

Surrogate Parents and Special Education in Pennsylvania: An Overview

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PaTTAN

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PDE's Commitment to Least Restrictive Environment (LRE)

Our goal for each child is to ensure Individualized Education Program (IEP) teams begin with the general education setting with the use of Supplementary Aids and Services before considering a more restrictive environment.

Goals for the Training

- Understand the need for surrogate parents
- Define terminology and the law
- Understand responsibilities and requirements of the surrogate parent
- Understand the appointment process

Identification of “Parent” and IDEA

- Special Education process cannot function without a “parent” – an active, involved decision maker who must consent to evaluations, provision of services, and educational placement.
- The IDEA confers specific rights and obligations on the “parent.”
- Understanding these rights and responsibilities is critical to effectively meeting the needs of students with disabilities and complying with all LEA duties and responsibilities under the law.

Special Problem:

Children in the Child Welfare System

- Too often, children in foster care have no active, involved parent. This is a particular problem for children in residential settings – group homes, RTFs, partial hospitalization programs, etc. who do not have a foster parent to serve in this role.

Special Problem:

Unaccompanied Youth

- Children who are unaccompanied homeless youth are “on their own.”
- Unaccompanied homeless youths lack a fixed nighttime residence and are not in the care of a parent or guardian.
- Like youth in foster care, they are often highly mobile and with unidentified special education needs.
- These students often lack any parental involvement and may not have another legally authorized decision maker.

Regulatory definition of Parent

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

Parent means—

- A biological or adoptive Parent of a child;
- 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;

In Pennsylvania, a foster parent MAY be considered a parent for the purpose of this definition.

- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child.

Child Welfare caseworkers are not permitted, by federal law, to serve in this role.

Regulatory definition of Parent

(continued)

- A person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare or
- A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a) (5) of the [IDEA].

Identifying a student's IDEA Parent

- If a person is signing an IEP as “parent,” you **must** ensure that the person is legally authorized to serve as the child's IDEA Parent.
 - For example, a “group home parent” or caseworker **CANNOT** serve as IDEA Parent even if they previously signed an IEP
- In all cases, the person's **relationship** to the student should be reflected in the IEP.

Role of the Biological/Adoptive Parent

A child may have more than one parent -- bio/adoptive parent, guardian, foster parent, person with whom child is living who is acting as the parent.

When there is **more than one** category of potential “parent,” school must treat the biological/adoptive parent as the IDEA Parent if:

Bio/adoptive parent still has legal authority to make education decisions

AND

Bio/adoptive parent is “attempting to act as the parent.”

School must document efforts to engage parent & accommodate his/her schedule for IEP meetings, conference him/her into meetings etc. before allowing another person (most often the foster parent) to serve as a child's IDEA Parent and act on the child's behalf.

Role of Foster Parent

- If there is no biological/adoptive parent who is “attempting to act as the parent” in the picture, the foster parent automatically becomes the IDEA Parent unless court appoints someone else. No need for the LEA to appoint the foster parent as the surrogate parent.
- If a judicial decree or order identifies someone to act as the IDEA Parent, the school must recognize that person’s authority.

Role of person “acting as the parent”

- In some cases, a student may be living with a person (such as a grandparent) who is acting in the role of the parent.

When must an LEA assign a surrogate parent

The federal requirements related to the appointment of a surrogate parent for an IDEA-eligible or thought-to-be-eligible child are specified in 34 CFR 300.519:

- School districts are obligated to appoint a surrogate for a child who has **no** IDEA Parent.
- Specifically, a district must assign a surrogate parent when:
 - No IDEA Parent (e.g., parent, foster parent, guardian) can be identified,
 - School, after reasonable efforts, can't locate a parent, or
 - Child is unaccompanied homeless youth

Current Federal Law

The duties of the public agency 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) A method for assigning a surrogate parent to the child.

Timeframe for appointing a surrogate parent

- The LEA must appoint a surrogate parent within **30 calendar days** of discovering the need for a surrogate parent.
- The LEA should maintain a pool of qualified surrogate parents so it can meet this obligation.

What is the definition of a surrogate parent?

A person who acts in place of the parent to make educational decisions on behalf of a child with a disability in all matters relating to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education (FAPE) to the child.

Which LEA is responsible?

- “LEA”, in which the student resides, is responsible for appointing a surrogate parent. This includes public school districts and public charter schools, as well as, cyber charters.
 - IUs can assist school districts in appointing surrogate parents, but the school district is ultimately responsible for ensuring that a surrogate parent is appointed within 30 calendar days.
- The LEA in which a residential facility is located is responsible for identifying all children who need surrogate parents.

When Can't an LEA appoint a surrogate parent?

- There is already someone in the child's life who qualifies as an IDEA Parent,
 - (e.g. active biological or adoptive parent, a foster parent, a person with whom the child lives who is acting as a parent in the place of a parent)
- A Court has already appointed a surrogate parent or Educational Decision Maker (“EDM”).

When can a Judge appoint a surrogate parent or other EDM?

- Under the IDEA, a court is authorized to appoint a surrogate parent in some circumstances.
- Since July 2011, Juvenile Court Rules have required courts to consider whether a child needs an “educational decision maker” (EDM) appointed for a child who is dependent or delinquent.

When can a Judge appoint a surrogate parent or other EDM?

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- A court should appoint an EDM for a child:
 - Who has no parent or guardian, or
 - If the court determines that doing so is in the best interest of the child.
- An EDM may be appointed for a child with special education needs or for a child in regular education.
- If the Court appoints a surrogate parent/EDM, that person trumps all other potential decision makers.

Rights of court-appointed EDM

- A court-appointed EDM/surrogate parent has the SAME rights as a biological/adoptive parent or other IDEA Parent. The LEA must treat that person as the child's IDEA Parent in every respect.
- *Check with the child's caseworker to determine if the court has appointed an EDM/ surrogate parent*

Who can be a surrogate parent?

- An LEA shall, as a first preference, select a surrogate who is a relative caregiver, foster parent, or court-appointed special advocate. (CASA). If none of these is willing or able to serve, another person may be appointed to be the surrogate.
- For children in the child welfare system, LEAs should work with caseworkers to identify potential surrogate parents for representation of the child.

Recruiting surrogate parents

- Work with Children & Youth agencies, Juvenile Probation and others to identify potential surrogate parents for individual students. This will ensure that the assigned person has a positive and ongoing relationship with the child.
- Appropriate community groups should be contacted for purpose of recruiting surrogate parents, such as:
 - CASAs (Court Appointed Special Advocate)
 - Local Parent-Teacher Organizations
 - Local Task Force
 - Retired educators' groups
 - Service Clubs (charitable non-profit organizations)
 - Business men and women's organizations (Kiwanis, Rotary, BPOE)

Who can't serve as a surrogate parent?

- Current employees of LEA or Pa Dept. of Ed.
 - Includes Board Members of charter schools
- Employees of “any agency that is involved in the education or care of the child.”
 - Includes Children & Youth agency or private provider workers
 - Staff of residential facility (i.e. “group home parent”)
 - Juvenile Probation Officers
- Anyone with a conflict of interest
 - “Conflict” is defined by U.S. Department of Education as coming from the employer relationship (e.g., can't be teacher in another school district, or employee in group home where child is living)

Initial Evaluation: Short-Term Exception

- **Initial evaluation exception:**
 - If a child is not living with a parent or a foster parent, **the LEA can conduct an initial evaluation without parental consent if:**
 - The school district can't locate the parents after making reasonable efforts,
 - The birth parents' rights have been terminated (TPR),
 - **Or** a judge removes the birth parents' educational rights (temporarily or permanently) & consent is given by an individual the judge appoints
 - (For the initial evaluation **ONLY**, caseworker or other person responsible for education or care of child **CAN** be appointed)
- **BUT** the LEA or Court should appoint a surrogate parent in the interim.
 - School cannot provide **ANY** special ed services without consent of IDEA Parent.

Initial Evaluation: Short-Term Exception

- **Unaccompanied Homeless Youth:**
 - For these youth, staff of an emergency shelter, transitional shelter, independent living program or street outreach program may be appointed as a "**temporary surrogate parent**" (even if that person is an employee of an agency involved in the care or education of the youth) until such time as a surrogate parent who meets the usual requirements can be appointed.
- **BUT** the LEA or Court should appoint a permanent surrogate parent as soon as possible.
 - Schools cannot provide **ANY** special ed services without consent of an IDEA Parent.

Requirements for surrogate parents

- Must be willing and able to serve in the role and cannot have a conflict.
- **Must have knowledge and skills to represent child in the special education process.**

Accordingly, training is critical to ensure effective participation and decision making by a surrogate parent.

Note: Rule does not apply to judge-appointed surrogates, so they are not required to attend the school district's surrogate parent class.

Training requirements for surrogate parents

- The surrogate parent training must provide each individual with the knowledge and skills to adequately represent the child in all aspects of the special education process.
- The training sessions must be comprehensive and, at least, include the following areas:
 - Legal rights and responsibilities
 - The Role of the Surrogate Parent
 - The Special Education Process
 - Understanding Procedural Safeguards, Mediation and Due Process

Summary:

LEAs' Obligations to assign surrogate parents

- LEAs must have a method for identifying children who need surrogate parents and a method for assigning surrogate parents.
- Reach out to facilities, and in particular residential placements in your LEA, to locate children who need surrogate parents as many of these children may lack anyone to serve as an IDEA Parent.

Remember, you have a "child find" duty that specifically includes "wards of the State". The LEA must ensure that these children are identified and receiving services.

- LEAs must appoint a surrogate parent ***within 30 calendar days*** of determining that a child does not have an IDEA Parent.

Summary (continued):

LEAs' Obligations to assign surrogate parents

- Whenever possible locate a person who knows and has a positive relationship with the child to serve as a surrogate parent.
- LEAs must maintain a pool of potential, trained surrogate parents.
- Train all surrogate parents.
- Develop and maintain relationships with your local child welfare agencies to identify and promptly appoint surrogate parents.

Resources

- PDE Guidance: Basic Education Circular on Surrogate Parents & Surrogate Parent Manual
- The complete Surrogate Parent Manual, including referral form, application and agreement, can be found on the PaTTAN website at: www.pattan.net
- Surrogate Parent Trainings: Surrogate Parent PowerPoint trainings and other materials are available for use by LEAs from the Education Law Center website: www.elc-pa.org.

Helplines and Websites

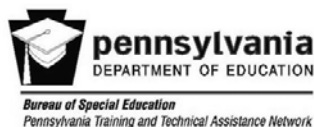
- PaTTAN (PDE's website for special education information and resources):
- pattan.net/category/Legal/Forms/
- PDE Basic Education Circulars
(VERY helpful summaries of legal requirements with respect to various education issues):
www.portal.state.pa.us/portal/server.pt/community/basic_education_circulars/7497

Helplines and Websites (continued)

- Education Law Center: elc-pa.org,
215-238-6970
- Disability Rights Network: drnpa.org
- Helpline: 1-800-692-7443800-692-7443
- Legal Center for Foster Care and Education:
fostercareandeducation.org/

Contact Information:

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