

# Administrative Regulation

**Instruction**

**AR 6159.3**

## Appointment of Surrogate Parent for Special Education Students

### Conditions Necessitating a Surrogate

\*\*\*Note: Pursuant to 20 USC 1415(b)(2), districts and/or Special Education Local Plan Areas (SELPA) are mandated to adopt procedures to protect the rights of students by appointing a surrogate parent under the following circumstances.\*\*\*

The Superintendent or designee shall appoint a surrogate parent to represent a student with disabilities under one or more of the following circumstances: (Government Code 7579.5; 20 USC 1415(b)(2); 34 CFR 300.515)

\*\*\*Note: 34 CFR 300.20 and 300.515 provide that the definition of "parent," as used below, includes a foster parent. Education Code 56505 provides that a foster parent shall have the same rights relative to his/her foster student's education as a parent/guardian. See BP/AR 6159 - Individualized Education Program.\*\*\*

1. No parent/guardian for the student can be identified.
2. The district, after reasonable efforts, cannot discover the location of a parent or legal guardian of the student.

\*\*\*Note: Pursuant to Government Code 7579.5, when a student is a ward of the court, the district would appoint a surrogate parent only when the court has limited the right of the parent/guardian to make educational decisions for his/her child and the student has no responsible adult, such as a foster parent, to represent him or her. Since Welfare and Institutions Code 361 and 726 require the juvenile court to appoint a responsible adult when the court limits parental rights, it will rarely be necessary for the district to appoint a surrogate pursuant to item #3 below because that appointment would be superseded by the court's appointment of a responsible adult or foster parent.\*\*\*

3. The student is adjudicated a dependent or ward of the court pursuant to Welfare and Institutions Code 300, 601 or 602 and all of the following conditions are satisfied:
  - a. The court has referred the student for special education and related services or the student has a valid individualized education program (IEP)
  - b. The court has specifically limited the right of the parent/guardian to make educational decisions for his/her child
  - c. The student has no responsible adult to represent him or her pursuant to Welfare and Institutions Code 361 or 726 or Education Code 56055(cf. 6159 - Individualized Education Program)

\*\*\*Note: In 2004, P.L. 108-446 amended 20 USC 1415(b)(2), effective July 1, 2005, to require the appointment of a surrogate parent for an unaccompanied homeless youth, as specified below.\*\*\*

4. The student is an unaccompanied homeless youth not in the custody of a parent/guardian, as defined in 42 USC 11434a  
(cf. 6173 - Education for Homeless Children)
5. The student has reached the age of majority but has been declared incompetent by a court of law

## Appointment of Surrogate Parents

\*\*\*Note: Pursuant to 20 USC 1415(b)(2)(B), as amended by P.L. 108-446, effective July 1, 2005, districts and/or SELPAs are mandated to adopt procedures to make reasonable efforts to appoint a surrogate parent within 30 days of the determination that a surrogate is needed.\*\*\*

Upon a determination that a student needs a surrogate parent, the Superintendent or designee shall make reasonable efforts to ensure that the surrogate is appointed within 30 days. (20 USC 1412(b)(2)(B))

When appointing a surrogate parent, the Superintendent or designee shall give first preference to a relative caretaker, foster parent or court-appointed special advocate, provided any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the Superintendent or designee shall select the surrogate parent of his/her choice. If the student is moved from the home of the relative caretaker or foster parent who was appointed as the student's surrogate parent, the Superintendent or designee shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the student. (Government Code 7579.5)

(cf. 6173.1 - Education for Foster Youth)

\*\*\*Note: Federal and state law, 34 CFR 300.515 and Government Code 7579.5, provide that the surrogate parent cannot be an employee of any public or private agency that is involved in the student's education or care. However, pursuant to 34 CFR 300.515, an employee of a nonpublic agency that only provides non-educational care for the student and who meets the standards specified below may be selected. Persons serving as surrogate parents may include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not involved in the student's education or care and do not have a conflict of interest in representing the student. Pursuant to Government Code 7579.5, a person with a conflict of interest is a person who has any interest that might restrict or bias his/her ability to advocate for all of the services required to ensure that the student has a free, appropriate public education.\*\*\*

\*\*\*Note: In the Analysis of Comments to the Federal Regulations, 34 CFR 300.a1, the U.S. Department of Education states that a conflict of interest may arise because an educational decision has an impact on which agency will be responsible for paying for services for the student.\*\*\*

Surrogate parents shall have no interests that conflict with the student's educational interests and shall have knowledge and skills that ensure adequate representation of the student. If a conflict of interest arises after the appointment of a surrogate parent, the Superintendent or designee shall terminate the appointment and appoint another surrogate parent. (34 CFR 300.515; Government Code 7579.5)

### Duties of Surrogate Parent

The surrogate parent shall have all the rights relative to the student's education that a parent has under the Individuals with Disabilities Education Act pursuant to 20 USC 1414-1482 and 34 CFR 300.1-300.756. The surrogate parent may represent the student in all matters relating to identification, assessment, instructional planning and development, educational placement, review and revision of the IEP, and in other matters relating to the provision of a free and appropriate public education. (Education Code 56050; Government Code 7579.5)

(cf. 6164.4 - Identification of Individuals for Special Education)

In addition, the representation of the surrogate parent shall include the provision of written consent to the IEP including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Government Code 7570-7588. (Education Code 56050)  
(cf. 5141 - Health Care and Emergencies)

\*\*\*Note: The district may choose whether or not to pay surrogate parents for their services. Pursuant to 34 CFR 300.515, a surrogate parent is not considered a district employee solely because he/she is paid by the district to serve as a surrogate parent. The following optional paragraph provides that the surrogate not receive compensation for his/her services except for expense reimbursement.\*\*\*

Surrogate parents shall volunteer their services to the district and serve without compensation. The district may reimburse them for mileage and other incidental expenses directly associated with their duties as surrogate parents.  
(cf. 3350 - Travel Expenses)

Surrogate parents shall have access to the student's school records as necessary to fulfill their responsibilities as surrogate parents and in accordance with Board policy and administrative regulation.  
(cf. 5125 - Student Records)

### **Termination of Appointment**

The Superintendent or designee shall terminate the appointment of a surrogate parent under the following conditions:

1. When the student is no longer in need of special education (Government Code 7579.5)
2. When the student reaches 18 years of age, unless he/she chooses not to make education decisions for himself/herself or is deemed by a court to be incompetent (Government Code 7579.5)
3. Another responsible adult is appointed to make educational decisions for the student (Government Code 7579.5)
4. The right of the parent/guardian to make educational decisions for the student is fully restored (Government Code 7579.5)

\*\*\*Note: Item #5 below is optional.\*\*\*

5. When the surrogate parent no longer satisfies the requirements for appointment as a surrogate parent, as specified above.

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Sebastopol, California