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FAQs About Special Education: Surrogate Parents for Children with Disabilities

The Individuals with Disabilities Education Improvement Act (IDEIA) requires that children with disabilities who do not have parents to advocate for them in the special education process be given a surrogate parent to make decisions about special education issues. This FAQ describes the process for determining when a child with a disability needs a surrogate parent and the surrogate's responsibilities.

Question: *What is a surrogate parent?*

Answer: 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. A parent is unavailable when he or she cannot be located or when he or she chooses not to act as a parent for the child. A parent is also unavailable if he or she has lost the ability to act as parent by court order. The surrogate parent represents 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 receiving Early Intervention services, a surrogate represents the child in all matters relating to the provision of Early Intervention services.

Question: *Who needs a surrogate parent?*

Answer: A child in special education or Early Intervention needs a surrogate parent in four situations:

- 1) No parent can be identified; or
- 2) The school or service provider, after reasonable efforts, cannot find the child's parent; or
- 3) The child is a ward of the State (and the parent has lost the right to make educational decisions); or
- 4) The child is homeless and not in the physical custody of a parent or guardian.

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If the child's natural parent is available the natural parent should be making educational decisions for the child unless that parent has lost the right to do so under State law. For example, a parent who has lost permanent custody of his child cannot act as parent, but one whose child is temporarily in the custody of the State can still act as parent unless a State law prevents him from doing so.

Question: *Who can be considered a parent?*

Answer: Someone other than a child's natural parent can be considered a parent in special education and Early Intervention. If a person is available who can act as the child's parent, a surrogate parent does not need to be appointed. "Parent" means:

- A natural or adoptive parent of a child
- The parent with legal custody of the child if the parents are separated or divorced
- The guardian or custodian, but not the State if the child is a ward of the State (for example, when child welfare has permanent custody of the child)
- A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare)
- A surrogate parent who has been appointed for the child under the IDEIA.

Question: *Can a foster parent act as a child's parent or surrogate parent?*

Answer: Yes. A foster parent may act as a parent for children eligible for special education and Early Intervention if:

- The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and
- The foster parent:
 - Has an ongoing, long-term parental relationship with the child;
 - Is willing to make the educational decisions required of parents ; and
 - Has no interest that would conflict with the interests of the child.

While there is no law that specifically prohibits it, the Ohio Department of Education interprets Ohio law to prevent a foster parent from acting as parent.

A foster parent may also be appointed as surrogate parent for a foster child if the foster parent does not meet the qualifications to be a "parent" and meets the qualifications for being a surrogate.

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Question: *How is a surrogate parent assigned to a child?*

Answer: For a child in special education, the child's school district of residence¹ is responsible for the assignment of a surrogate parent. The school must have a method for determining whether a child needs a surrogate and for assigning surrogates. If a child needs a surrogate parent one must be assigned as soon as possible and within thirty days of determining the need. For children in Early Intervention, the Ohio Department of Health is responsible for ensuring that a surrogate is assigned. For children who are wards of the state, the judge overseeing the child's care can also appoint the surrogate.

Question: *What are the qualifications of a surrogate parent?*

Answer: A surrogate parent must have knowledge and skills that ensure adequate representation of the child. 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 match the child's cultural and linguistic background. The Ohio Department of Education requires that surrogates must successfully complete training for surrogate parents. The Ohio Department of Health requires that the surrogate have knowledge and skills necessary to ensure the adequate representation of the child.

Question: *Who cannot be a surrogate parent?*

Answer: Someone who is an employee of a State, local or any other public agency that is involved in the education or care of the child cannot be a surrogate. This is because that person could have a conflict of interest with the child. 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.

Someone who is an employee of a nonpublic agency that provides only non-educational care for the child can be a surrogate if they have the knowledge and skills, no conflict of interest and otherwise meet the criteria for being a surrogate parent, including surrogate training requirements.

Question: *Can a surrogate parent be liable for decisions made as surrogate?*

Answer: 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 would be addressed through state or federal criminal laws.

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Question: How long can a surrogate parent act as surrogate parent?

Answer: A surrogate parent may continue to serve as surrogate as long as she continues to meet surrogate parent requirements. The school is required to review every year the appointment of each parent surrogate to ensure that the rights of the child are protected. Similarly, the appointment of a surrogate for a child in early intervention must be reviewed at least annually. 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 appointed guardian.

Question: What if I believe a child with a disability needs a surrogate parent?

Answer: If you believe a child with a disability needs a surrogate parent, you should contact the child's school district special education department. For children in early intervention, contact the Ohio Department of Health (ODH) at 614-644-8389. If the school or ODH fail to appoint a surrogate parent required by law, anyone can file a complaint with the Ohio Department of Education (ODE) or ODH. Complaints about surrogate parents who do not meet surrogate parent qualifications or who otherwise fail to ensure that the rights of the child are protected may also be made to ODE or ODH.

Footnotes

¹ School district of residence means the school district in which the child's parents reside, a community school if the child is enrolled in a community school, the last school district in which the child's parents are known to have resided if the parents' whereabouts are unknown, or a school district of residence as determined by a court.

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Additional OLRS Resources

OLRS web site: **www.olrs.ohio.gov**

The OLRS web site can be accessed to view or download OLRS publications on special education and to get additional information.

• **Other OLRS Information and Referral Packets available are:**

- #1 What can I do to get my school to follow my child's Individualized Education Program (IEP)?**
- #2 What can I do if my child is being harassed in school?**
- #3 What can I do if my child is having behavior problems in school?**
- #4 How do I get an extended school year (ESY) for my child?**
- #5 How do I get my school-aged child evaluated for special education?**
- #6 How do I get related services for my child?**
- #7 FAQs About Special Education, Private Insurance and Medicaid**
- #8 Early Intervention Services, Payment for Services**
- #10 Transition Planning for Students with Disabilities**

Contact OLRS intake for your free copy of any of these packets, or download a copy from the OLRS web site.

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