




Disability  
Rights **OHIO**

# **SURROGATE PARENTS IN SPECIAL EDUCATION**

A practical guide for juvenile judges, school districts, child welfare agencies, and surrogate parents on protecting a child's rights in special education.



# HOW TO USE THIS GUIDE

This guide was developed by Disability Rights Ohio (DRO) for judges/magistrates, school districts, child welfare agencies, surrogate parents, and individuals interested in becoming surrogate parents to explain the role of a surrogate parent in special education. This guide contains materials for specific audiences, but can be a helpful resource no matter what your role is in a child's special education.

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## FOR THE COURT

The Individuals with Disabilities Education Act (IDEA) places importance on the rights and role of a child's parents in the special education process. One of IDEA's foundational principles is the right of parents to participate in educational decision-making regarding their child. The IDEA and Ohio law emphasize parental participation in the special education process, and require a surrogate parent to act as a child's parent for the purposes of special education when no other parent is available. There are common misconceptions about when a surrogate parent should be put in place to protect a child's rights. Juvenile magistrates and judges have the authority to appoint surrogate parents for children they have jurisdiction over. Frequently, this court has jurisdiction over children with complex backgrounds and who are more likely to be in need of special education services. It is critical that judges know when to appoint a surrogate parent for a child, in order to both empower parents and ensure the rights of children with disabilities are protected. This section contains a bench card with three steps to take before appointing a surrogate parent, frequently asked questions, and sample orders appointing a surrogate parent and vacating an appointment.

# Bench Card: Surrogate Parents under IDEA

The Individuals with Disabilities Education Act (IDEA) and Ohio law require that children with disabilities who do not have a parent available to advocate for them in the special education process be given a surrogate parent to make decisions about special education issues and ensure that the rights of the child. School districts should appoint a surrogate when necessary. However, juvenile courts also have the authority to appoint a surrogate parent.<sup>1</sup>

## Why is it so important to ensure a child has a “parent” for special education matters?

IDEA is premised on strong parental participation. A “parent” requests and consents to evaluations, services and placements; participates as an equal member of the individualized education program (IEP) team; has the right to receive educational records, progress reports, and notice of proposed changes to the IEP; has the right to request an Independent Educational Evaluation (IEE) and engage in dispute resolution options, including administrative and court proceedings. Not having a “parent” can delay evaluations and the provision of special education services. Due to the legal requirements for meaningful parental participation under IDEA, it is critical that every child has someone to act as a “parent” for the purposes of special education.

## Who can be a “parent” under IDEA and Ohio law?

Under IDEA, a “parent” means (1) a biological or adoptive parent; (2) a foster parent, unless prevented by state law; (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 in permanent custody of Children Services); (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 a surrogate parent.<sup>2</sup>

Ohio law prohibits a foster parent from acting as a “parent” in the special education process because legal custody of the foster child is held by a children services agency, and not by the foster parent.<sup>3</sup> However, a foster parent may become the surrogate parent of the child as long as they meet all other requirements.

A biological or adoptive parent, when attempting to act as parent, and when more than one party is qualified to act as parent, must be presumed to be the parent for the purposes of IDEA unless the biological or adoptive parent does not have legal authority to make educational decisions for the child (parental rights have been permanently terminated).

<sup>1</sup> 20 U.S.C. § 1415(b)(2)(A)(i)

<sup>2</sup> 20 U.S.C. § 1401(23)

# Three Steps to Appointing a Surrogate Parent

A child's school district has the ultimate responsibility for ensuring a child in need of a surrogate parent is assigned one. However, there may be cases when the Court needs to fulfill that role. The steps below provide guidance on how to proceed if it appears the Court may need to take action and appoint a surrogate parent for children who are wards of the state.

## Step 1: Determine if a biological/adoptive parent can act as parent

A biological or adoptive parent who is attempting to act as the parent is presumed to be the parent unless the person does not have legal authority to make educational decisions for the child.

- When a child is in the temporary custody of a county child welfare agency and the court order placing them in the county's custody does not specifically terminate a parent's educational rights, the child's parents maintain educational decision-making rights.
- Do NOT appoint a surrogate parent for a child in temporary custody.
- Judicial Advocacy Tip: If the goal is reunification, the Court should consider empowering parents to actively participate in their child's education.
  - Include education-related tasks in the case plan and refer parent to resources to equip them to meet their child's special education needs. A parent resource section is included in this guide.

## Step 2: Determine if another "parent" is available

A biological or adoptive parent who is attempting to act as the parent is presumed to be the parent unless the person does not have legal authority to make educational decisions for the child.

- If, after reasonable efforts, a biological/adoptive parent cannot be located or parental rights have been terminated, the Court should determine if another "parent" is available.
- This "parent" could be a legal guardian or other person in a parental role with whom the child lives, such as a grandparent, step-parent, or other relative.
- A foster parent is not a "parent" under Ohio law.
  - But, a foster parent can be appointed as a surrogate parent if they meet all other requirements.
- Determine if the child's school district has already assigned a surrogate parent - if so, this child has an available "parent" under law.



## Step 2: Determine if another “parent” is available (cont.)

- Judicial Advocacy Tip: While there is no requirement to issue an order designating a legal guardian or other “parent” as the parent for special education purposes, the Court may find it helpful to issue an order if more than one qualified individual is trying to act as parent, the child’s school district is unaware of another available “parent”, or if the child’s school district has been notifying incorrect individuals about special education matters (for example, sending notice of IEP meetings only to the foster parent).

## Step 3: If the child has no “parent” and one cannot be located after reasonable efforts, appoint a surrogate parent

- If no “parent” can be located, and the child is a ward of the state, the Court should issue an order appointing a surrogate parent.
- A surrogate parent should be assigned as soon as possible, but no later than thirty (30) days after it is determined that the child is in need of a surrogate parent.
- A surrogate parent must be someone who:
  - Is not an employee of the school district, the Ohio Department of Education or any other agency involved in the education or care of the child, including public children's service agencies;
  - Has no personal or professional interest that conflicts with the interests of the child being represented;
  - Has the knowledge and skills to adequately represent the child; and
  - Has successfully completed the Ohio Department of Education’s training to be a surrogate parent.

## Special Circumstances

If the child is an unaccompanied youth<sup>4</sup>, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as a temporary surrogate parent without regard to the above criteria until a surrogate parent who does meet all criteria can be appointed.

- Judicial Advocacy Tip: The Ohio Department of Education and school districts have homeless liaisons who are available to provide support and coordinate resources. Consider linking staff with these individuals. More information can be found here: <https://education.ohio.gov/Topics/Student-Supports/Homeless-Youth>

<sup>4</sup> The term “unaccompanied youth” includes a homeless child or youth not in the physical custody of a parent or guardian. 42 U.S.C. § 11434(a)(6).

# Frequently Asked Questions by the Court

## **A biological/adoptive parent can be located, but does not want to participate in their child's education. Can the Court appoint a surrogate parent for the child?**

There is no statutory authority under IDEA to appoint a surrogate parent when a parent is available or can be identified and located after reasonable efforts, but refuses to participate in the child's education. The Court should consider empowering the parent to participate in their child's education, for example, by including education-related tasks on the case plan or referring the parent to resources to help educate them on being involved in their child's education and their rights in special education.

Outside of IDEA and Ohio special education law, the Court may issue an order limiting a biological/adoptive parent's right to make educational decisions if it is not in the child's best interest for the biological/adoptive parent to make educational decisions.

## **A parent can be located, but is incarcerated. Should the Court appoint a surrogate parent?**

A parent's incarceration is not a reason to assign a surrogate automatically. If the parent can be reached and make decisions regarding the child's education and services, the parent should do so, even if incarcerated. School districts can facilitate the participation of incarcerated parents in meetings about their child by using telephone or video conferencing.

## **How are reasonable efforts to locate a parent determined?**

Reasonable efforts to locate parents include, but are not limited to, documenting phone calls to the parent, letters, certified letters with return receipts, and documented visits to the parents' last known address.

- Judicial Advocacy Tip: Efforts to locate a parent can be hampered by common barriers to parental participation, including lack of transportation and literacy issues. School districts and courts should make efforts to determine and address barriers that prevent parents from being able to respond and participate in their child's special education.

## **What are the responsibilities of a surrogate parent?**

The surrogate parent makes decisions for 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 to the child. For a young child aged 0-3 receiving Early Intervention services, a surrogate makes decisions for the child in all matters relating to the provision of Early Intervention services.

# Frequently Asked Questions by the Court

## **What is the duration of a surrogate parent appointment?**

A surrogate parent may continue to serve as surrogate as long as the person continues to meet surrogate parent requirements and/or as long as the child is entitled to a surrogate under the law. When a student with a disability turns 18, all of the rights of the surrogate parent transfer to the student, unless the student has been determined to be incompetent under State law, in which case educational decisions are made by the student's court appointed guardian.

## **How often must the Court review a surrogate parent appointment?**

The Court is required to review the appointment of each surrogate parent at least annually to ensure that the rights of the child are protected. However, it is best practice to determine who the child's special education decision-maker is and get an update from them at every hearing, to ensure the child's rights are being protected.

## **When appointing a surrogate parent, what are some examples of personal or professional interests that conflict with a child's interest?**

A personal or professional conflict could be financial, occupational, or familial, but is not limited to these types of conflicts. For example, a teacher could not be a surrogate because she may be required to advocate for services for a child but be hesitant to do so because it would create a financial burden for her employer. If a child is in the custody of children's services, a children services worker could not be a surrogate for similar reasons. Further, a person closely related to a school district employee may share the same conflicts.

## **How can a Court determine if a surrogate parent has the knowledge and skills that ensure adequate representation of the child?**

Because surrogate parents are assigned to ensure that the child's rights are protected, the surrogate parent will need to be familiar with the special education process, be aware of the role of the parent in special education decisions, be familiar with state and federal special education law, and have completed the required training through the Ohio Department of Education. A person with such knowledge and skills may be a foster parent, relative, or a friend in the community. To the extent possible, the surrogate parent should also match the child's cultural and linguistic background.

## **What are some reasons a Court may need to terminate a surrogate parent appointment?**

Some examples of reasons to terminate a surrogate parent appointment are: a previously "unavailable" parent becomes available again, the child turns 18 and no longer requires a surrogate parent, or the child's status as a child with a disability changes (i.e. the child is determined to no longer be a child with a disability/exited from special education services).



*SAMPLE ORDER*

IN THE COURT OF COMMON PLEAS  
DOMESTIC RELATIONS AND JUVENILE BRANCH  
FRANKLIN COUNTY, OHIO

IN THE MATTER OF:	:	Case No.:
	:	Judge:
	:	Magistrate:

**ORDER APPOINTING SURROGATE PARENT FOR CHILD WHO HAS OR IS SUSPECTED OF HAVING A  
DISABILITY**

The court finds that:

- 1) The child has, or is suspected of having, a disability as defined in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401(3) and O.R.C. 3323.01(A).
- 2) A surrogate parent is needed to act as a parent in educational decision-making and safeguarding the child's rights under the IDEA and Ohio law
- 3) 3. The child is entitled, under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519; O.R.C 3323.05, and O.A.C. 3301-51-05 to the assistance of a surrogate parent because (check all that apply):
  - ☐ Parental rights have been terminated
  - ☐ After reasonable efforts, no parent can be located
  - ☐ Child is an unaccompanied youth, as defined by the McKinney–Vento Homeless Assistance Act of 1987 and 42 U.S.C § 11434a(6).
  - ☐ Other \_\_\_\_\_

**ACCORDINGLY**, it is **ORDERED** that:

- 1) \_\_\_\_\_ is appointed as a surrogate parent for \_\_\_\_\_
- 2) The surrogate parent named above meets all requirements to serve as a surrogate parent and has no conflict of interests preventing them from fulfilling the requirements of this order.
- 3) The surrogate parent named above has the following rights, duties, and responsibilities:
  - a. to request or respond to requests for evaluations of the child;
  - b. to review and keep confidential the child's educational records;
  - c. to request and participate in school meetings including Individualized Education Program (IEP) meetings;
  - d. to express approval or disapproval of a child's educational placement or IEP;
  - e. to monitor the child's educational development;

- f. to help the child access available and needed educational services;
  - g. to aid the child in securing all rights provided the child under the IDEA;
  - h. to meet the child face-to-face
  - i. to be afforded all of the due process rights parents hold under the IDEA
- 4) The surrogate parent shall attend all other further proceedings to address the educational needs of the child. The surrogate parent will be provided notice of this Appointment and all other further proceedings.
- 5) As to issues affecting the provision of a free appropriate public education, principals, teachers, administrators, and other employees of the \_\_\_\_\_ School District shall communicate with the surrogate parent and accept the requests or decisions of the surrogate parent in the same manner as if he or she were the child's parent.
- 6) The surrogate parent must have access to and keep confidential the child's records including, but not limited to, records from the school system, community-based care provider or agency, and any mental health or medical evaluations or assessments.

**IT IS SO ORDERED.**

/s/ \_\_\_\_\_

*SAMPLE ORDER*

IN THE COURT OF COMMON PLEAS  
DOMESTIC RELATIONS AND JUVENILE BRANCH  
FRANKLIN COUNTY, OHIO

IN THE MATTER OF:	:	Case No.:
	:	Judge:
	:	Magistrate:

**ORDER VACATING PRIOR APPOINTMENT OF SURROGATE PARENT**

The Court finds that:

- 1) The child had previously been entitled to a surrogate parent under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519; O.R.C 3323.05, and O.A.C. 3301-51-05
- 2) The child was appointed a surrogate parent by this Court to act as a parent in educational decision-making and safeguarding the child's rights under the IDEA and Ohio law
- 3) The child no longer requires a surrogate parent because (check all that apply):
  - ☐ A parent, as defined by O.R.C. 3323.01(H)(1)-(3), is available to act as a parent in educational decision-making and safeguarding the child's rights under the IDEA and Ohio law
  - ☐ The child has reached eighteen years of age and rights have been transferred to the child in accordance with § 1415(m) of the IDEA
  - ☐ The child is no longer a child with a disability under the IDEA and Ohio law
  - ☐ Other \_\_\_\_\_

The previous order appointing a surrogate parent for this child is hereby **VACATED**.

**IT IS SO ORDERED.**

/s/ \_\_\_\_\_

# Resources for Empowering Parents in Special Education

## **A Guide to Parent Rights in Special Education: Special Education Procedural Safeguards Notice**

- This guide can help you understand your rights and your child's rights according to IDEA and the Ohio Operating Standards. It also gives you information and resources to help you understand your child's special education supports and services.

## **Ohio Department of Education Special Education Dispute Resolution**

- This link provides an overview of the various dispute resolution options available to parents if situations arise where you and the school are in disagreement about your child's special education services and supports, or you believe the school has violated federal or state special education law.

## **Ohio Department of Education Basics of Special Education Video Series**

- ODE has created a series of videos for parents that explain special education services in Ohio, including frequently used terminology.

## **Ohio Coalition for the Education of Children with Disabilities (OCECD)**

- OCECD is Ohio's parent training and information center. Parent training and information centers work with families of students with disabilities, help parents participate in their child's education, and collaborate with other professionals to improve outcomes of students with disabilities. OCECD has information on a variety of Informational Tip Sheets on their website, covering many topics in special education.

## **Disability Rights Ohio**

- Disability Rights Ohio's Self-Advocacy Resource Center provides information and resources on various special education topics for parents, including sample letters for communicating with your child's school.

## FOR SCHOOL DISTRICTS

**Under the Individuals with Disabilities Education Act (IDEA) and Ohio law, school districts must appoint surrogate parents for students with disabilities (or who are suspected of having a disability) who have no parent to participate in the special education decision-making process. A surrogate parent has all of the due process rights of a parent and can request evaluations, attend IEP meetings, and consent to special education placements and services. Students in foster care, living in various residential settings apart from their parents, and unaccompanied homeless youth are most likely to need a surrogate parent. However, because parental participation is critical to good educational outcomes, care should be taken to fully evaluate the child's circumstances before appointing a surrogate parent when another parent is available. This section includes steps to take before assigning a surrogate parent, frequently asked questions, best practices, and resources specific to school districts working with children who may need a surrogate parent.**

# Surrogate Parents in Special Education:

## Steps to Take When a School District Suspects a Surrogate Parent is Needed

The Individuals with Disabilities Education Act (IDEA) and Ohio law require that children with disabilities who do not have a parent available be given a surrogate parent to make decisions about special education issues and ensure that the child's rights are protected. Surrogate parents can be assigned by the school district of residence or the judge overseeing a child's case (if the child is in permanent custody of Children Services), but the ultimate responsibility of assigning a qualified surrogate parent lies with the school district of residence.

### Step 1: Check if a parent can be identified

- A "parent" can be:
  - ❖ A biological or adoptive parent of a child, but not a foster parent of a child (unless the foster parent meets applicable requirements to be a surrogate parent).
  - ❖ 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 in custody of Children Services).
  - ❖ 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.
  - ❖ An assigned surrogate parent.
- If the child is in permanent custody of Children Services, determine if the judge overseeing their case has already assigned a surrogate parent.

### Step 2: If a parent is not immediately identified, quickly make reasonable efforts to locate one

- Reasonable efforts to contact parents include, but are not limited to, documenting phone calls to the parent, letters, certified letters with return receipts, and documented visits to the parents' last known address.
  - ❖ Consideration should be given to barriers that may prevent a parent from being identified, including lack of transportation to meetings, literacy issues, unable to get time off work, etc. and how reasonable efforts can be made that are more likely to reach the parent.



### **Step 3: If a parent cannot be identified after reasonable efforts, assign a surrogate parent as soon as possible**

- A surrogate parent must be assigned no later than thirty (30) days after it is determined the child is need of a surrogate parent.

### **Step 4: Ensure the surrogate parent is qualified and has no personal or professional interest that conflicts with the child**

- A surrogate parent may not be employed by ODE, the district, or any entity responsible for the child's education or care.
- Surrogate parents must successfully complete ODE's Surrogate Parent Training.
- A personal or professional conflict could be financial, occupational, or familial, but is not limited to these types of conflicts.

### **Step 5: Review surrogate parent assignments regularly**

- Surrogate parent assignments must be reviewed at least annually.
- Watch for conflicts of interest and reassign another surrogate parent as necessary.
- Familiarize yourself with reasons to end the assignment.
  - ❖ Child moves to a new district, a parent is located, the child turns 18, child is no longer child with a disability.

*Reference FAQs for Further Guidance*

# FAQs from School Districts and Best Practices

The following long-form document covers frequently asked questions from school districts regarding the steps to assign a surrogate parent, rights and responsibilities of a surrogate parent in special education, and best practices when working with students who may need a surrogate parent, including students who are homeless or English language learners.

## FAQs on Steps to Assigning a Surrogate Parent

**We have identified a parent, but they do not want to participate in the child's special education. Can we assign a surrogate parent who will be willing to participate?**

No, a school district cannot assign a surrogate parent when an otherwise identified parent refuses to participate in the special education process. The district should continue to encourage the parent to participate as appropriate, and determine if any barriers to parental participation can be resolved.

**A child's parent is incarcerated. Should we assign a surrogate parent?**

No. Parent incarceration is not a reason to assign a surrogate parent. Schools should work to find ways for the parent to be involved and make decisions regarding the child's education and services, even if incarcerated.

**How many times should we attempt to identify a parent?**

There is no direct guidance on how many attempts are sufficient, but remember that reasonable efforts to identify parents include, but are not limited to, documenting phone calls to the parent, letters, certified letters with return receipts, and documented visits to the parents' last known address. It is best practice to attempt each form of contact at least once.

**Can a surrogate parent be paid, and does this make them a district employee?**

A surrogate parent can be paid, and a person who is otherwise qualified to be a surrogate parent is not an employee of the school district solely because the person is paid by the district to serve as a surrogate parent.<sup>5</sup>

<sup>5</sup> 34 CFR § 300.519

## **FAQs on Steps to Assigning a Surrogate Parent (cont.)**

### **Can a foster parent act as parent or surrogate parent?**

It depends. Ohio law prohibits a foster parent from acting as a “parent” in the special education process because legal custody of the foster child is held by a children services agency, and not by the foster parent. However, a foster parent may become the surrogate parent of the child as long as they have taken the necessary steps through ODE, are qualified, and do not have a conflict of interest.

### **Do all foster children need surrogate parents?**

No, a surrogate parent should only be assigned when the natural or adoptive parents' authority to make educational decisions on their child's behalf has been extinguished under Ohio law and no other “parent” can be located. The child's children services caseworker should be able to answer questions about the parent's current educational decision-making rights.

### **What are some examples of personal or professional interests that conflicts with a child's interest?**

A personal or professional conflict could be financial, occupational, or familial, but is not limited to these types of conflicts. For example, a teacher could have a conflict because she may be required to advocate for services for a child but be hesitant to do so because it would create a financial burden for her employer. If a child is in the custody of children's services, a children services worker could not be a surrogate for similar reasons. Further, a person closely related to a school district employee may share the same conflicts.

### **How are “knowledge and skills that ensure adequate representation of the child” determined?**

A surrogate parent must have knowledge and skills that ensure adequate representation of the child. Because surrogate parents are assigned to ensure that the child's rights are protected, the surrogate parent will need to be familiar with the special education process, be aware of the role of the parent in special education decisions, and be familiar with state and federal special education law. A person with such knowledge and skills may be a foster parent, relative, or a friend in the community. To the extent possible, the surrogate parent should also match the child's cultural and linguistic background. The Ohio Department of Education requires that surrogates must successfully complete training for surrogate parents.

## **FAQs on Steps to Assigning a Surrogate Parent (cont.)**

### **We have identified a conflict of interest with a surrogate parent assignment, now what?**

If a conflict of interest arises subsequent to the assignment of a surrogate parent, determine if the conflict can be resolved. Determining if a conflict can be resolved prior to terminating the assignment can help ensure consistency for the child. If the conflict cannot be cured, terminate the assignment and assign another surrogate parent.

### **What are some examples of reasons a surrogate parent's assignment should be terminated?**

Some examples of reasons a surrogate parent's assignment should be terminated are: a previously "unavailable" parent becomes available again, the child turns 18 and no longer requires a surrogate parent, or the child's status as a child with a disability changes (i.e. the child is determined to no longer be a child with a disability/exited from special education services).

### **What is the duration of a surrogate parent assignment?**

A surrogate parent may continue to serve as surrogate as long as the person continues to meet surrogate parent requirements and their appointment is necessary (i.e. no other parent is identified). The school is required to review every year the assignment of each surrogate parent to ensure that the rights of the child are protected and no conflict exists. When a student with a disability turns 18, all of the rights of the surrogate parent transfer to the student, unless the student has been determined to be incompetent under State law, in which case educational decisions would be made by the student's court assigned guardian.

## **FAQs on Surrogate Parents in Special Education Meetings**

### **What are the rights and responsibilities of a surrogate parent?**

The surrogate parent makes decisions for 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 to the child.

## **FAQs on Surrogate Parents in Special Education Meetings (cont.)**

### **What are the rights and responsibilities of a surrogate parent?**

The surrogate parent makes decisions for 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 to the child.

### **Who should sign the IEP if a surrogate parent is assigned?**

When a district assigns a surrogate to a child with a disability, the surrogate qualifies as a "parent" under the IDEA. Because a surrogate parent is included in the IDEA's definition of "parent," a surrogate parent is given all of the procedural safeguards granted to parents under the IDEA, and it is the responsibility of the surrogate to assert those rights. As a result, the surrogate parent can sign the IEP and any other special education documents.

### **Do surrogate parents have rights to the child's educational records?**

Surrogate parents have all the rights guaranteed to parents under state and federal special education laws and the Family Educational Rights and Privacy Act (FERPA). Surrogate parents can see, correct, obtain copies of, and approve or disapprove the right of other to see the child's educational records.

## **Homeless Children**

### **We have identified a homeless child in need of a surrogate parent. Do homeless children have any special protections?**

Yes, children who are homeless have special protections pursuant to the McKinney-Vento Act. The Act aims to minimize enrollment delays and ensure the continuity of services and transportation, when necessary, to provide stability to the homeless child. Information about all of the areas outlined below are available from the National Center for Homeless Education at [www.nche.ed.gov](http://www.nche.ed.gov)

## Homeless Children (cont.)

### What specific protections are given under the McKinney-Vento Act?

- ❖ The child may stay in the school he or she was in before becoming homeless or enroll in a school where the child is living for the time being.
- ❖ The child must receive the transportation to school they need regardless of living arrangement.
- ❖ The child should be enrolled in school without delay, even if the school does not receive paperwork normally required for enrollment, such as the child's birth certificate or medical records.
- ❖ The child has the right to receive free meals.
- ❖ The child must receive the same special programs and services that other children receive, including special education, migrant education, and vocational education, and the child cannot be separated from other students in a different school or different program because they are homeless.
- ❖ The child may attend either the school of origin or the school where the child now lives as the parent or surrogate parent chooses. If there is a dispute about whether the child is homeless, the chosen district must enroll the student while the dispute is resolved.
- ❖ After being placed in permanent housing, the child may stay in their original school for the rest of the school year and receive transportation to that school. This will provide stability for the child.

### What are some best practices for school districts when working with homeless children?

*Some best practices include:*

- ❖ **Attempt to contact an unaccompanied child's biological/adoptive parent and assess whether another individual is acting as a parent**
  - By definition, unaccompanied homeless youth are not in the physical custody of a parent or guardian, however, sometimes the parent or guardian may still be involved in the child's education and if they can be identified, they must be allowed to act as parent for purposes of special education.
- ❖ **Consider assigning a temporary surrogate parent**
  - Temporary surrogate parents for unaccompanied youth should be appointed much more quickly than the required thirty (30) days and do not have to meet all requirements imposed on surrogate parents. This allows the District to ensure the rights of especially vulnerable youth are quickly protected while the District continues to determine if a more long-term surrogate parent assignment is required.



## **Homeless Children (cont.)**

### **What are some best practices for school districts when working with homeless children? (cont.)**

#### **❖ Ensuring the timely transfer of educational records**

- Even though homeless children can be enrolled in a different school without paperwork, it is important to ensure that records are transferred as soon as possible. This is particularly true for students who have disabilities and special goals and services provided through an IEP or 504 plan. Being homeless already puts the child at a disadvantage, and necessary services should be provided without delay. Additionally, for students with behavioral or mental health needs, it is important to ensure that the new school understands and can address those needs.

#### **❖ Know about homeless liaisons and how they help**

- The child's district is responsible for assigning a local liaison. The liaison acts as the primary support and advocate for homeless students and provides resources, McKinney-Vento services and information. The liaison serves as the direct contact between families and school. The local liaison is responsible for the academic and non-academic support of homeless students, ensuring student enrollment and the delivery of McKinney-Vento resources to increase stability in and out of the classroom. The first step in serving homeless youth is identification. After identification, the local liaison is responsible for ensuring that families are aware of transportation services, educational opportunities, and nutrition programs.

#### **❖ Understand the unique needs of homeless students**

- Homeless youth may need additional and frequent services to keep up with peers and to feel a part of the larger school community. Ensure the surrogate parent is familiar with community resources and how to access them. Service needs can range from extra school services, to the need for supports in the community and can include:
  - Remediation/tutoring
  - School materials/clothes
  - Program continuity and stability
  - Extended programming (after school, Extended School Year in the IEP, summer school)
  - Sensitivity training for staff
  - Housing
  - Legal
  - Job supports

#### **❖ Utilize a trauma informed approach**

- Children who experience homelessness or who are in the child welfare system will experience trauma as a result of the loss of housing, loss of a parent, or placement in a restrictive setting away from friends and family. Trauma can affect a child's ability to focus on academic tasks, regulate emotions, and control behavioral impulses. You should be familiar with trauma informed practices and utilize a trauma informed approach when working with these youth.

## **English Language Learners (ELL)**

**We have identified an ELL student in need of a surrogate parent. What are some best practices in this situation as to the child's special education?**

*Some best practices include:*

- ❖ Ensuring the child is provided necessary interpreters and translation services throughout the special education process
- ❖ Assigning a surrogate parent, to the extent possible, who matches the child's cultural and linguistic background
- ❖ Ensure any evaluations of the child are culturally competent to ensure that the evaluation results in accurate and useful information
- ❖ The evaluation team should be familiar with the basics of cultural competence and collectively demonstrate cultural competence in the context for each evaluation, select or create data collection instruments that have been (or will be) vetted for use with the population of interest, and engage in ongoing critical reflection on assumptions about what constitutes meaningful, reliable, and valid data and how these data are derived

# Resources for School Districts

## **ODE Surrogate Parent Training -**

- Anyone can sign up to access the training; you do not need to be trying to become surrogate parent
- Individual modules can be reviewed, rather than going through the entire training at once

## **Trauma Informed Care -**

- **Trauma and Learning Policy Initiative's (TLPI)**
  - Access free digital publications, videos, and the latest research
- **Conscious Discipline**
  - Access free digital resources including printables, song lyrics, webinars, discipline tips, research articles, and Shubert's Home and School in Bug Valley, a practical hands-on example of conscious discipline structures in school, room-by-room

## **Children in Custody of Child Welfare Agencies -**

- **National Center on Foster Care and Education**
  - Access national data on educational outcomes for children in foster care and the Center's Blueprint for Change
- **U.S. Department of Education**
  - Access the Foster Care Transition Toolkit, guidance and regulatory information, and other information from the Department
- **Ohio Department of Education**
  - Access state support documents, resources, and best practices under the Every Student Succeeds Act (ESSA)

## **ELL and Cultural Competence -**

- **"Facilitating the Meaningful Participation of Culturally and Linguistically Diverse Families in the IFSP and IEP Process"**
- **National Education Association's Cultural Competence Training Program**

## FOR CHILD WELFARE AGENCIES

Children's Services caseworkers play a valuable role in protecting the safety and welfare of children. As such, it is important for caseworkers to be informed about a child's rights, including in special education and the role surrogate parents play. This section contains information about the importance of the role of the parent in special education, who is and is not a parent under the law, when a surrogate parent should be appointed, and best practices for caseworkers.

# Surrogate Parents in Special Education and the Role of Children's Services

The Individuals with Disabilities Education Act (IDEA) and Ohio law require that children with disabilities who do not have a parent available to advocate for them in the special education process be given a surrogate parent to make decisions about special education issues and ensure that the rights of the child are protected. A surrogate parent may be appointed by the child's school district or the dependency court. Because children requiring a surrogate parent are often in temporary or permanent custody of Children's Services, it is important for Children's Services staff to understand the role and requirements of a surrogate parent in special education.

## The Role of the Parent in Special Education

The IDEA is premised on strong parental participation. A parent requests and consents to evaluations, services and placements; participates as an equal member of the Individualized Education Program (IEP) team; has the right to receive educational records, progress reports, and notice of proposed changes to the IEP; has the right to request an Independent Educational Evaluation (IEE) and engage in dispute resolution options, including administrative and court proceedings. Without a parent available, special education evaluations and services the child may need can be delayed.

When a child does not have a parent available, the IDEA and state law require a surrogate parent be appointed to take on the rights and responsibilities of a parent.

## The Parent in Special Education

Under the IDEA and state law, a parent is 1) a biological or adoptive parent; 2) a guardian authorized to act as a parent or make educational decisions for the child (but not the State if the child is a ward of the state); 3) an individual acting in the place of a biological or adoptive parent with whom the child lives, (ex. grandparent, stepparent, other relative) or an individual who is legally responsible for the child's welfare; 4) a surrogate parent.

Under Ohio law, a foster parent is not a parent for special education purposes, because Children's Services holds legal custody, not the foster parent. However, a foster parent can be appointed as the surrogate parent if they meet all other requirements.

## Surrogate Parent Requirements

A surrogate parent must be someone who:

- Is not an employee of 1) the child's school district, 2) the Ohio Department of Education, 3) any other agency involved in the education or care of the child, including Children's Services;
- Has no personal or professional conflicts of interest with the child;
- Has the knowledge and skills to adequately represent the child; and
- Has completed the Ohio Department of Education's training to be a surrogate parent

Surrogate parents should be assigned by the child's school district or the Court as soon as possible, but no later than thirty days after it is determined the child requires a surrogate parent.

**Exception for Unaccompanied Youth:** Appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as a temporary surrogate parent without meeting all the criteria above until a surrogate parent who does meet all criteria can be appointed.

## Issues That May Arise

### **Parental Involvement**

**Uninvolved Parents** - Children on your caseload may have a parent, biological or otherwise, meeting the definition of a parent who you perceive to be unwilling to be involved in their child's special education. While the Court has the authority to terminate parental rights and appoint another individual to make educational decisions, a parent who can be located, but is not involved in their child's special education services is not a reason to request a surrogate parent be assigned. Consider working with the school district to identify ways to encourage and support parental involvement including finding a parent mentor or advocate to support the parent's participation and holding meetings in the parent's home, over the phone, or in a way that eliminates any barriers to participation the parent may have. You should not act as the child's parent, including in signing any special education documents.

**Multiple Individuals Acting as Parent** - You may have a child on your caseload who has multiple individuals attempting to act as their parent. The biological or adoptive parent of the child is presumed to be the parent for the purposes of special education, unless parental rights have been terminated. If the biological or adoptive parent is unavailable, and it remains unclear who has the primary right to act as a parent, consider advocating before the Court for an order clarifying who holds the right.



## Issues That May Arise (cont.)

### Parental Involvement (cont.)

**Incarcerated Parents** - For children on your caseload, whose parent are incarcerated, do not automatically assume a surrogate parent is necessary. If a child's parent can be located to make decisions about their child's special education services and retains their parental rights, they are the only individual who can act as a parent. You should not act as the child's parent, including in signing any special education documents.

### Custody Status

Questions about the need for a surrogate parent may arise particularly if a child is in temporary or permanent custody of Children's Services.

**Temporary Custody** - Children in temporary custody of Children's Services typically do not require a surrogate parent, because the biological/adoptive parent has not had their parental rights terminated.

**Permanent Custody** - Children in permanent custody of the State (wards of the State) may require a surrogate parent. Importantly, a foster parent is not a parent for the purposes of special education under Ohio law, because they do not hold custody. However, a foster parent may be a surrogate parent if they meet all other requirements and are appointed or assigned by the Court or child's school district. The State, (including employees of Children's Services) is expressly prohibited from acting as a parent for purposes of special education.

## Best Practices

As a child's caseworker, you play an important role and will often serve as a point-person between the school, Court, and others involved with the child. By utilizing these best practices, you help ensure a child's rights are protected and assist in reaching positive outcomes.

- Double check for an available parent - while it is the school district and Court's responsibility to make reasonable efforts to locate a parent, you can verify what efforts have been made. If you've identified a potentially available parent, bring it to the attention of the school district or Court
- Verify a surrogate parent has been assigned, if appropriate, and keep detailed records on who is acting as parent
- Help the surrogate find ways to interact with the child and get to know the child
- Communicate with the surrogate parent
- Involve the biological/adoptive parent, if available and appropriate - if reunification is the goal, involve the child's biological/adoptive parent on matters involving the surrogate parent

## FOR SURROGATE PARENTS

Surrogate parents play a unique role in a child's life and are tasked with making decisions for 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 for the child. Children requiring a surrogate parent often have complex backgrounds and needs, so it is critical for surrogate parents to familiarize themselves with their rights, responsibilities, and best practices to ensure the child receives the special education services they require. This section contains information specific to surrogate parents beyond what is contained in the mandatory Ohio Department of Education training, including frequently asked questions, best practices, and resources.

# Information Every Surrogate Parent Needs to Know:

The Individuals with Disabilities Education Act (IDEA) and Ohio law require that children with disabilities who do not have a parent available to advocate for them in the special education process be given a surrogate parent to make decisions about special education issues and ensure that the rights of the child are protected. This document describes the rights and responsibilities of a surrogate parent, as well as important information to know as a surrogate parent.

## What is a surrogate parent?

A surrogate parent acts in the place of a child's natural parent to make decisions about the child's education when the child's natural parent is unavailable to make decisions. The surrogate parent makes decisions for 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 for the child. For a young child receiving Early Intervention services, a surrogate makes decisions for the child in all matters relating to the provision of Early Intervention services.

## Why is the role of surrogate parent so important?

IDEA is premised on strong parental participation. A "parent" requests and consents to evaluations, services and placements; participates as an equal member of the individualized education plan (IEP) team; has the right to receive educational records, progress reports, and notice of proposed changes to the IEP; has the right to request an Independent Educational Evaluation (IEE); and engages in dispute resolution options, including administrative and court proceedings. Not having a "parent" can delay evaluations and the provision of special education services. Because parental participation under IDEA is necessary to ensure access to services and important procedural rights, it is critical for every child to have someone to act as a "parent" for the purposes of special education.

## What are my rights and responsibilities as a surrogate parent?

As a surrogate parent, you make decisions for the 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.

Thus, you are responsible for representing the child when decisions about their special education program are made including:

- ❖ Evaluation and identification of the child as a student with a disability
- ❖ Development of the child's Individualized Education Program (IEP)
- ❖ Placement and least restrictive environment
- ❖ Determinations about the provision of appropriate educational services

## **Information Every Surrogate Parent Needs to Know (cont.)**

### **How long can I serve as a surrogate parent?**

You may continue to serve as a surrogate as long as you continue to meet surrogate parent requirements and your role as surrogate parent is required/no other parent is available. The child's school district is required to review your appointment at least annually.

### **Do I have a right to review the child's educational records?**

Surrogate parents have all the rights guaranteed to parents under state and federal special education laws and the Family Educational Rights and Privacy Act (FERPA). Surrogate parents can see, correct, obtain copies of, and approve or disapprove the right of other to see the child's educational records.

### **Who should sign the IEP?**

When a district assigns a surrogate to a child with a disability, the surrogate qualifies as a "parent" under the IDEA. Because a surrogate parent is included in the IDEA's definition of "parent," a surrogate parent is given all of the procedural safeguards granted to parents under the IDEA, and it is the responsibility of the surrogate to assert those rights. As a result, the surrogate parent can sign the IEP and any other special education documents.

### **What happens when the child turns 18?**

When a student with a disability turns 18, all rights of the surrogate parent transfer to the child, unless the child has been determined to be incompetent under State law, in which case educational decisions would be made by the child's court appointed guardian.

While there is no requirement that a surrogate parent be in place after the child reaches age 18, the child may still request to have a surrogate parent involved to assist with educational decision making.

### **Can I be held liable for decisions I make as surrogate parent?**

Federal and Ohio law specify that neither the surrogate parent nor the school district can be liable for civil damages for acts of the surrogate parent unless such acts constitute willful or wanton misconduct. Criminal acts by a surrogate parent would be addressed through state or federal criminal laws.

## Information Every Surrogate Parent Needs to Know (cont.)

### **The child I am advocating for is homeless. Do they have special protections I need to be aware of?**

Children who are homeless have special protections pursuant to the McKinney-Vento Act, including:

- The child may stay in the school they were in before becoming homeless or enroll in a school where the child is living temporarily.
- The child must receive the transportation to school they need regardless of living arrangement.
- The child should be enrolled in school without delay, even if the school does not receive paperwork normally required for enrollment, such as the child's birth certificate or medical records.
- The child has the right to receive free meals.
- The child must receive the same special programs and services that other children receive, including special education, migrant education, and vocational education, and the child cannot be separated from other students in a different school or different program because they are homeless.
- The child may attend either the school of origin or the school where the child now lives as the parent or surrogate parent chooses. If there is a dispute about whether the child is homeless, the chosen district must enroll the student while the dispute is resolved.
- After being placed in permanent housing, the child may stay in their original school for the rest of the school year and receive transportation to that school. This will provide stability for the child.

The Ohio Department of Education and school districts have homeless liaisons who are available to help you understand the rights of homeless children and the protections of the McKinney-Vento Act. You can reach out to the liaison for help.

# Best practices as a surrogate parent:

As a surrogate parent you are responsible for advocating for the child and ensuring their educational needs are met. For a surrogate parent to advocate effectively they must be familiar with their rights as a surrogate, important terminology and special education laws. It is the responsibility of the surrogate parent to remain up to date on the information that will help them advocate for the child.

## After being appointed or assigned as surrogate parent:

1. Confirm with the child's school district that:
  - No other parent can be identified
  - The district made reasonable efforts to locate a parent before your appointment
  - Children's Services has permanent custody of the child and/or the child is an unaccompanied homeless youth.
2. Meet with the child
  - If possible, first meet with the child alone
  - Explain that your role is to ensure that the school provides everything that the child needs to make progress in their education
  - Do not say you are acting in place of their parents or disparage their parents in any way
  - Ask the child about their strengths, interests, challenges and goals
  - Ask which teachers and subjects they like and which they do not
  - Ask where they could use more help and if they feel like they are making progress in their goals
  - Give the child a way to contact you if they have questions about their education
3. Meet with or speak to the people in the child's life
  - The important people in the child's life are likely their county child welfare caseworker, a caseworker for a private agency that contracts with the county agency, the child's guardian ad litem (GAL), a court appointed special advocate (CASA), a therapist, a foster parent, a relative with whom they live or have frequent visits, parents' friends, neighbors, and the child's parent (if appropriate and available)
  - Ask these people about the child's strengths, interests, challenges and goals
4. Request and review the child's educational records
  - The school district that appointed you will likely have a file on the child which includes grades, test scores, attendance and disciplinary history. It may also include information from the child's prior school district(s)
  - Reviewing drafts of evaluation reports and IEPs before meetings will help you prepare questions and make requests in the meeting
  - Ask about dates/times/locations for any upcoming special education meetings
  - Create a list of contacts, including the child's county caseworker, guardian ad litem, therapists, medical team, foster parent, relatives they see often, teacher(s), principal, related service providers, and the special education coordinator/director



## **Best practices as a surrogate parent (cont.)**

### **5. Identify needed evaluations, services, or placements**

Educate yourself about evaluations, services, or placements that may be appropriate based on the child's disability and needs

Review current evaluations, services, and placements and determine if they are meeting the child's needs

Request tours of the child's school and meet with their teacher, intervention specialist, therapists, and other service providers

Make prompt requests in writing for new evaluations, additional services, and changes in placement

### **6. Keep good records**

Organize the child's records in a way that is useful and accessible to you

Document dates and times of communications and meetings with individuals in the child's life

Be prepared to report to the Court (if there is an open case) about the child's educational progress

### **7. Familiarize yourself with the court order**

If you have been appointed a surrogate parent by a court, be sure to familiarize yourself with the order and any requirements listed in the order

Be prepared to provide the child's school a copy of the order

## **During a meeting in which you are acting as surrogate parent:**

### **1. Act as an advocate for the child, not the school**

Introduce yourself as a surrogate parent for the child

Ask the same critical questions as if you were advocating for your own child

### **2. Utilize dispute resolution options if necessary**

If you disagree with a school district's decision, evaluation, or IEP, consider using the dispute resolution options (including mediation, a facilitated IEP meeting and a complaint to the Ohio Department of Education) to resolve the disagreement

## **As the surrogate parent appointment continues:**

### **1. Familiarize yourself with trauma informed care practices**

Many of the children will have experienced trauma related to abuse or neglect. Children who experience homelessness or who are in the child welfare system will often experience trauma as a result of the loss of housing, loss of a parent, or placement in a restrictive setting away from friends and family.

Trauma can affect a child's ability to focus on academic tasks, regulate emotions, and control behavioral impulses. You should be familiar with trauma informed practices and utilize a trauma informed approach when working with these youth

### **2. Familiarize yourself with the rights of and resources for homeless children**

Children who are homeless have special protections pursuant to the McKinney-Vento Act. The Act aims to minimize enrollment delays and ensures the continuity of services and transportation, when necessary, to provide stability to the homeless child.

The child's district is responsible for appointing a local liaison. The liaison acts as the primary support and advocate for homeless students and provides resources, McKinney-Vento services and information. The liaison serves as the direct contact between families and school. The local liaison is responsible for the academic and non-academic support of homeless students, ensuring student enrollment and the delivery of McKinney-Vento resources to increase stability in and out of the classroom.

### **3. Stay in regular contact with the child and the people in their life**

Provide stability for the child by staying in regular communication with the child, their teachers/school, and other adults in their life

# Helpful Resources for Surrogate Parents

## Ohio Department of Education Surrogate Parent Training

- Individual modules of ODE's surrogate parent training can be accessed at any time if you need a refresher

## **Trauma Informed Care -**

- Trauma and Learning Policy Initiative's (TLPI)
  - Access free digital publications, videos, and the latest research
- Conscious Discipline:
  - Access free digital resources including printables, song lyrics, webinars, discipline tips, research articles, and Shubert's Home and School in Bug Valley, a practical hands-on example of conscious discipline structures in school, room-by-room

## **Children in Custody of Child Welfare Agencies -**

- National Center on Foster Care and Education:
  - Access national data on educational outcomes for children in foster care and the Center's Blueprint for Change
- U.S. Department of Education:
  - Access the Foster Care Transition Toolkit, guidance and regulatory information, and other information from the Department
- Ohio Department of Education:
  - Access state support documents, resources, and best practices under the Every Student Succeeds Act (ESSA)

## **ELL and Cultural Competence -**

- "Facilitating the Meaningful Participation of Culturally and Linguistically Diverse Families in the IFSP and IEP Process"
- National Education Association's Cultural Competence Training Program

## **Special Education -**

- Ohio Department of Education
  - Ohio Special Education Information
  - Special Education Dispute Resolution
  - Procedural Safeguards
- Ohio Coalition for the Education of Children with Disabilities (OCECD)
- Disability Rights Ohio