

# Educational Surrogate Parent

Educational surrogate parents are appointed for students receiving special education services when:

- ❖ Parent cannot be identified or located
- ❖ Student is state ward
- ❖ Student is unaccompanied homeless youth as defined in McKinney-Vento

A surrogate parent may not be:

- ❖ Employee of the SAU or provider agency that serves the student
- ❖ Employee of DHHS if student is state ward
- ❖ Employee of DOE
- ❖ Person with conflict of interest

## DHHS Guardian

The DHHS Child Protective Worker, as guardian, holds parental rights for regular education matters such as enrolling/registering in school and signing permission to participate in a field trip. MUSER allows for DHHS guardians as members of the IEP team, however, explicitly states that “the surrogate parent retains the sole authority to represent the child by exercising the procedural safeguards available under this rule.”

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## Educational Surrogate Parent

Most students in DHHS custody are in foster care. Foster parents are in MUSER under the definition of parent, and therefore most often hold parental rights for special education matters. For those students without someone to advocate for them as listed in the MUSER definition of parent, DOE appoints the Educational Surrogate Parent. Foster parents fulfill the role of the educational surrogate UNLESS a surrogate has already been appointed.

Educational Surrogate Parents have all the powers of a parent for special education matters for instance, waiving the right to prior notice, signing consent for special education evaluation, and signing consent for initial placement.

## Surrogate Parents

### General. (a)

- Each public agency must ensure that the rights of a child are protected when—
  - (1) No parent (as defined in §300.30) can be identified;
  - (2) The public agency, after reasonable efforts, cannot locate a parent;
  - (3) The child is a ward of the State under the laws of that State; or
  - (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

### Duties of public agency (b)

- The duties of a public agency under paragraph (a) of this section 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) For assigning a surrogate parent to the child.

### Wards of the State. (c)

- In the case of a child who is a ward of the State, the

surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

### Criteria for selection of surrogate parents (d)

- (1) The public agency may select a surrogate parent in any way permitted under State law.
- (2) Public agencies must ensure that a person selected as a surrogate parent—
  - (i) Is not an employee of the SEA, the LEA, EIS provider or any other agency that provides early intervention services, education, care, or other services to the child or any family member of the child;
  - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
  - (iii) Has knowledge and skills that ensure adequate representation of the child

### Non-employee requirement; compensation (e)

- A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

### Unaccompanied homeless youth (f)

- In the case of a child 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 without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

### Surrogate parent responsibilities (g)

- The surrogate parent may represent the child in all matters relating to—
  - (1) The identification, evaluation, and educational placement of the child; and
  - (2) The provision of FAPE to the child.

### SEA responsibility (h)

- The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.