

# Surrogate Parents and Special Education Decision-Making Guidance

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Michigan Department of Education  
Office of Special Education



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# Table of Contents

Surrogate Parents and Special Education Decision-Making Guidance.....	4
I. Introduction .....	4
II. Overview of Surrogate Parent Requirements.....	4
What Is the Definition of a Parent? .....	4
What Does the Federal Law Say About Surrogate Parents? .....	5
Who Is Responsible for Appointing a Surrogate Parent? .....	6
Who Can Request or Challenge the Appointment of a Surrogate Parent? .....	7
Is There a Requirement to Appoint a Surrogate Parent for Children Ages Birth to Three? .....	7
What Is the Age of Majority for Consent Requirements? .....	7
III. Responsibilities and Rights of Surrogate Parents .....	7
What Is the Surrogate Parent’s Role? .....	7
Can the LEA Collaborate With Other Agencies to Find a Surrogate Parent? ....	7
What Are the Rights of the Surrogate Parent? .....	8
IV. Appointing a Surrogate Parent .....	8
What Is the Process for Appointing a Surrogate Parent? .....	8
How Are Wards of the State Assigned Surrogate Parents? .....	11
How Are Surrogate Parents Assigned to Students Residing in Group Homes, Residential Treatment Facilities, and Institutions? .....	11
How Are Unaccompanied Homeless Youth Assigned Surrogate Parents? .....	12
Can the Foster Parent Act as a Surrogate Parent? .....	12
What Happens if a Student Moves to a Different LEA? .....	12
What is the Length of Time a Surrogate Parent Serves? .....	12
When Should Surrogate Parents Be Dismissed? .....	13

# Surrogate Parents and Special Education Decision-Making Guidance

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## I. Introduction

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This guidance document provides information to public agencies, service providers, and parents regarding the implementation of the *Individuals with Disabilities Education Act* (IDEA) requirements pertaining to surrogate parents. Its purpose is to provide guidance to public agencies in selecting and training surrogate parents.

This document covers the major considerations under federal law when surrogate parent appointments are made for students ages 3 through 21, including the:

- Regulatory requirements for a surrogate parent.
- Rights, responsibilities, and requirements of a surrogate parent.
- Appointment process of surrogate parents.

Contact the Michigan Department of Education (MDE), Office of Special Education (OSE) information line at 888-320-8384 with any further questions.

## II. Overview of Surrogate Parent Requirements

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This section provides an overview of federal requirements and describes surrogate parents and other persons who have a legal authority to act on a student's behalf in the special education process when the student is IDEA-eligible or thought-to-be eligible.

### What Is the Definition of a Parent?

The federal definition of a parent is specified in the federal regulations implementing the IDEA at 34 CFR § 300.30:

- (a) Parent means—
- (1) A biological or adoptive parent of a child;
  - (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
  - (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
  - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the

child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with § 300.519 or § 300.639(a)(5) of the Act.

(b)

(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

The *Michigan Administrative Rules for Special Education* (MARSE) have included the federal definition of parent with an addition at R 340.1701b(d)(viii) as follows:

*The affected student or youth with a disability when the student or youth with a disability reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings.*

### **What Does the Federal Law Say About Surrogate Parents?**

The federal requirements related to the appointment of a surrogate parent for a student who is special education eligible or suspected-to-be-eligible are specified in 34 CFR § 300.519:

(a) *General*. Each public agency must ensure that the rights of a child are protected when—

- (1) No parent (as defined in § 300.30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of that 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)).

(b) *Duties of public agency*. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

- (c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) *Criteria for selection of surrogate parents.*
- (1) The public agency may select a surrogate parent in any way permitted under the IDEA.
  - (2) Public agencies must ensure that a person selected as a surrogate parent—
    - (i) 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;
    - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
    - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) *Unaccompanied homeless youth.* In the case of a student who is 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 paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) *Surrogate Parent responsibilities.* The surrogate parent may represent the student in all matters relating to—
  - (1) The identification, evaluation, and educational placement of the student; and
  - (2) The provision of free appropriate public education (FAPE) to the student.
- (h) *SEA responsibility.* The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

### **Who Is Responsible for Appointing a Surrogate Parent?**

The student’s local education agency (LEA)—meaning the district of residence or the public school academy—is responsible for providing a FAPE to students with disabilities and, in most cases, for appointing a surrogate parent when needed.

## **Who Can Request or Challenge the Appointment of a Surrogate Parent?**

Anyone, including caseworkers or probation officers, who believes that a student with a disability is in need of a surrogate parent can request that one be appointed. There is no legal requirement that the LEA or intermediate school district (ISD) grant this request if it does not believe that the IDEA requirements for a surrogate parent are met. If anyone disagrees with the appointment or refusal to appoint, they may request mediation or file a state complaint with the MDE, OSE.

## **Is There a Requirement to Appoint a Surrogate Parent for Children Ages Birth to Three?**

Part C of the IDEA includes requirements to appoint a surrogate parent for an infant or toddler when determined necessary. 34 CFR § 303.422 sets forth the criteria for selecting surrogate parents under Part C. Public agencies should follow Part C requirements for all children ages birth to three who are eligible for Part C or Michigan special education programs or services.

## **What Is the Age of Majority for Consent Requirements?**

For all students, the age of majority in Michigan is 18. Once a student reaches the age of 18, he or she can make his or her own educational decisions unless a legal guardian has been appointed by court proceedings to make educational decisions. When a student reaches the age of majority, a surrogate parent is no longer necessary.

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## **III. Responsibilities and Rights of Surrogate Parents**

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### **What Is the Surrogate Parent's Role?**

The surrogate parent's role in special education is the same as the role of a birth or adoptive parent—to represent the student in the special education process including, but not limited to, actions such as consent for evaluation and placement and consent for release of information. A surrogate parent acting on the student's behalf for the purposes of special education is not authorized to act as a parent in any other sense.

### **Can the LEA Collaborate With Other Agencies to Find a Surrogate Parent?**

Nothing in the IDEA prohibits a public agency from collaborating with judges and advocates in establishing a process for assigning surrogate parents. The LEA should inform all persons and agencies responsible for the residential care and education of the student of the surrogate parent's appointment. The LEA must ensure that the

confidentiality of student information is maintained according to the *Family Educational Rights and Privacy Act* (FERPA).

### **What Are the Rights of the Surrogate Parent?**

Once appointed, the surrogate parent has all the procedural rights provided to the parent in the IDEA including the right to:

1. Access all the student's educational records.
2. Review and inspect any records collected, maintained, and used by an agency to make decisions affecting the student's educational program.
3. Request an amendment of student records as indicated in 34 CFR § 300.618.
4. Consent to the release of the student's educational records as indicated in 34 CFR § 300.613.
5. Represent an eligible or suspected-to-be eligible student in all matters related to suspension and expulsion including manifestation determination reviews, decisions involving changes of placement, and the provision of procedural safeguards.
6. A surrogate parent may file a state complaint pursuant to 34 CFR §§ 300.151–300.153. The surrogate parent may also request mediation or file a due process complaint on behalf of the student.

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## **IV. Appointing a Surrogate Parent**

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### **What Is the Process for Appointing a Surrogate Parent?**

#### **Step 1: Determining the status of and contacting the child's parent**

When a student is initially referred for special education programs or services, efforts to locate the parent should begin immediately since the parent must participate in many timeline-driven decisions related to consent, evaluation, and potential educational placement and provision of a FAPE.

For parents whose educational rights are intact, reasonable efforts to contact them must be documented. Attempts to contact include, but are not limited to, the following:

- Telephone calls.
- Letters.
- Visits to the parent's last known address and/or place of employment.

LEAs should continue to send notices to the parent whose educational rights may still be intact, even during the process of appointing a surrogate parent. If the parent is located, the surrogate parent appointment should be terminated. It is

important that the LEA document the termination of the surrogate parent appointment.

An LEA cannot appoint a surrogate parent:

- If the available parent is disinterested and refuses to participate in the special education process.
- When an available parent acts in a manner that is inconsistent with the best interest of the student.

## **Step 2: Recruiting Surrogate Parents**

**Qualifications/Qualities:** Surrogate parents must be at least 18 years old. Additional suggested qualifications include being a resident of Michigan, residing in proximity to be available to make educational decisions, and having strengths that match the needs of the student. Surrogate parents should be willing to be trained to act as an educational representative. The surrogate parent should be screened using a criminal background check and other procedures used by the ISD for school volunteers.

**Recruitment Guidelines:** When recruiting a surrogate parent, the LEA should give first preference to a relative, friend, or court-appointed advocate. If none of these individuals is willing or able to act as a surrogate parent, the LEA must be prepared to appoint another qualified adult. An involved human service agency may be a source for identifying a surrogate parent who already knows and has a relationship with the student. Appropriate community groups can also be contacted for the purpose of recruiting surrogate parents. It is recommended that such groups be given a clear explanation of the roles and responsibilities of surrogate parents as well as an overview of the time commitments. Examples of community groups could include the following:

- Parent advisory committee members.
- Big Brothers/Big Sisters.
- Local parent-teacher organizations.
- Local Arc organizations.
- Retired educators' groups.
- Service clubs.
- Faith-based organizations.

### **Step 3: Screening for Conflict of Interest**

The LEA must ensure that a person recruited as a surrogate parent:

- Is not an employee of the SEA, LEA, or any other agency that is involved in the education or care of the student.
- Has no personal or professional interest that conflicts with the interest of the student that the surrogate parent represents.
- Has knowledge and skills that ensure adequate representation of the student.

**Note:** A public agency may employ a person solely to serve in the capacity of a surrogate parent. In this case, the person is allowed to serve as the surrogate, and the employee conflict of interest does not apply.

### **Step 4: Training of Prospective Surrogate Parents**

While LEAs are responsible for the recruitment, selection, training, and assignment of surrogate parents, ISDs may provide support and perform these functions, particularly the training. The surrogate parent training should provide each individual with the knowledge and skills to adequately represent the student in all aspects of the special education process. The training should be regularly reviewed to ensure that the surrogate parent has adequate knowledge to serve in this capacity. It is recommended that the training be comprehensive and, at a minimum, include the following areas:

1. Legal Rights and Responsibilities
  - Introduction to the IDEA and the MARSE.
  - Introduction to the surrogate parent provisions of state and federal laws.
  - Overview of public agencies responsibilities.
2. The Role of the Surrogate Parent
  - Rights and responsibilities of the surrogate parent.
  - Building relationships with the student and school staff.
  - Monitoring and recording student progress.
  - Obtaining and reviewing student records (confidentiality).
  - Discussion of resources available to support surrogate parents.
3. Developing an Effective Special Education Program
  - Identification—Understanding the student's disability.
  - Evaluations—Preparing for the evaluation process and development of the Individualized Education Program (IEP); surrogate parent input in the evaluation.
  - IEP—Developing goals and objectives and other sections of the IEP; surrogate parent role at the IEP.

- IEP Content—Behavior support, assistive technology, transition services, effective Present Level of Academic Achievement and Functional Performance and goals writing, and related services and programs.
  - Understanding student achievement data.
4. Understanding Procedural Safeguards, Mediation, and Due Process
- Overview of the IDEA and state procedural safeguards.
  - Special education discipline procedures in the IDEA.
  - Mediation and other dispute resolution alternatives.
  - State complaint procedures and due process.

Once volunteers have been trained to act as surrogate parents, the ISD should maintain a list of qualified surrogate parents. The LEA then contacts the ISD when a surrogate parent is needed.

### **How Are Wards of the State Assigned Surrogate Parents?**

Ward of the State as defined by the IDEA in 34 CFR § 300.45:

As a child who, as determined by the State where the child resides, is—

1. A foster child.
2. A ward of the State.
3. In custody of a public child welfare agency.

**Exception:** Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 300.30.

Courts overseeing a student’s case may appoint a surrogate parent for wards of the state. When a court makes an appointment, not all of the criteria for selection of a surrogate parent apply. The person selected cannot be an employee of an agency involved in the education or care of the student, but the other criteria do not apply to appointments by courts.

If the court does not appoint a surrogate parent for a ward of the State, an LEA must assign a surrogate parent.

### **How Are Surrogate Parents Assigned to Students Residing in Group Homes, Residential Treatment Facilities, and Institutions?**

Decisions by the courts, state agencies, and parents to place a child in a residential facility can occur outside the scope of the IEP team. Children can be placed in group homes, residential treatment facilities, juvenile justice facilities, county jails, or state correctional facilities. The authority of the parent will vary with each student. The public agency will need to review each case individually, carefully review documents, and obtain legal counsel as necessary before assigning a surrogate parent.

## **How Are Unaccompanied Homeless Youth Assigned Surrogate Parents?**

An unaccompanied homeless youth is defined as a homeless youth not in the physical custody of a parent or guardian. The federal McKinney-Vento Act defines homeless children and youth as individuals who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who:

- Share the housing of other persons due to loss of housing, economic hardship, or similar reasons.
- Live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations.
- Live in emergency or transitional shelters.
- Are abandoned in hospitals.
- Are awaiting foster care placement.
- Live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.
- Are migratory children who otherwise fit the definition of homelessness.

A surrogate parent must be appointed for a student who is an unaccompanied homeless youth. The surrogate parent could include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs until a surrogate parent can be appointed who meets all requirements.

### **Can the Foster Parent Act as a Surrogate Parent?**

The definition of parent includes foster parents (34 CFR § 300.30). In instances where the foster parent is acting as the student's parent, there is no need to appoint a surrogate parent.

### **What Happens if a Student Moves to a Different LEA?**

To ensure minimum disruption to the student, whenever possible, the surrogate parent should continue to serve as the child's surrogate parent if the new LEA is in agreement.

### **What is the Length of Time a Surrogate Parent Serves?**

The length of service, although not defined in regulation or rule, should ensure minimum disruption to the student. When deciding how long a surrogate parent should serve, the LEA should consider:

- Educational needs of the student.
- Anticipated availability of the surrogate parent.
- Age and grade level of the student.

## **When Should Surrogate Parents Be Dismissed?**

A surrogate parent should be dismissed if any of the following occur:

- The person is not properly performing the duties of a surrogate parent.
- The person has a conflict of interest with the appointment.
- The student is no longer in need of special education programs or services.
- The student reaches the age of majority, which is 18 in the state of Michigan, and no legal guardian has been appointed.
- Another responsible adult is appointed to make educational decisions for the student.
- The rights of the parent or guardian to make educational decisions for the student are fully restored.