

SURROGATE PARENT (Questions and Answers)

I. WHEN TO APPOINT A SURROGATE PARENT

A surrogate parent should be appointed when (1) no parent can be identified; (2) the school division, after reasonable efforts, cannot discover the location of a parent; or (3) the child is a ward of the state; and/or (4) the child is an unaccompanied homeless youth.

- 1. Must a surrogate parent be appointed if the parents and their location are known but they have moved out of the area?**

No, a surrogate parent should not be appointed if the parents' location is known and contact can be made. A surrogate parent is appointed only when (1) the parents cannot be identified; (2) the LEA, after reasonable efforts, cannot discover the location of a parent; or (3) the child is a ward of the state; and (4) the child is an unaccompanied homeless youth.

- 2. If a relative or private individual has been allowed to act as parent by a natural parent, should a surrogate parent be appointed?**

No, A surrogate parent should not be appointed. The State regulations include, in the definition of parent, persons acting as a parent of a child. This means that a person acting in the place of a parent such as a grandmother or stepparent with whom the child lives has the authority to represent the child in educational matters. Consequently, the child does not require a surrogate parent.

- 3. Is the surrogate appointed when a child is placed in the temporary custody of foster parents?**

No, a surrogate parent is not appointed unless: (1) the parent cannot be located; (2) the school division, after reasonable efforts, cannot discover the location of a parent; or (3) the child is a ward of the state; or (4) the child is an unaccompanied homeless youth.

- 4. Is a surrogate appointed when a child with a disability is placed in the permanent custody of foster parents?**

No, a surrogate is not appointed for a child in permanent foster care because a child's permanent foster care parents are "parents" as defined by 34 CFR § 300.10 and accordingly, have the authority to represent the child in educational matters. Furthermore, the Code of Virginia §63.1-206.1 gives foster parents the authority to consent to educational matters.

- 5. Is a surrogate parent to be appointed when a child with a disability is placed with a legal guardian?**

No, a surrogate appointment is not necessary if the child is placed with a legal guardian because under both federal regulations and state regulations,

“guardian” is included in the definition of parent. Therefore, since a legal guardian is a “parent, there is no need to appoint a surrogate parent.

6. Should a surrogate parent be appointed where the parents leave the state for one year?

No, a surrogate does not need to be appointed when the parents leave the state for a year as long as the parents can be identified and located, and have not lost their parental rights (Although not required, it would be prudent for the LEA to have the parents sign a document indicating that another party will be speaking for them regarding the educational needs of the child.)

7. Are surrogate parents appointed only for children suspected of, or identified as, having a disability?

Yes, surrogate parents are required only for children who are suspected of, or identified as, having a disability, and who also meet the other requirements pertaining to the availability of their parents.

8. Whose responsibility is it to appoint surrogate parents when the child is receiving services within a state residential facility?

If it is determined that a surrogate needs to be appointed, the state residential facility has the responsibility to determine whether or not a surrogate parent was appointed in the local school division prior to the student being placed in the facility. If a surrogate does not currently exist for the child in the facility, then the state facility would appoint a surrogate parent.

9. Does the school division have to have the permission of any other agency to appoint a surrogate parent?

No, the school division does not need the permission of another agency to appoint surrogates. The appointment of the surrogate parent is made by the public agency that has legal responsibility for the education of the child. For a child who is a ward of the state, the judge overseeing the child’s care may appoint a surrogate parent.

10. Is there a time frame for the appointment of a surrogate parent?

Yes, the LEA must assign a surrogate parent to a child within 30 calendar days After a determination of a need for a surrogate.

11. Should a surrogate parent be appointed when a child who reaches the age of majority is not competent to provide informed consent?

Yes, a surrogate parent should be appointed as the educational representative if the LEA has received written notification that the child is not competent to provide informed consent and no family member is available to serve as the child’s educational representative.

The Virginia Department of Education must make reasonable efforts to ensure that LEAs appoint a surrogate parent within 30 calendar days after a determination that a child needs a surrogate.

II. CRITERIA FOR SELECTION OF A SURROGATE PARENT

A surrogate may be selected in any way permitted under State law. A surrogate parent must meet the following criteria. A person selected as a surrogate:

- Shall have no interests that conflict with the interest of the child he or she represents
- Have knowledge and skills that insure adequate representation of the child
- Not be an employee of the Virginia Department of Education, the LEA or any public agency that is involved in the education or care of the child;
- Be an adult and legal citizen of the United States
- Reside in the same general geographic area as the child, whenever possible

The prospective surrogate parent must have completed SEA approved training prior to representing the child. The LEA shall provide training, at least annually, for surrogate parents.

1. Can a child's foster parents also be his surrogate parents?

Yes, a child's temporary foster parents may be appointed as the surrogate parents as long as (1) the temporary foster parents have no interest that conflicts with the interests of the child; (2) the temporary foster parent has knowledge and skills that ensure adequate representation of the child; and (3) the temporary foster parent has received the required training. (Please refer to page 2, item 3 to determine the need for a surrogate for children in temporary foster care.)

2. When a foster parent has been appointed as a surrogate parent and then new foster parents are selected for the child; is surrogate parent appointment automatically terminated?

No, transfer of a child to a different foster parent would not automatically result in a change of appointment of a surrogate parent. A change in appointment would occur prior to the expiration date of the surrogate's appointment if the surrogate parent were no longer able to objectively represent the educational interests of the child. Depending on the circumstances surrounding the change in temporary foster parents, it is possible that the former foster parents no longer meet the eligibility criteria (e.g. alleged abuse).

3. Can both husband and wife serve jointly as surrogate parents?

Yes, a husband and wife can serve jointly as surrogate parents. Only one surrogate parent is needed; however, nothing would prohibit a husband and wife from serving jointly as surrogates as long as they both meet the criteria for

selection of a surrogate. In making this decision, LEAs need to be aware that disagreements may sometimes occur between two surrogate parents.

4. Does a person have to repeat training in subsequent years to be eligible for reappointment as a surrogate parent?

No, additional training is not required by the SEA. A person may repeat the training if he wishes or if the LEA requires it.

5. Is it a conflict of interest to use LEA Advisory Committee members as surrogate parents?

No, a conflict of interest does not exist merely because a prospective surrogate is on the LEA Advisory Committee. Before appointing a LEA Advisory Committee member as a surrogate, however, the school division or LEA should ensure that no conflict of interest exists, that the person has knowledge and skills that ensure adequate representation of the child, and that the person has received the required training.

6. Can a person from a public agency serve as a surrogate?

A person assigned as a surrogate may not be an employee of an agency that is involved in the education and care of the child. LEAs should use caution in determining whether the selection of public agency employees or retired agency employees would be appropriate in order to avoid a conflict of interest or potential bias. LEAs are urged to appoint other third parties instead of public agency employees or retired public agency employees to serve as surrogate parents.

7. Are employees of private agencies that operate small group homes eligible to serve as surrogate parents for children with disabilities committed to that agency?

The LEA may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child. Employees of private agencies that operate small group homes may serve as surrogate parent because the facility is not a "public agency" or a public agency involved in the education or care of the child. LEAs should use caution in determining the appropriateness of such an appointment because of the potential for conflict of interest or bias.

8. Is an employee of the private facility that a child attends eligible to serve as a surrogate parent for the child?

Employees of a private facility may serve as surrogate parents because the facility is not a "public agency" or a public agency involved in the education or care of the child. An employee of a private facility may, however, have a conflict of interest as a surrogate parent if he is put in the position of advocating for, or against, placing the child in the private facility.

III. RESPONSIBILITIES OF A SURROGATE

A surrogate 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 to a child.

1. When a child is in foster care (and requires a surrogate), who has authority to sign Individualized Education Plan, the surrogate or foster parent?

The surrogate parent has the authority to sign the IEP. When the surrogate and foster parents are different the ultimate decision relative to the identification, evaluation and placement of a child who is suspected of having or determined to have a disability rests with the surrogate parent.

2. Does the surrogate parent sign the form for a child with a disability to take field trips?

No, the surrogate parent does not sign the consent form for field trips unless it is part of the Individualized Education Plan. The surrogate parent only represents the child in matters relating to the identification, evaluation and placement of the child, or the provision of a free appropriate public education to the child. However, if the surrogate parent were also the foster parent, the surrogate parent would sign the consent form.

3. Are there any educational decisions the surrogate parent cannot make while representing the child?

The surrogate parent may make any decisions pertaining to the identification, evaluation and placement of the child, or the provision of a free appropriate public education to the child. In addition, the surrogate parent is the appropriate person to request a due process hearing on behalf of the child.

4. Who signs the release of information where social services requests confidential information?

The surrogate parent signs for release of information if the requested records concern the identification, evaluation, and placement of the child, or the provision of a free appropriate public education to the child with a disability.

5. When a child is in the custody of the Department of Social Services, who requests a due process hearing?

If the criterion for appointment of a surrogate parent has been met, then the surrogate parent requests a due process hearing. The Department of Social Services does not have legal authority to request a due process hearing.

6. What is the caseload of a surrogate parent?

There is no specific caseload requirement.

IV. REVIEW, RENEWAL AND TERMINATION OF THE SURROGATE ASSIGNMENT

The surrogate parent shall serve during, or for the duration of, the school year for which he is appointed. When it is determined that the child requires a differentiated instructional program as delineated in the Individualized Education Plan, the surrogate parent shall serve for the duration of that current document. Should a child require the services of a surrogate during the summer months, the LEA shall extend the appointment as needed, consistent with timelines required by law. At the conclusion of each school year, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA.

The assignment of a surrogate may be terminated only when one or more of the following circumstances occur: (1) the child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship); (2) the child is found no longer eligible for special education (except when termination of special education services is being contested); (3) legal guardianship responsible for the child is transferred to a person who is able to carry out the role of a parent; (4) a parent, who was previously unknown or unavailable, is now known or available; or (5) the appointed is no longer eligible (see "Criteria for Selection of a Surrogate Parent").

1. Can a surrogate be appointed and the appointment terminated later?

The assignment of a surrogate parent may be terminated prior to the expiration of his appointment only when one or more of the following circumstances occur:

1. The child reaches the age of majority and the child has not been declared legally dependent
2. The child is found no longer eligible for special education services
3. Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent
4. A parent who was previously unknown or unavailable, is now known or available or
5. The appointed surrogate parent is no longer eligible under the eligibility criteria set out in the regulations

2. What are the conditions for non-renewal of an appointment of a surrogate parent?

Conditions for non-renewal of a surrogate parent include when:

1. The child reaches the age of majority and has not been declared legally dependent
2. The child is not longer eligible for special education services
3. Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent
4. A parent who was previously unknown or unavailable, is now known or available or
5. The appointed surrogate parent is no long eligible under the eligibility criteria set out in the regulations

Conditions for non-renewal may not be the result of the surrogate parent's requests for a due process hearing, filing of a written complaint, requests for copies of the student's records, challenges to the content of the student record, or requests for independent educational evaluations. Should non-renewal occur, the surrogate parent has the right to request a hearing to challenge the non-renewal.