

Surrogate Parents- 10 Frequently Asked Questions

1) How does the Code of Federal Regulations define “parent” for students with a disability eligible to receive special education services or suspected of being eligible to receive services?

Section 300.30(a) of Title 34, Code of Federal Regulations (CFR) defines “parent” as:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (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 a ward of the State);
- (4) An individual acting in 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
- (5) A surrogate parent who has been appointed in accordance with 34 CFR §300.519 or section 639(a)(5) of the Act

2) Which students need surrogate parents?

A student with a disability who is eligible to receive services under IDEA (Individuals with Disabilities Education Act)- or a student who is suspected of being eligible for IDEA services- needs a surrogate parent under the following circumstances:

- When the natural parent or guardian is unknown or the whereabouts cannot be determined;
- When the child is a ward of the state or ward of the court (parental rights terminated);
- When the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act; or
- When a court of competent jurisdiction has determined that no person has the authority, willingness or ability to serve as the educational decision-maker for the student without judicial action (Rule 6A-6.0333, FAC)
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3) Which “parent” takes precedence for educational purposes when a student has “parents” in more than one of these categories?

According to 34 CFR §300.30(b), unless there is a judicial decree or order identifying a specific person or persons under the definitions of parent in 34 CFR §300.30 (a)(1) through (4) (See #1 above), the biological or adoptive parent, when attempting to act

as the parent, “must be presumed to be the parent...unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.”

4) What is a surrogate parent?

A surrogate parent is a person who has been appointed to represent the educational interests of a student with a disability who does not have a parent or guardian who can act in his or her interests.

5) What are the minimum qualifications of a surrogate parent?

In accordance with s. 39.0016(3)(b)2., F.S., the following are the minimum qualifications of a surrogate parent:

- Be at least 18 years of age
- Have no personal or professional interest that conflicts with the interests of the child whom the surrogate represents
- Not be an employee of the local school board or other public or private agency involved in the education or care of the child
- Have knowledge, skills and experience demonstrated by successful completion of training using materials developed and approved by the Bureau of Exceptional Education and Student Services

6) Who appoints surrogate parents?

The district school superintendent appoints surrogate parents for students who are eligible or suspected of being eligible for special education and related services. A surrogate parent for a student who is a ward of the state may also be appointed by the judge overseeing the student’s case, provided the surrogate parent meets the qualifications as described in question #5. The appointment of a surrogate parent (specifically named) by the court must be entered as an order of the court, with a copy provided to the school as soon as possible.

All requirements and eligibility for, and of, a surrogate parent, are the same regardless of whether the surrogate parent is appointed by the school district or the court. The school district must accept the appointment of the court if the district has not already appointed a surrogate. Similarly, the court must accept a surrogate parent duly appointed by a school district superintendent.

7) Can an individual appointed as a Guardian ad Litem serve a surrogate parent?

Yes, if they meet the legal criteria listed in question #5, they may serve as surrogate parents. The school district superintendent must first consider the child's guardian ad litem when appointing a surrogate parent, if he/she has not previously appointed a surrogate parent (s. 39.0016(3)(b)3., F.S.)

8) Do students with disabilities who live with foster parents need surrogate parents?

It depends. A therapeutic foster parent may not serve as a parent. Otherwise, a foster parent meets the definition of parent as a "person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent". A foster parent is not considered an agency employee solely because they receive payment (room and board) for a child cared for in the foster home. Foster parents serve as "parents" to students with disabilities in educational matters.

However, if the foster parent does not have an "ongoing, long-term parental relationship" with the child or is unwilling or unable to represent the child's educational interests, a surrogate parent may be needed.

9) Do students with disabilities who live in group homes, therapeutic foster homes, and residential facilities other than foster homes need surrogate parents?

Yes, unless the student's parent or guardian has retained the right to make educational decisions. Operators and staff of group homes, therapeutic foster homes, and residential facilities—other than foster home—may not serve as a surrogate parent due to the requirement that the surrogate parent have no interest that conflicts with the interest if the child represented.

10) What is the duration of the surrogate parent appointment?

Section 39.0016(3)(b)6., FS, provides for a surrogate parent to continue in the appointed role until one of the following circumstances occurs:

The child is no longer eligible for, or in need of, special education services.

The legal guardianship of the child is assigned to a person who is able to assume the role of the parent

The parent who was previously unknown becomes known, whose whereabouts were previously undiscovered are discovered, or who was unavailable becomes available.