



# SPECIAL EDUCATION SERVICES GUIDANCE ON SURROGATE PARENTS

This guidance is intended to provide a general overview of surrogate parents, when they are needed, and how to ensure they are able to represent the student's educational interest as well as their responsibilities as the "parent." Surrogate parents must be assigned by the Local Education Agency (LEA) to ensure that the rights of the student are protected and services meet the educational needs of the student in the Least Restrictive Environment. For all purposes, the surrogate parent IS the student's parent and should be considered a full member of the student's team.

## WHO SERVES AS THE "PARENT" REGARDING SPECIAL EDUCATION DECISIONS?

Oklahoma recognizes the federal definition of a parent, which includes explanations for "parent," "a person acting as a parent," "surrogate parent," and "guardian." (See 34 C.F.R. § 300.30). Throughout the rest of this document, the Individuals with Disabilities Education Act (IDEA) definition of parent is being used wherever "parent" is referenced.

- "Parent" means a biological parent, an adoptive parent, a person acting as a parent, a legal guardian, a surrogate parent, or a foster parent.
- "Person acting in the place of a parent" means a person such as a grandparent, a stepparent, or other relative with whom the child lives, or a person other than a parent who is legally responsible for the welfare of a child.
- "Surrogate Parent" means an individual appointed by the LEA to make educational decisions regarding the Free Appropriate Public Education (FAPE) of a child with a disability. C.F.R. §300.519
- "Guardian" means a person authorized to act as the child's parent and/or to make educational decisions, but it does not mean the State if the child is a ward of the State.

There are some exceptions when a biological or adoptive parent still has the legal authority to make educational decisions for the child, and another person is qualified to act as the parent. (See 34 C.F.R. § 300.30(b)). The LEA *cannot* appoint a surrogate parent when the biological parent is available but chooses not to participate.

## WHAT IS A "SURROGATE PARENT"?

All students with disabilities are entitled to a FAPE under state rules and the IDEA. Included in these laws is a mandate that the parents of students with disabilities have the opportunity to participate actively in the educational decision-making process. However, some students with disabilities do not have parents (as defined in the previous section) who can fulfill this critical role. The IDEA requires that, in certain cases, an individual must be appointed by the LEA or a judge as a surrogate parent to make decisions regarding the FAPE of a student with a disability. A surrogate parent is needed for students under the age of 18, when:

- No parent (as defined by the IDEA) can be identified;
- The LEA, after reasonable efforts, cannot locate a parent;
- The student is a ward of the State; or
- The student is an unaccompanied, homeless youth as defined by the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

## WHO CANNOT BE A SURROGATE PARENT?

- Someone with financial responsibility or other responsibility for the day-to-day care of the student,
- A school district employee or any agency involved in the care or education of the student, such as the Oklahoma State Department of Education, the Oklahoma Office of Juvenile Affairs, or a Residential Treatment Center staff member (\*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 for up to 30 days until a surrogate parent can be appointed who meets the requirements of a surrogate.),
- Any person with personal or professional interests that conflict with the interests of the student.

## WHAT ARE THE RESPONSIBILITIES OF THE LEA REGARDING SURROGATES?

- Have a method for determining whether a student needs a surrogate parent and a method for assigning surrogate parents prepared to serve in that role,
- Maintain a list of eligible persons to serve as surrogate parents and provide annual training to surrogate parents,
- Document training provided by the LEA for surrogate parents according to the IDEA, including information regarding Oklahoma State and federal requirements for the education of students with disabilities; parents' rights; due process procedures and procedural safeguards; the process for delivery of special education services; information about the nature of the student's disability(ies) and needs; and information regarding the IDEA Part B rights that transfer to the student at the age of majority (18) <https://sde.ok.gov/sites/ok.gov.sde/files/SpecEd-SurrParents.pdf>
- Share student records and educational information with the appointed surrogate. \*FERPA allows parents, including those individuals acting as a surrogate, to inspect and review all educational records of their child maintained by the LEA,
- Document contacts with surrogate and Child Welfare Specialist/Department of Human Services (DHS) Caseworker as for any parent in the Contact Log in EDPlan,
- For students who are wards of the State or placed in the care of the DHS in a youth shelter, group home, or other facility, the LEA should consult with the DHS Case Manager/Child Welfare Specialist who has been assigned the care of the student pertaining to the education and history of the student,
- For a student who is a ward of the State, a judge overseeing the student's case may appoint a surrogate parent.

## WHAT ARE THE RESPONSIBILITIES OF A SURROGATE PARENT?

- Protect the student's rights in the educational decision-making processes, including the identification, evaluation, and placement of the student and the provision of a FAPE to the student,
- Follow confidentiality requirements of Oklahoma Rules and federal law (FERPA),
- Participate in developing, reviewing, and revising the student's Individualized Education Plan (IEP),
- Exercise other rights as needed given to parents under the IDEA,
- The surrogate parent may, but is not required to, invite other people with information specific to the student or charged with the care of the student, such as the Child Welfare Specialist, a counselor or behavioral health specialist working with the student, a staff member of the congregate care setting's team, a former foster parent/relative/someone who knows about the student's disability, behaviors and needs, and/or a Court Appointed Special Advocates (CASA) or other educational advocate.

## WHAT IS THE ROLE OF THE SURROGATE IN AN IEP MEETING?

- Attend and represent the student's educational interests at the IEP meeting,
- Ask for an IEP meeting whenever it is needed to address concerns, needs, and/or progress,

## WHAT IF A DISAGREEMENT ARISES OR THE SURROGATE PARENT HAS CONCERNS WITH PROGRESS?

- Contact the special education teacher or building principal to address questions or concerns,
- Request an IEP meeting,
- Request a facilitated IEP meeting through the Special Education Resolution Center (SERC),
- Seek special education advocate assistance,
- Be willing to participate in a resolution meeting with the school, or as a last resort,
- File an impartial special education state complaint or due process hearing.

## WHO CAN THE LEA CHOOSE TO BE A SURROGATE?

- CASA worker (CASA serves children in 62 of Oklahoma's 77 counties as well as four tribal courts)
- Relative of the student
- Other neutral party who may know the student