

Surrogates In Special Education

Table of Contents

[Introduction](#)

[Who Can Be a Surrogate Parent?](#)

[When Must a Surrogate Be Appointed?](#)

[Homeless Students](#)

[Responsibilities of a Surrogate Parent](#)

[Rights of a Surrogate Parent](#)

[Students Reaching Age of Majority/Conservatorship](#)

[The Appointment Process](#)

[Reference and Resources](#)

Introduction

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

Legal Requirements

Federal law requires the state and LEAs (Local Educational Agencies) to establish and maintain procedures for assigning a surrogate parent to a student whenever the location of the biological parents or guardian of the child is not known or available or the child is a ward of the state and the court has determined that the educational rights of the biological parents should be limited. The surrogate parent must not be an employee of any public agency involved in the education or care of the child (Title 20, United States Code, Section 1415[b][2][A] and Title 34, Code of Federal Regulations, Section 300.519[d][2][i]).

Federal implementing regulations provide a legal definition of a “surrogate parent” and stipulate the requirements that must be met when a public agency selects and assigns a surrogate parent for a child with no identifiable parent or per the court’s request to a child who is a ward of the state. State law provides that “surrogate parent” shall be defined as it is defined in the IDEA (Individuals with Disabilities with Education Act) regulations cited above (Title 34, Code of Federal Regulations, Section 300.519[d]). A surrogate parent may represent a student who receives special education in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate public education to the student (California Education Code Section 56050 and Title 34, Code of Federal Regulations, Section 300.519[g]).

Who Can Be a Surrogate Parent?

A surrogate parent must be a person appointed by the LEA to represent a student whenever the student does not have parental representation and has been referred for, or is currently being served in, special education (California Education Code Section 56050; California Government Code Section 7579.5[c]; Title 34, Code of Federal Regulations, Section 300.519[d][2]).

In general, state and federal law mandate that each person appointed as a surrogate parent must meet the following requirements:

- The surrogate shall not be an employee of a public or private agency involved in the education or care of the child.
- The surrogate shall have no interest that conflicts with the interests of the child he or she represents.

- The surrogate shall have knowledge and skills that ensure adequate representation of the child.
- There are some exceptions to these requirements. For instance, for a student who is a ward of the court, the surrogate parent needs to meet only the first requirement of the law if the surrogate is appointed by the court. (For information about other court-appointed advocates, see appendix D.) In addition, for a homeless student, the surrogate parent may be an employee of an agency, if needed.
- An LEA shall select, as a first preference, a surrogate who is a relative caregiver, foster parent, or court-appointed special advocate. If none of these individuals are willing or able to serve, another person may be appointed to be the surrogate (California Government Code Section 7579.5[b]).
- The basic premise is that a surrogate parent will have the appropriate knowledge and skills required to adequately represent a student who receives special education and related services and who does not have parental representation in educational matters.

When Must a Surrogate Be Appointed?

California Government Code Section 7579.5 specifies the following requirements for when a surrogate parent must be appointed. A local educational agency shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

- A. The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program,
- B. The court specifically has limited the right of the parent or guardian to make educational decisions for the child, and (C)
- C. The child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.
 - a. No parent for the child can be identified.
 - b. The local educational agency, after reasonable efforts, cannot discover the location of a parent.
 - Additionally, an LEA must appoint a surrogate parent for unaccompanied homeless youths (Government Code Section 7579.5).
 - The surrogate parent for a child who is a ward of the state may be

appointed by a judge overseeing the child’s care, provided that the surrogate meets the requirements of Government Code Section 7579.5. If a judge appoints the surrogate parent, then the LEA is not required to do so (Government Code Section 7579.6).

It is important to know which persons fall within the definition of “parent” because the LEA may not appoint a surrogate parent for a child who has a parent. For this purpose, the federal regulations implementing IDEA define “parent” as a biological or adoptive parent of a child; foster parents, to the extent allowed by state law; guardians; caregiver relatives; or other persons legally responsible for the child’s welfare (Title 34, Code of Federal Regulations, Section 300.30[a]). A properly appointed surrogate parent is also considered a parent under federal law.

California's Education Code Section 56028 provides the following definitions of a parent:

(a) "Parent" means any of the following:

(1) A biological or adoptive parent of a child.

(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code.

(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.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

(b) (1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall 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 (1) to (4), inclusive, of subdivision (a) to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

(c) "Parent" does not include the state or any political subdivision of government.

(d) "Parent" does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

School administrators are encouraged to familiarize themselves with the definitions of "parent" set forth in California Education Code Section 56028 and Title 34, Code of Federal Regulations, Section 300.30. It is also advised that school administrators determine the most efficient way to find out whether parents of children who are wards of the court have retained their educational rights.

An LEA's authority to appoint a surrogate may be exercised only when the parent(s) cannot be located or parental rights have been terminated. If the location of the parent(s) is known but the parent(s) fails or refuses to participate in the IEP meeting, the LEA may need to file for a due process hearing to obtain approval for the district's offer of a free appropriate public education. In this case, the LEA does not need, or have authority, to appoint a surrogate parent.

In its publication of the 2006 regulations—Federal Register; Volume 71; Number 156; Monday, August 14, 2006, page 46689—the federal Department of Education provided further clarification on this issue when responding to comments about IDEA:

Comment: A few commenters recommended that placement meetings not be held, or decisions made, without a representative of the child. The commenters recommended appointing a surrogate parent when the biological or adoptive parent refuses to attend, or is unable to participate, in the placement meeting.

Discussion: There is no statutory authority to permit the appointment of a surrogate parent when a parent is either unable or unwilling to attend a meeting in which a decision is made relating to a child's educational placement. In section 615(b)(2) of the Act, a public agency does not have the authority to appoint a surrogate parent where a child's parent is available or can be identified and located after reasonable efforts, but refuses, or is unable, to attend a meeting or otherwise represent the child.

Educators are advised to consult with their legal counsel, as needed, to identify who has been assigned legal authority to make educational decisions for the child.

If the LEA does not appoint a surrogate parent within 30 days of the request from the court, it must, within the next five court days, notify the court on form JV-536 of its inability to appoint a surrogate parent and its continuing reasonable efforts to assign a surrogate parent. The court forms relevant to surrogate parents are included in appendix

Homeless Students

The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act ("McKinney-Vento Act") (Title 42, United States Code, Section 11434a[6])

LEAs are responsible for appointing a surrogate parent for unaccompanied "homeless children and youths" as defined in the McKinney-Vento Act (Title 42, United States Code, Section 11434a; see also California Government Code Section 7579.6 and Title

34, Code of Federal Regulations, Section 300.519[a][4]). The term “unaccompanied youth” is defined as a homeless child or youth who is not in the physical custody of a parent or guardian (Title 42, United States Code, Section 11434a[6]).

The term “homeless children and youths” means persons who lack a fixed, regular, and adequate nighttime residence, as defined in Title 42, United States Code, Section 11434a(2):

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings
- Migratory children who are living in the circumstances described above

In the case of an unaccompanied homeless youth, a temporary surrogate parent may be appointed until a surrogate parent can be appointed who meets all the requirements (Title 34, Code of Federal Regulations, Section 300.519[f]). Such temporary surrogate parents may include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs (Title 34, Code of Federal Regulations, Section 300.519[f]). However, temporary surrogate parents must still be free of any personal or professional conflict of interest with the child’s interest and must possess knowledge and skills that ensure adequate representation of the child (Title 34, Code of Federal Regulations, sections 300.519[d] and [f]).

Responsibilities of a Surrogate Parent

Under current law, a surrogate parent shall serve as a child’s parent and has all the same rights as a child’s parent pertinent to special education and related services (California Government Code Section 7579.5[c]). A surrogate parent may represent an individual with exceptional needs in matters related to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters related to the provision of a free appropriate public education to the individual (California Education Code Section 56050[b]).

Notwithstanding any other provision of law, 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 pursuant to Chapter 26.5 (commencing with Section 7570) of the Government Code (California Government Code Section 7579.5[c]). The surrogate parent may sign any consent related to IEP purposes (California Education Code Section 56050[b]).

Because a surrogate parent may represent a child in all matters related to the special educational process (Title 34, Code of Federal Regulations, Section 300.519[g]), the surrogate parent should learn as much as possible about the child with disabilities to appropriately represent the rights of the child throughout the special education process. Federal regulation requires that LEAs ensure that a person selected as a surrogate parent has knowledge and skills that ensure adequate representation of the child (Title 34, Code of Federal Regulations, Section 300.519[d][2][iii]). Additionally, state law requires that the surrogate parent meet with the child at least one time (California Government Code Section 7579.5[d]). Although not explicitly required by law, CDE recommends that LEAs provide training to each prospective surrogate parent before he or she is appointed for a specific child

Rights of a Surrogate Parent

The surrogate parent's rights necessarily include access to educational records relevant to any decisions made regarding the educational program of the child. That is, the surrogate parent has the right to examine any records collected, maintained, or used by an agency to make decisions affecting the child's educational program within five business days of the information request, just like other parents (California Education Code Section 56504).

Surrogate parents and the LEAs that appoint them are held harmless by the state of California when acting in their official capacity except in acts or omissions found to have been wanton, reckless, or malicious (California Government Code Section 7579.5[l]). When a student is being considered for suspension or expulsion, or there is a dispute over the identification, assessment, or placement of the student, the surrogate parent is entitled to participate as the "parent" in all phases of the proceedings (California Education Code sections 48900, et seq. and 56505, et seq.). Surrogate training should include information regarding parents' procedural rights during suspension or expulsion proceedings and due process hearing procedures.

If a surrogate parent requires legal assistance in the representation of the child, the LEA must provide information about low-cost legal resources, just as it would provide this information for other parents (California Education Code Section 56502[h]).

More information about parents'—and therefore surrogate parents'—procedural rights is available in the California Department of Education's Notice of Procedural Safeguards

at <https://www.cde.ca.gov/sp/se/qa/pseng.asp>.

Students Reaching Age of Majority/Conservatorship

Students who reach the age of majority—age eighteen—are presumed competent to make their own decisions. In some situations, a student over the age of eighteen, who is legally an adult, may have a conservator who will act on the student’s behalf for decisions about special education and related services. The term “conservator” refers to a person given legal authority and responsibility by the superior court to make decisions for an adult person, married minor, or married minor whose marriage has been dissolved who is not competent to make such decisions or to give informed consent. Duly appointed conservators can be identified by a document called “Letters of Conservatorship” issued by the court, pursuant to California Probate Code, Section 1800, et seq. The “Letters of Conservatorship” define the scope of the conservator’s power over the person and property of the incompetent adult.

The LEA must examine the conservatorship documents to determine whether the conservator meets the legal requirements of a “parent” under state and federal law. Each situation involving a conservator must be analyzed individually to determine whether the LEA must appoint a surrogate parent.

For further information regarding the appointment and responsibilities of conservators, please visit <http://www.courts.ca.gov/documents/gc350.pdf>.

The Appointment Process

Contacting the Parents: The majority of students eligible for special education or suspected of being eligible for special education will have an easily identifiable and locatable parent, as defined under law. However, in situations in which the parent is not known, efforts to locate the parent should begin immediately once a student has been referred for assessment. Time is of the essence for several reasons. First, a series of tasks with specific timelines begin on referral that pertain to identification, assessment, and placement decisions (California Education Code Section 56043). Since a parent must be involved in education-related decisions, the determination of the need for a surrogate parent should be made within 30 days of the referral.

If the student has not been adjudicated a ward or dependent, and if the LEA cannot determine that the student is in a home with an adult who is acting as a parent or who could be appointed as the surrogate parent, the LEA is advised to consider making a

report of neglect or abuse to the child welfare agency in the county (California Penal Code sections 11165.7 and 11165.9).

Before appointing a surrogate parent, an LEA must make reasonable efforts to locate the parent (Title 34, Code of Federal Regulations, Section 300.519[a][2] and California Government Code Section 7579.5[a][3]). Reasonable efforts to contact parents include, but are not limited to, the following measures:

- Documented telephone calls
- Letters
- Certified letters with return receipts
- Documented visits to the parents' last known address

If the reasonable efforts described above fail to locate the parent or to obtain parent status notification from the placing agency, a surrogate parent appointment may be necessary. Please note that the placing agency is the entity that makes a placement, and a placement is the arrangement for the care of a child in a foster home or a child-caring agency or institution, including placement with a relative, or into a pre-adoptive home ([visit the California Department of Social Services' website at http://www.cdss.ca.gov/inforesources/Foster-Care/Interstate-Compact-on-the-Placement-of-Children-ICPC/faqs](http://www.cdss.ca.gov/inforesources/Foster-Care/Interstate-Compact-on-the-Placement-of-Children-ICPC/faqs)). A surrogate parent shall be appointed not more than 30 days after the LEA determines that a student needs a surrogate parent (California Government Code Section 7579.5[a]). The timely appointment of a surrogate parent, when necessary, will facilitate timely IEP review, establish consent for special education assessment, or both.

If a surrogate parent is appointed for a child who is a ward or dependent of the court, the LEA must notify the court within five court days of the appointment. If the child has been referred by a placing agency, it is helpful for the LEA to inform the placing agency of the appointment.

Selecting a surrogate parent: When appointing a surrogate parent, the LEA shall give first preference to a relative caregiver, foster parent, or court-appointed special advocate. However, if none of those individuals are willing or able to act as a surrogate parent, the LEA must be prepared to appoint another qualified responsible adult to act in that capacity (California Government Code Section 7579.5[b]). The local surrogate parent appointment program is more likely to be successful if an ongoing process of recruitment, screening, and training is used to develop and maintain a pool of potential surrogate parents.

Finding Volunteers: Individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers

(California Government Code Section 7579.5 [jj]). Appropriate community groups may be contacted for purposes 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 involved in representing a student receiving special education and related services. Volunteers should be informed that they will be representing children who have special and sometimes unique needs. Volunteers must be willing to be trained to act as educational representatives for students requiring a surrogate parent.

Recruitment is more likely to be successful when LEAs bring the needs of their surrogate parent program to the attention of their local interagency network groups. The combination of local resource and referral networks—which include public and nonpublic schools, other public non-educational agencies, private agencies, private practitioners, and other local community volunteer agencies—may assist LEAs in locating potential surrogate parents.

Reasonable efforts should be made to ensure that persons representing all sections of the community and all racial, ethnic, linguistic, and economic subgroups within the community are recruited and made available for appointment as surrogate parents to ensure that surrogate parents are culturally sensitive to their assigned child (California Government Code Section 7579.5[e]). It is helpful to include information about cultural awareness when training individuals to become surrogate parents.

Appointment of Foster Parents: When a court has limited the right of the parent or guardian to make educational decisions and has not assigned another responsible adult to do so, foster parents and care providers who live with the child in small foster family homes have the usual rights of parents to participate in educational decisions. The foregoing is true unless a court expressly excluded the foster parents from such decisions in a written order (California Education Code Section 56055[b]).

State law allows these foster parents to be appointed as surrogate parents except when there is a conflict of interest (California Government Code Section 7579.5[i] and [j]). An additional factor to consider is that monies received by foster parents and small foster family home care providers are not regarded by the California Department of Social Services (DSS) as payment for contracted services but as reimbursements for expenses incurred on the child's behalf. Foster parents may have a conflict of interest if changes in placement leading to residential placement are under consideration.

Reference and Resources:

[CDE Surrogate Handbook](#)

[Back to Table of Contents](#)