

## Procedural Safeguards - 5.6 Surrogate Parents

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### State Performance Plan (SPP):

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(See Overview in the Introduction for information on the SPP.)

### Intent:

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To provide guidance to school districts (LEAs) on appointing an individual to represent and advocate for a child with a disability, when the parents cannot be identified or located or when the child is homeless or a ward of the state.

### Timelines:

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#### No later than 30 calendar days

A surrogate parent shall be assigned as soon as possible, but **no later than 30 calendar days** from the date it is determined that the child needs the surrogate.

## REQUIREMENT

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### **3301-51-05**

#### ***(E) Surrogate parents***

##### ***(1) General***

Each school district must ensure that the rights of a child are protected when:

- (a) No parent (as defined in rule 3301-51-01 of the Administrative Code) can be identified;
- (b) The school district, after reasonable efforts, cannot locate a parent;
- (c) The child is a ward of the state under the laws of Ohio; or
- (d) 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), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431.

##### ***(3) Wards of the state***

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 (E) (4) (c) (i), (E) (4) (c) (iv), and (E) (5) of this rule.

##### ***(4) Criteria for selection of surrogate parents***

- (c) The school district of residence must ensure that a person selected as a surrogate parent:
  - (i) Is not an employee of the Ohio Department of Education, the school district, or any other agency that is involved in the education or care of the child;
  - (iv) Has successfully completed the training prescribed by the Ohio Department of Education prior to acting on behalf of the child.

**(5) Non-employee requirement; compensation**

A person who is otherwise qualified to be a surrogate parent under paragraph (E) (4) of this rule is not an employee of the school district solely because the person is paid by the school district to serve as a surrogate parent.

**(7) Appointment of surrogate by a judge**

If a surrogate parent is appointed by a judge overseeing the child's case, upon the request of the judge, the school district of residence will confirm that the person appointed meets the requirements in paragraphs (E) (4) (c) (i), (E) (4) (c) (iv), and (E) (5) of this rule.

**(8) Child who has reached age of majority**

A child who has reached the age of majority may request a surrogate parent.

**(9) Unaccompanied homeless youth**

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 (E) (4) (c) (i) of this rule, until a surrogate parent can be appointed that meets all of the requirements of paragraph (E) (4) of this rule.

## GUIDANCE

### General

If the child does not have a biological or adoptive parent, the school district reviews the definition of "parent" to determine whether a person can be identified who is acting as a parent or serving in the parental role.

"Parent" means:

- A biological or adoptive parent of a child, but not a foster parent of a child;
- 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 a ward of the state);
- 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 who has been appointed in accordance with the procedural safeguards rule;
- Except for a person identified through a judicial decree or order to act as the parent, the biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- If a judicial decree or order identifies a specific person or persons to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*.
- If more than one party is qualified to act as the parent, the parties that may be parents are taken in the order found in the definition, unless there is a judicial decree or order identifying a specific person or persons to act as the parent of the child or to make educational decisions on behalf of the child.

For example, in the definition a "guardian generally authorized to act as the child's parent" precedes a "grandparent with whom the child lives." Therefore, the school district would consider the "guardian" to be the "parent" to represent the child with a disability.

### Ward of the state

"Ward of the state" means a child who, as determined by the state where the child resides, is:

- A foster child;
- A ward of the state; or
- In the custody of a public child welfare agency.

If a child is a ward of the state, the district must consider whether it needs to appoint a surrogate parent, but is not automatically required to appoint a surrogate parent. The district must first consult any judicial decree and follow the decree. If the decree identifies a specific person to act as a parent of the child or to make educational decisions on behalf of the child, than that person shall be considered to be the parent.

If there is a specific person who meets the definition of parent, (see above) other than a parent from whom custody is being removed by court order, the district can consider that person as the parent who can make educational decisions for the child.

If the court is removing a child from the custody of a parent, the district need not presume that that parent retains authority to make educational decisions for the child, if the decree is silent on this issue.

If a child will be placed in foster care, a surrogate parent will probably need to be appointed. If the child resides in a foster home, the foster parent is not considered to be the parent under Ohio law; however, the foster parent may serve as the surrogate parent if the foster parent meets the criteria for surrogate parents, including successfully completing the prescribed training, and is appointed by the superintendent of the district of residence.

Neither a public nor private child welfare worker meets the definition of a parent and cannot serve as a surrogate parent

### Unaccompanied homeless youth

If the child is an unaccompanied homeless youth, the school district may appoint an individual to serve as a temporary surrogate who is a staff member at an emergency shelter, transitional shelter, independent living program or street outreach program. If a staff member from one of these agencies is also employed by the Ohio Department of Education (ODE), the school district or any other agency involved in the education or care of the child, that individual may still be appointed as the child's *temporary* surrogate parent, until an individual who meets all the requirements for a surrogate parent can be appointed. However, the school district must ensure that the individual appointed as a temporary surrogate meets the other three criteria:

- Has no personal or professional interest that conflicts with the interests of the child the surrogate parent represents;
- Has knowledge and skills that ensure adequate representation of the child; and
- Has successfully completed the training prescribed by the ODE before acting on behalf of the child.

### Appointment of surrogate by a judge

If the court has appointed a guardian *ad litem*, the guardian *ad litem* is not considered to be the parent; however, the guardian *ad litem* may serve as the surrogate parent if he or she meets the criteria for surrogate parents. That person must successfully complete the prescribed training and be appointed by the superintendent of the district of residence or by a judge overseeing the child's case.

The school district should establish a procedure with the local courts to notify the school when a surrogate parent has been appointed by a judge. If a judge has appointed a surrogate parent for a child who is a ward of the state, the school district, upon request of the judge, confirms that the surrogate appointed meets the requirements. If the individual appointed by the judge has not successfully completed surrogate parent training offered by the ODE, the school district should contact the State Support Team and arrange for a training session.

### Child who has reached age of majority (age 18)

If a child with disabilities (except for a child with a disability who has been determined to be incompetent under Ohio law) reaches the age of majority (age 18) and requests a surrogate parent, the school district of residence proceeds with appointing a surrogate parent to represent the child. This includes requests from children who are incarcerated in an adult or juvenile state or local correctional institution.

The school district may not assign a surrogate solely because the parent or child to whom rights have been transferred is uncooperative or unresponsive to special education matters. Neither is a parent's lack of expertise in special education issues or lack of fluency in English a basis for assigning a surrogate parent.

## REQUIREMENT

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### **3301-51-05**

#### ***(E) Surrogate parents***

#### ***(2) Duties of the school district***

The duties of a school district of residence under paragraph (E) (1) of this rule include the assignment of an individual to act as a surrogate for the parents. This must include a method:

- (a) For determining whether a child needs a surrogate parent; and
- (b) For assigning a surrogate parent to the child.

## GUIDANCE

### Duties of the school district

If a school district serving a child with a disability believes the child may need a surrogate parent, the district should contact the child's school district of residence (see [Glossary](#) for definition) to determine whether a person can be identified who is acting as a parent.

The school district of residence maintains the ultimate responsibility for the appointment of a surrogate parent. However, the school district of residence may request the school district that the child attends to assist it in determining whether a person can be identified who is acting as a parent, and if no one can be identified as a parent, to assist the district of residence in locating and appointing a surrogate parent.

Upon appointing a surrogate parent, the school district of residence is responsible for immediately requesting that the surrogate be trained by the State Support Team.

If the surrogate parent is located in the child's district of service rather than the child's district of residence and the district of service is located in a different State Support Team region than the district of residence, the State Support Team where the surrogate is located may provide the training.

### Method for determining need

The school district attempts to locate the parents of the child with a suspected or identified disability when the district does not receive their written permission for any action requiring parental participation or does not receive consent for evaluation or special education and related services.

Attempts to locate the parents may include:

- phone calls;
- letters;
- certified letters with return receipts;
- visits to the child's home; and
- interviews with relatives and other individuals who may know the whereabouts of the child's parents.

Depending on a child's specific situation, the school district may collaborate with other individuals and organizations, such as child welfare agencies, juvenile justice personnel, county boards of MR/ DD and homeless liaisons, to determine the need for a surrogate parent. However, the school district must ensure the confidentiality of a child's personally identifiable data, information and records collected or maintained by the district (*Federal Register*, August 14, 2006, pg. 46711).

The school district should document each attempt to locate the parents of a child with a suspected or identified disability and include the documentation in the child's education record.

## REQUIREMENT

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### **3301-51-05**

#### ***(E) Surrogate parents***

##### ***(4) Criteria for selection of surrogate parents***

- (a) A surrogate parent shall be assigned as soon as possible but no later than thirty days of the date that it is determined that the child is in need of the surrogate.
- (b) The school district of residence maintains the ultimate responsibility for the assignment of a surrogate parent. If requested by the school district of residence and mutually agreed upon, the school district of attendance, county board of mental retardation and developmental disabilities (county board of MR/ DD), or other educational agency may appoint the surrogate parent.
- (c) The school district of residence must ensure that a person selected as a surrogate parent:
  - (i) Is not an employee of the Ohio Department of Education, the school district, or any other agency that is involved in the education or care of the child;
  - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents;
  - (iii) Has knowledge and skills that ensure adequate representation of the child; and
  - (iv) Has successfully completed the training prescribed by the Ohio Department of Education prior to acting on behalf of the child.

##### ***(5) Non-employee requirement: compensation***

A person who is otherwise qualified to be a surrogate parent under paragraph (E) (4) of this rule is not an employee of the school district solely because the person is paid by the school district to serve as a surrogate parent.

## GUIDANCE

### Appointment of Surrogate by School District

The school district of residence must utilize all information available to determine whether the child needs a surrogate. If review of this information indicates the child needs a surrogate parent, the school district appoints a surrogate parent as soon as possible, but no later than 30 days of the date the need was determined. The appointment of a surrogate parent does not require Board of Education action.

If the child is attending another school district or a program provided by a county board of MR/ DD or other educational agency, the school district of residence may ask that district or agency to appoint the surrogate parent.

The school district should confirm this appointment through a written notice that includes the term of the surrogate parent's appointment. The school district should send copies of this notice, to the extent allowed by the law, to the child's case worker and any other professionals who are involved with the child, and should record this appointment in the child's education record.

If the surrogate parent is appointed by the child's school district of attendance or another agency providing the child's special education, the school district of residence should request that it be provided a copy of the notification of appointment.

## Recruitment

The school district should recruit and train individuals from the community to serve as surrogate parents. Interested and otherwise qualified individuals should be invited to attend a training session conducted by the State Support Team. Sources for individuals who might serve as surrogate parents may include:

- PTA groups;
- Parent advisory boards at local schools;
- Local chapters of various associations for children; and
- Local civic organizations and service clubs.

The school district should maintain a list of individuals who have successfully completed the surrogate parent training. This list should include each person's current and previous employment; experience with children with disabilities; education or training related to children with disabilities; possible conflicts of interest; and other relevant information. Examples of possible conflicts of interest include:

- The person might benefit personally, professionally or financially from decisions regarding the child;
- The person may be required to make decisions regarding the child that might affect policy in which the individual has a personal, professional or financial interest; or
- The person is not able to faithfully represent the child because of an institutional bias or interest.

## Criteria for selecting surrogate parents

The school district of residence appoints a surrogate parent who:

- Is not an employee of the ODE, the school district, or any other agency that is involved in the education or care of the child;
- Is not an employee of any other school district;
- Has no personal or professional interest that conflicts with the child's interests;
- Has knowledge and skills that ensure adequate representation of the child; and
- Has, before acting on behalf of the child, successfully completed the training prescribed by the ODE.

The school district should take the following factors into consideration when matching a child with a surrogate parent:

- Cultural similarities or familiarity with the child's culture;
- Language compatibility; and
- Prior involvement with the child.

The school district should apply its policies for volunteers (e.g., requiring personal references or background checks) to the appointment of a surrogate parent, as appropriate. A person who qualifies to be a surrogate parent and is paid by the district in that capacity does not become an employee of the school district.

## REQUIREMENT

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### **3301-51-05**

#### ***(E) Surrogate parents***

#### ***(10) Surrogate parent responsibilities***

The surrogate parent may represent the child in all matters relating to:

- (a) The identification, evaluation, and educational placement of the child; and
- (b) The provision of FAPE to the child.

#### ***(6) Civil damages***

Pursuant to section 3323.051 of the Revised Code, neither the surrogate parent nor the authority that assigned the surrogate parent shall be liable in civil damages for acts of the surrogate parent unless such acts constitute willful or wanton misconduct.

## GUIDANCE

The school district gives the surrogate parent the same cooperation it gives to a natural parent in matters regarding the provision of special education to the child.

### Case load

The school district decides the number of children a surrogate parent may represent. This decision takes into consideration the surrogate parent's interests, abilities and availability.

### Term of appointment

The school district is responsible for monitoring each appointed surrogate parent. The school district should review the appointment of surrogate parents annually to ensure that:

- The rights of the child are protected;
- The surrogate parent continues to meet the eligibility requirements; and
- The surrogate parent actively participates in the special education decision- making process.

The school district determines the surrogate parent's term of appointment. Surrogate parents should be appointed on an annual basis and reappointed if the child being represented continues to need a surrogate. The district notifies the surrogate parent of the reappointment through a written notice and records the reappointment in the child's educational record.

The school district may terminate the appointment of the surrogate parent (except for a surrogate appointed by the court) before the expiration date of the agreed- upon period. There are several circumstances under which the school district may choose to discontinue an assignment:

- The child reaches the age of majority (age 18) and is not requesting a surrogate parent after his or her 18<sup>th</sup> birthday;
- The child moves to another district;
- The child is no longer eligible for or in need of special education, except when the termination of the special education is being contested;
- The natural or adoptive parent, or someone else who is qualified to serve as the parent, has been identified or located;
- The surrogate parent has a conflict of interest not previously identified (if a conflict of interest arises after the assignment of a surrogate, the authority that made the assignment shall terminate it and assign another surrogate [ORC 3323.051]);
- The surrogate parent is not involved in representing the child because the surrogate parent is not attending meetings or not responding to school district correspondence regarding the child; or
- The appointed surrogate is no longer eligible or willing to serve.

The school district informs the surrogate parent of his or her termination and the reason for the termination through a written notification.

Public agencies have a responsibility to ensure that a surrogate parent is carrying out his or her responsibilities, so there are circumstances when removal may be appropriate. A mere disagreement with the decisions of a surrogate parent about appropriate services or placements for the child, however, generally would not justify a removal, since the role of the surrogate parent is to represent the interests of the child, which may not be the same as the interests of the public agency (*Federal Register*, August 14, 2006, pg. 46712).

## Compensation

The school district may, but is not required to, compensate the surrogate parent by reimbursing expenses and paying an hourly or per diem rate. 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 school district to serve as a surrogate parent.

## Liability

Under Ohio's laws, the surrogate parent and the authority that assigned the surrogate parent are protected from liability in civil damages for acts of the surrogate parent, unless such acts constitute willful or wanton misconduct. However, if the school district has specific questions regarding the surrogate parent and liability, the district should forward them to its legal counsel.

### **LEGAL CITATIONS:**

#### **Federal Statutes:**

20 U.S.C. 1414(b) (2) (A) and (B)

#### **Federal Regulations:**

34 CFR §300.519

#### **Ohio Revised Code: (Policies)**

ORC 3323.05(B) and 3323.051

#### **Operating Standards:**

3301-51-01(B) (42)

3301-51-05(E) (1)- (10)

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#### **FORMS** (\* = required)