

**TECHNICAL ASSISTANCE ON THE IMPLEMENTATION  
OF THE SURROGATE PARENT REQUIREMENTS**



**SURROGATE PARENT**  
*(Questions and Answers)*

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## Introduction

As you are well aware, the Individuals with Disabilities Education Act (IDEA) Part B and Part H (which will be Part C once reauthorization of the IDEA becomes effective in July 1, 1998) requirements for Surrogate Parents are very similar. In meeting the Part C requirements in this area, the Virginia Policies and Procedures state that local interagency coordinating councils can develop procedures of their own "or have coordinated efforts with their respective local educational agencies to meet the policies...." Many local early intervention councils have established such arrangements to ensure that the requirements for the availability of surrogate parents are met.

To assist local school districts, the Virginia Department of Education has prepared and made available a Questions and Answers document related to the IDEA, Part B surrogate parent requirements. That document is attached for your information but some important changes have been made. The original Virginia Department of Education document is printed in regular text, questions in bold and answers not in bold. As appropriate, Part C, referred to in this document as IDEA Early Intervention, notations or references are printed in *italics* next to the relevant Part B terminology. Please note that the early intervention phrase "public agency", used in lieu of "school division" refers to that entity determined by the local council to oversee and implement the surrogate parents procedures.

We hope that this document is helpful to you. Please contact the IDEA Early Intervention office if you have additional questions.

## **SURROGATE PARENT** (Questions and Answers)

*Note: All IDEA Early Intervention notations are in italics.*

All Department of Education Part B language is in regular text.

**All questions are in bold.**

### **I. WHEN TO APPOINT A SURROGATE PARENT**

**A surrogate parent should be appointed when (1) no parent can be identified; (2) the LEA/*the public agency*, after reasonable effort, cannot discover the location/*determine the whereabouts* of the parent; (3) the legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law, or (4) *the child is a ward of Virginia under the laws of the Commonwealth.***

**1. Must a surrogate parent be appointed if the parents and their location are known but they have moved out of the area?**

No, a surrogate parent should not be appointed because the parents' location is known and contact can be made. A surrogate parent is appointed only when (1) the parents cannot be identified; (2) the LEA/*public agency*, after reasonable efforts, cannot discover the location/*determine the whereabouts* of the parent; (3) legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law; or (4) *the child is a ward of Virginia under the laws of the Commonwealth. Wards of Virginia are children for whom parental rights have been terminated by the court or whose parents have permanently entrusted them to a local department of social services.*

**2. If a relative or private individual has been allowed to act as parent by a natural parent, should a surrogate parent be appointed?**

No, a surrogate parent should not be appointed. The State regulations and *IDEA Early Intervention Policies and Procedures* include, in the

definition of parent, persons acting as a parent of a child. This means that a person acting in the place of a parent such as a grandmother or stepparent with whom the child lives has the authority to represent the child in educational/*early intervention* matters. Consequently, the child does not require a surrogate parent.

**3. Is a surrogate parent appointed for all children placed in the temporary custody of foster parents?**

No, a surrogate parent is not appointed unless (1) the parent cannot be located; (2) the LEA/*public agency*, after reasonable efforts, cannot discover the location/*determine the whereabouts* of the parent; (3) legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order; or (4) *the child is a ward of Virginia under the laws of the Commonwealth.*

**4. Is a surrogate appointed when a child with a disability is placed in the permanent custody of foster parents?**

No, a surrogate is not appointed for a child in permanent foster care because a child's permanent foster care parents are "parents" as defined by 34 CFR §300.13/34 CFR 303.18 and accordingly, have the authority to represent the child in educational/*early intervention* matters. Furthermore, the Code of Virginia §63.1-206.1 gives foster parents the authority to consent to educational matters.

**5. Is a surrogate parent to be appointed when a child with a disability is placed with a legal guardian?**

No, a surrogate appointment is not necessary if the child is placed with a legal guardian because under both Federal regulations and state regulations "guardian" is included in the definition of parent. Therefore, since a legal guardian is a "parent" there is no need to appoint a surrogate parent.

**6. Should a surrogate parent be appointed where the parents leave the state for one year?**

No, *the appointment of a surrogate parent is not required* when the parents leave the state for a year as long as the parents can be identified and located, and have not lost their parental rights (Although not required, it could assist the LEA/*public agency* to have the parents sign a document indicating that another party will be speaking for the parents regarding the educational/*early intervention* needs of the child).

**7. Are surrogate parents appointed only for children suspected of, or identified as, having a disability?**

Yes, surrogate parents are required only for children who are suspected of, or identified as, having a disability, and who also meet the other requirements pertaining to the availability of their parents.

**8. Whose responsibility is it to appoint surrogate parents when the child is receiving services within a state residential facility?**

If it is determined that a surrogate needs to be appointed, the state residential facility has the responsibility to determine whether or not a surrogate parent was appointed in the local school division/*local council* jurisdiction prior to the student/*child* being placed in the facility. If a surrogate does not currently exist for the child in the facility then the facility would appoint a surrogate parent.

**9. Does the school division/*public agency* have to have the permission of any other agency to appoint a surrogate parent?**

No, the school division/*public agency* does not need the permission of another agency to appoint surrogates. The appointment of a surrogate parent is made by the public agency which has legal responsibility for the education of the child/*the local council which has responsibility to ensure the early intervention of the child.*

- 10. Could a surrogate be appointed for a child in foster care and under the custody of a local Department of Social Services where the parents rights have not been terminated if the parents do not want an IDEA Early Intervention evaluation?**

*No, In accordance with federal IDEA Early Intervention regulations, Virginia's Policies and Procedures related to surrogate parents ensure that the rights of children eligible under IDEA Early Intervention are protected if: (1) no parent can be identified; (2) the public agency, after reasonable efforts, cannot determine the whereabouts of a parent; (3) legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court Order or permanent entrustment agreement pursuant to applicable law; or (4) the child is a ward of Virginia under the laws of the Commonwealth.*

*Since the parents' rights have not been terminated by the Court, IDEA Early Intervention regulations do not allow for the appointment of a surrogate in this situation.*

- 11. If a child is under the custody of the Department of Social Services and parental rights have been terminated, but both the natural parent and the foster parent are available to participate in the IFSP process, must a surrogate be appointed?**

*Yes, a surrogate must be appointed since the child is under the custody of the Department of social Services and parental rights have been terminated. The foster parent may be appointed as the surrogate as long as the foster parent: (1) has no interest that conflicts with the interest of the child; (2) has knowledge and skills that ensure adequate representation of the child; and (3) has received required training.*

*It is the practice of the Department of Social Services, whenever appropriate and feasible, to involve natural parents as much as possible. Natural parents should participate in the development of the IFSP if they are available, when they will be the one implementing the plan. However, if there are disagreements between the natural, foster and perhaps surrogate parent, the surrogate parent has final authority.*



## II. CRITERIA FOR SELECTION OF A SURROGATE PARENT

A surrogate may be selected in any way permitted under State law. A person selected as a surrogate shall have no interest that conflicts with the interest of the child he or she represents; have knowledge and skills that insure adequate representation of the child (The prospective surrogate parent must have completed an *SEA/local interagency coordinating council* approved training session prior to representing the child. The *LEA/local interagency coordinating council* shall provide training, at least annually, for surrogate parents); not be an employee of a public agency/*any agency* which is involved in the education or care of the child/*involved in the provision of early intervention or other services to the child*; be an adult and legal citizen of the United States; and reside in the same general geographic area as the child, whenever possible.

**1. *If the appointment of a surrogate parent is required for a child, Can a child's foster parents also be his surrogate parents?***

Yes, a child's temporary foster parents may be appointed as the surrogate parent as long as (1) the temporary foster parent has no interest that conflicts with the interests of the child; (2) the temporary foster parent has knowledge and skills that ensure adequate representation of the child; and (3) the temporary foster parent has received the required training.

**2. *Where a foster parent is appointed as a surrogate parent, then new foster parents are selected for the child, does this automatically terminate the surrogate parent appointment?***

No, transfer of child to a different foster parent would not automatically result in a change of appointment of a surrogate parent. A change in appointment would occur prior to the expiration date of the surrogate's appointment if the surrogate parent is no longer able to objectively represent the educational/*early intervention* interests of the child. *Local councils are to have established procedures, or have coordinated efforts with respective local education agencies, which include conditions and methods for changing or terminating the assignment of a surrogate parent before the appointment has expired.* Depending on the circumstances surrounding the change in temporary foster parents,

it is possible that the former foster parents no longer meet the eligibility criteria (e.g. alleged abuse).

**3. Can both husband and wife serve jointly as surrogate parents?**

Yes, husband and wife can serve jointly as surrogate parents. Only one surrogate parent is needed; however, nothing would prohibit a husband and wife serving jointly as surrogates as long as they both meet the criteria for selection of a surrogate. In making this decision, LEAs/*public agency* need to be aware that disagreements may sometimes occur between two surrogate parents.

**4. Does a person have to repeat training in subsequent years to be eligible for reappointment as a surrogate parent?**

**No**, repeat training is not required by the SEA/*DMHMRSAS*. A person may repeat the training if he wishes or if the LEA/*local interagency coordinating council* requires it.

**5. Is it a conflict of interest to use LEA Advisory Committee/*local interagency coordinating council* members as surrogate parents?**

**No**, a conflict of interest does not exist merely because a prospective surrogate is on the LEA Advisory Committee/*local interagency coordinating council*. Before appointing an LEA Advisory Committee/*local interagency coordinating council* member as a surrogate, however, the school division/*public agency* should ensure that no conflict of interest exists, that the person has knowledge and skills that ensure adequate representation of the child, and that the person has received the required training.

**6. Can a person from a public agency serve as a surrogate?**

A person assigned as a surrogate may not be an employee of an agency which is involved in the education and care of the child/*provision of early intervention or other services to the child*. LEAs/*public agencies* should use caution in determining whether the selection of public agency employees or retired agency employees would be appropriate in order to avoid a conflict of interest or potential bias. LEAs/*public agencies* are urged to appoint other third parties

instead of public agency employees or retired public agency employees to serve as surrogate parents.

**7. Are employees of private agencies which operate small group homes eligible to serve as surrogate parents for children with disabilities committed to that agency?**

Employees of private agencies which operate small group homes may serve as surrogate because the facility is not a "public agency" or a public agency involved in the education or care of the child. LEAs should use caution in determining the appropriateness of such an appointment because of the potential conflict of interest or bias.

*IDEA Early Intervention regulations do not make a distinction between employees of "public" and "private" agencies. Therefore, it would not be permissible for an employee of such an agency to serve as a surrogate parent for a child under IDEA Early Intervention as described in this question.*

**8. Is an employee of the private facility which a child attends eligible to serve as a surrogate parent for the child?**

Employees of a private facility may serve as surrogate parents because the facility is not a "public agency or a public agency involved in the education or care of the child". An employee of a private facility may, however, have a conflict of interest as a surrogate parent if he is put in the position of advocating for, or against, placing the child in the private facility.

*As in the response to #7, IDEA Early Intervention regulations do not distinguish between a "public" and "private" agency, so it would not be permissible for the employee to serve as the child's surrogate parent for IDEA Early Intervention purposes.*

**9. Are there any additional considerations for the selection and appointment of a surrogate parent for a child under IDEA Early Intervention?**

*Yes. It is recommended that the following be considered:*

- (1) appointment of a relative to serve as a surrogate parent;*
- (2) appointment of a foster parent who has the knowledge and skills to represent the child adequately; and*
- (3) appointment of a qualified person of the same racial, cultural, and linguistic background of the child.*

**III. RESPONSIBILITIES OF A SURROGATE**

**A surrogate may represent the child in all matters relating to (1) the identification, evaluation, and educational placement of the child/*the evaluation and assessment of the child, development and implementation of the child's IFSPs, including annual evaluations and periodic reviews,* and (2) the provision of a free appropriate public education to a child/*the ongoing provision of early intervention services to the child, and any other rights established under this part.***

**1. When a child is in foster care, who has authority to sign *IFSPs*, the surrogate or foster parent?**

The surrogate parent. When the surrogate and foster parents are different the ultimate decision relative to the identification, evaluation and placement/*evaluation, assessment and provision of early intervention services to* of a child who is suspected of having or determined to have a disability rests with the surrogate parent.

**2. Does the surrogate parent sign the form for a child with a disability to take field trips?**

No, the surrogate parent does not sign the consent form for field trips unless it is part of the *IFSP*. The surrogate parent only represents the

child in matters relating to the identification, evaluation and placement of the child, or the provision of a free appropriate public education/*evaluation, assessment and provision of early intervention services* to the child. However, if the surrogate parent is also the foster parent, the consent form would be signed by the surrogate parent.

**3. What educational/early intervention decisions can the surrogate parent make while representing the child?**

The surrogate parent may make any decisions pertaining to the identification, evaluation and placement of the child, or the provision of a free appropriate public education/*evaluation, assessment and provision of early intervention services* to the child. In addition, the surrogate parent is the appropriate person to request a due process hearing on behalf of the child.

**4. Who signs the release of information where social services requests confidential information?**

The surrogate parent signs for release of information if the requested records concern the identification, evaluation, and placement of the child, or the provision of a free appropriate public education/*evaluation, assessment and provision of early intervention services* to the child with a disability.

**5. When a child is in the custody of the Department of Social Services, who requests a due process hearing?**

The surrogate parent *may* request a due process hearing. The Department of Social Services does not have legal authority to request a due process hearing.

**6. What is the caseload for a surrogate parent?**

There is no specific caseload requirement.

**7. Are there any situations in which the DSS social worker could sign permission forms, release forms, and/or the IFSP?**

*According to 34 CFR 303.406(e), for a child who has a surrogate parent, that parent represents the child in all matters related to IDEA Early Intervention including signing permission forms for evaluation and services, release of records forms, and the IFSP. No one but the surrogate is authorized to sign any forms which relate to the child's participation in IDEA Early Intervention.*

*However, the IDEA Early Intervention office and the IDEA Early Intervention Interagency Management Team feel that the social workers working for local departments of social services are an important and valuable asset to the child. Accordingly, they should be involved to the fullest and invited to the IFSP and other relevant meetings. Helping families to get to the appropriate meetings as related to the child's participation in early intervention services is just one of the many ways they can help to include families.*

**IV. REVIEW OF; RENEWAL OF; TERMINATION OF THE SURROGATE ASSIGNMENT**

**The surrogate parent shall serve during, or for the duration of, the school year/*calendar year* for which he is appointed. At the conclusion of each school year/*annual IFSP review*, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA/*public agency*.**

**The assignment of a surrogate may be terminated only when one or more of the circumstances occur as follows: (1) the child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship)/*the child ages out of the IDEA Early Intervention system*; (2) the child is found no longer eligible for special education/*early intervention* (except when termination of special education/*early intervention* services is being contested); (3) legal guardianship responsible for the child is transferred to a person who is able to carry out the role of parent; (4) a parent, who was previously unknown or**

unavailable, is now known or available; or (5) the appointed surrogate is no longer eligible (see "Criteria for Selection of a Surrogate Parent").

**1. Can a surrogate be appointed and the appointment terminated later?**

The assignment of a surrogate parent may be terminated prior to the expiration of his appointment only when one or more of the following circumstances occur:

- (1) The child reaches the age of majority and the child has not been declared legally dependent/*ages out of the IDEA Early Intervention system*;
- (2) The child is found no longer eligible for special education/*early intervention services (except when termination of services is being contested)*;
- (3) Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent;
- (4) A parent who was previously unknown or unavailable, is now known or available; or
- (5) The appointed surrogate parent is no longer eligible under the eligibility criteria set out in the regulations.

**2. Under what conditions may a school division/public agency not renew an appointment of a surrogate parent?**

Conditions for non-renewal of a surrogate parent include when:

- (1) The child reaches the age of majority and has not been declared legally dependent/*ages out of IDEA Early Intervention*;
- (2) The child is no longer eligible for special education/*early intervention services*;
- (3) Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent;

- (4) A parent who was previously unknown or unavailable, is now known or available; or
- (5) The appointed surrogate parent is no longer eligible under the eligibility criteria set out in the regulations.

Conditions for non-renewal may not be the result of the surrogate parent's requests for a due process hearing, filing of a written complaint, requests for copies of the student's/*child's* records, challenges to the content of the student/*child* record, or requests for independent educational evaluations. Should non-renewal occur, the surrogate parent has the right to request a hearing to challenge the non-renewal.