. Definitions

The term "surrogate parent" is functionally defined in the federal regulations implementing the IDEA. There is no definitional equivalent for the term in state law.

The term "parent" as defined in 34 C.F.R. § 300.30 means a parent, a foster parent,

a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.19. The term does not include the state if the child is a ward of the state. 34 C.F.R. § 300.30 provides that "parent" includes persons acting in the place of a parent, such as a grandmother or step-parent with whom the child lives, as well as persons who are legally responsible for a child's welfare.

Michigan's Rule, R 340.1701b(e), defines "parent" in parallel language to the federal regulations. The term "parent" also means the affected youth with a disability when the youth reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings.

Public agencies include local educational agencies (LEA), intermediate school districts (ISD), the Michigan Department of Education (MDE), the Michigan Department of Health and Human Services (MDHHS), and the Michigan Department of Corrections (MDOC).

III. Procedures

The federal implementing regulations for the IDEA place a twofold duty on public agencies:

1. To determine whether a child needs a surrogate parent; and, if so,
2. To appoint the surrogate parent.

The regulations require the development of a method to carry out this duty. Those regulations, case law, and official interpretations related to application of the regulations, provide additional clarification about requirements. The following procedures incorporate those considerations.

The differences in organizational structures and missions of service among those public agencies included in the definition compel flexibility in how those agencies are permitted to administer their responsibility efficiently and in a manner that keeps the surrogate parent resource as proximal as possible to the population in need.

Public agencies, particularly state governmental agencies, may carry out this duty as a central administrative office activity, or as a decentralized responsibility assigned to specific facilities or agency subunits.

The procedure that best suits the particular public agencies involved must be described in the ISD Plan for the Delivery of Special Education Programs and Services (Plan), or in the interagency agreement with the MDE.

To meet the federal requirements, the following characteristics apply to this Policy and any specific agency procedure.

A public agency may select, as a surrogate parent, a person who is an employee of a nonpublic agency that only provides non-educational care for the child, and who meets the standards at 34 C.F.R. § 300.519(d)(2)(i)-(iii).

Public agencies shall ensure that a person selected as a surrogate parent:

1. Is not an employee of the state educational agency (SEA), the LEA, or any other agency that is involved in the education or care of the child; and
2. Has no interest that conflicts with the interest of the child represented; and
3. Has knowledge and skills that ensure adequate representation of the child; and,
4. Is assigned not more than 30 days after there is a determination by the agency that the child needs a surrogate parent (34 C.F.R. § 300.519(h)).

IV. Delineation of Operational Responsibilities

The MDE, under its general supervisory responsibility and as the federal grant recipient, has the responsibility to assure that surrogate parents are available for any child covered under the IDEA who is in need of a surrogate parent and that surrogate parents are assigned within the 30 day timeline.

Each public agency that has the responsibility for providing the education or care of the individual has the responsibility to develop and maintain an adequate pool of potential surrogate parents, pursuant to the ISD Plan or the interagency agreement with the MDE.

If the student is a ward of the state or the court, the agency having the responsibility for the general care of the student shall have the responsibility to appoint a surrogate parent conforming to the requirements of the IDEA.

If the student is not a ward of the state or the court, the public agency responsible for the special education of the student has the responsibility to appoint a surrogate parent.

If the student is a ward of the state, the identification and location of the parent, as well as the status of residual parent rights, should be known. If these factors are not known, then the agency with which wardship resides is the agency that is responsible for the general care of the individual. That agency shall identify a surrogate parent.

The IDEA allows for the appointment of a surrogate parent by a judge overseeing the case of a child who is a ward of the state, provided that the surrogate parent meets the requirements at 34 C.F.R. § 300.519(c). The LEA has concurrent responsibility for the appointment of a surrogate parent. A guardian ad litem does not automatically meet the standards of a parent or surrogate parent. To act as a surrogate parent, the guardian ad litem must be specifically designated as a surrogate parent by the court.

If the student is an unaccompanied homeless youth, the LEA shall appoint a surrogate parent.

The MDE has the responsibility to resolve conflicts arising from determination of whether the need for a surrogate parent exists and if the proposed surrogate parent is free from conflict of interest.

Each ISD must assure that the ISD and LEA comply with this Policy. Each ISD Plan or interagency agreement must provide a description of how the pool of surrogate parents is maintained and how appropriate training is provided to potential surrogate parents.

To be effective, the training should incorporate:

1. Laws governing the provision of special education services, including those pertaining to procedural safeguards; and
2. Characteristics of the public agency and district providing care or special education for the child in question; and
3. Individualized educational program team responsibilities and processes; and,
4. The opportunity for the surrogate parent to become familiar with the needs of the child to whom the surrogate parent has been appointed.

V. Developing and Maintaining the Parent Surrogate Resource

When the need for a surrogate parent arises, it is usually under circumstances that are governed by time lines; i.e., when the agency receives a referral of a child who may be eligible for special education programs or services, or when the agency proposes or refuses to change the evaluation, diagnosis, placement, or FAPE for a child, or for any follow-up proceedings to resolve conflicts such as hearings or complaints involving the child. It is essential, as a condition of timely resolution of the activity and of due process, that a surrogate parent be appointed in an expeditious manner and no more than 30 days after there is a determination that

the child needs a surrogate parent. For these reasons, it is important to have developed a resource to obtain adequately prepared surrogate parents.

There are various public or private associations or organizations to which a public agency may turn as a source to supply surrogate parents when the need arises. Depending on the nature and primary mission of the public agency, one source may be more appropriate than another.

In the case of an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to whether the surrogate parent is an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child, until a surrogate parent can be appointed who meets the employment, conflict of interest, and adequate representation requirements (34 C.F.R. § 300.519(f)).

VI. Special Education Parent Advisory Committees

State law requires that ISDs maintain a Special Education Parent Advisory Committee (PAC) composed of parents of children with disabilities. Members of this PAC could serve as surrogate parents, or the PAC could assume some coordinating role in the development of the surrogate parent resource.

Many state agencies that have the responsibility for the residential care and the education of a child also have parent advisory committees that could serve in a capacity similar to the ISD PAC.

Other resources:

- Citizen advisory groups associated with the primary care agency
- Foster parent agencies
- Volunteer service agencies
- Parent organizations
- Facilities and agencies providing services to homeless youth
- Faith-based organizations

VII. Resolution of Conflicts Regarding Appointment of Surrogate Parents

If a question as to the need for a surrogate parent arises, or if there is a question as to the appropriateness (existence of a conflict of interest) of a particular surrogate

parent appointment, the agency responsible for appointing the surrogate parent shall immediately attempt to resolve the question by meeting with the individuals who raised the question.

A formal complaint may be filed with the Office of Special Education against the responsible agency regarding the appointment of a surrogate parent.