

# SURROGATE PARENTS

## Q & A

*The Individuals with Disabilities Education Act (IDEA) requires that school districts and all other education agencies protect the rights of children with disabilities. Whenever the parents of a child are not known, cannot be located after reasonable efforts, or when the child is a ward of the court, a surrogate parent must be appointed. Both school districts and juvenile courts in the state have the authority to appoint surrogate parents when needed. In addition, parents themselves, or children who have reached the age of majority, may request the assistance of a surrogate parent.*

*This Q and A document includes some of the questions most frequently asked about surrogate parents. For your convenience, a “Quick Index” at the end of the document lists topics and question numbers.*

### **1. *What is a surrogate parent?***

Surrogate parents are individuals appointed to act in place of a parent to participate in making special education decisions for a child. Surrogate parents appointed for educational purposes are sometimes referred to as educational surrogates.

### **2. *When must a surrogate parent be appointed?***

A surrogate parent is appointed for a child when there is reasonable cause to believe that the child has a disability, and

- The parent, as defined by IDEA, cannot be identified or located after reasonable efforts; or
- The child is a ward of the court under the laws of the state.

Reasonable efforts to locate the parents should include phone calls, letters, certified letters with return receipt, and a visit to the last residence. It is important to keep a written record of these efforts.

- 34 CFR 300.515; OAR 581-015-0099

### **3. *If a child's parents are rarely involved in the special education decisions about their child, may a surrogate parent be appointed?***

No. 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.

- ORS 419B.220; OAR 581-015-0099

**4. *What are the responsibilities of a surrogate parent?***

The surrogate parent acts as a substitute parent in special education by:

- Representing the child in all matters related to the identification, evaluation, annual IEP, and educational placement of the child.
- Protecting the special education rights of the child.
- Learning about the child's disability and understanding the special education needs of the child.
- Representing the child in all matters relating to a free appropriate public education (FAPE).

The surrogate parent does not have any rights and responsibilities for the child beyond involvement in special education processes.

▪ OAR 581-015-0099

**5. *May a surrogate parent be held liable if he or she makes a wrong decision about a child?***

In Oregon, a person appointed as a surrogate shall not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

▪ OAR 581-015-0099

**6. *What costs might a surrogate parent expect as a result of his or her responsibilities? May these costs be reimbursed?***

Typically the greatest cost of being a surrogate parent is the time needed to learn about a child and to participate in the various meetings and conferences held for the child. Other expenses would not be anticipated. District procedures would determine if any other costs were reimbursable.

**7. *What are the rights of the surrogate?***

An appointed surrogate parent has all of the rights available to parents in

- Procedural safeguards
- Due process hearings and procedures regarding hearings

▪ OAR 581-015-0099

**8. *Does a surrogate parent have the right to read a child's records?***

Yes. The surrogate parent has the same right as parents of other children to read records, files, documents and other materials which contain information directly related to the child and which are maintained by an educational agency.

**9. *At what age is a child entitled to a surrogate parent?***

A surrogate parent may be appointed for any child, from birth through age seventeen, who has or may have, a disability and for whom no adult in a parental role can be identified. A child who has reached the age of majority (generally 18) may request that a surrogate parent be appointed.

**10. *What are the criteria for becoming a surrogate parent?***

An individual appointed as a surrogate parent must meet the following criteria:

- The individual must have the knowledge and skills to ensure that the child is adequately represented in decisions about special education
- The individual may not be an employee of the school district or the Department of Education. However, surrogates shall not be considered employees of a school district solely on the basis of being compensated from public funds.
- The individual must not be an employee of any other agency involved in the education or care of the child, except of non-public agencies that provide only non-education care for the child.
- The individual must be free of any other interest that conflicts with the child's interest.

▪ 34 CFR 300.515; OAR 581-015-0099

**11. *Do payments made by Services for Children and Families (SCF) to foster parents constitute a conflict of interest that would make them ineligible to serve as a surrogate parent for children in their care?***

These payments are for children's expenses. The U.S. Department of Education has given guidance that these payments do not constitute a conflict of interest.

**12. *Do state laws or regulations require a criminal background check for prospective surrogate parents?***

School district policies and procedures may adopt policies and procedures that require a criminal background check for surrogate parents. Current state laws do not require school districts to adopt policies requiring criminal background checks.

**13. *Who appoints and assigns surrogate parents?***

In Oregon, two different agencies have a responsibility to appoint and assign surrogate parents for students who have, or who are suspected of having, disabilities. The school district of residence is responsible for appointing surrogate parents. Juvenile court also has authority to appoint surrogate parents for students who are wards of the court or who are in the process of becoming wards of the court. If the court has already appointed a surrogate parent, the school district does not appoint another one.

▪ 34 CFR 300.515; OAR 581-015-0099

**14. *What is the most important factor in the decision to appoint a surrogate parent?***

The child's legal status, rather than living arrangements, is the first and most important factor in the decision to appoint a surrogate parent. A public agency considering a surrogate parent appointment first must learn whether the child is a ward of the court or is in the process of becoming a ward of the court. A surrogate parent is not needed if the child is living with a person considered a

“parent” under IDEA and is not a ward of the court or in the process of becoming a ward of the court.

**15. *How does a district find out if a child has a court-appointed surrogate parent?***

Court papers note the appointment. At this time, districts must work out their own arrangements with local courts to receive this information.

**16. *Who may be considered a “parent”?***

A parent is:

- A natural or adoptive parent of a child;
- A guardian, but not the State, if the child is a ward of the State (court);
- A person acting in the place of a parent.

*Examples: an adult in a parental role with whom the child lives, a grandparent or stepparent with whom the child lives, or a person legally responsible for the child’s welfare.*

A foster parent, if parental rights have been terminated by court order and all of the following apply:

- The foster parent has an ongoing long-term relationship with the child.
- The foster parent is willing to make educational decisions;
- The foster parent has no other interest that conflicts with that of the child.

- 34 CFR 300.515; OAR 581-015-0099

**17. *May a foster parent be appointed as surrogate parent if they do not meet the definition of “parent”?***

Yes, if they meet the qualifications.

- OAR 581-015-0005

**18. *May a case manager from Services to Children and Families (SCF) or a probation/parole officer function as a surrogate parent?***

No. These agency representatives may be invited by school districts or surrogate parents to participate in IEP meetings. They cannot give consent for evaluation, reevaluation or initial placement and cannot act as a parent at an IEP meeting.

**19. *Do SCF case managers or probation/parole officers have access to the educational records of a child who has a surrogate parent?***

These agency representatives must have written consent from a surrogate parent to access the educational records of a child unless the agency representatives are granted that authority by court order.

**20. *May parents request that a surrogate parent be appointed?***

Yes. Parents and students, to whom rights have been transferred, may request a surrogate by providing written consent for a surrogate to be appointed by the

school district. They may also revoke this consent by sending a written request to the school district.

- OAR 581-015-0099

**21. *May a school district restrict a parent's reasons for requesting the appointment of a surrogate?***

No. Parents (and students who have reached the age of majority) may give consent for a surrogate parent appointment for any personal reason they wish.

**22. *Do surrogate parents appointed at the request of a parent or child have different responsibilities than other surrogates?***

No. All surrogate parents have the same responsibilities. They represent the child by making the special education or early intervention decisions for the child until a surrogate is no longer needed or consent for the surrogate's appointment is rescinded.

- OAR 581-015-0099

**23. *Are parents who request the appointment of surrogate parents entitled to receive any information?***

Yes. The parent, or the child who has reached the age of majority, who requests the appointment of a surrogate retains the right to receive notice and all other information provided to the surrogate.

- OAR 581-015-0099

**24. *May a school district change or terminate a surrogate appointment?***

Changes in surrogate appointment may occur for reasons related to the child, the parent, or the surrogate. These changes may occur when:

Child

- The child is no longer eligible for special education services.
- The rights transfer to the child at age 18.
- The child graduates.
- The child moves to another district.
- The child, who has the right to do so, who previously requested a surrogate revokes that request.

Parent

- A parent previously not identified or located, is now identified or located.
- The legal guardianship is transferred to a person able to carry out the role of the parent.
- A foster parent is identified who can carry out the role of the parent under OAR 581-015-0005.
- A parent who previously requested a surrogate parent revokes that request.

Surrogate

- The appointed surrogate is no longer eligible.
- The appointed surrogate is no longer willing to serve.

- OAR 581-015-0099

**25. *Do surrogate parents need special training?***

Surrogate parents are required to have sufficient knowledge to ensure that the child is adequately represented in special education decisions. The agency that appoints the surrogate parent is also responsible for ensuring that the surrogate parent has this information. Therefore, parent education is usually a major part of the surrogate parent system. This training may be provided by the school district, or other agencies or groups, which provide information to parents about children with disabilities.

**26. *Does surrogate parent education need to be separate from other education provided for parents?***

No. Most of the information will be the same information needed by all parents of children who have, or may have, a disability. Some topics that might be emphasized for surrogate parents include maintaining confidentiality and understanding the limits of a surrogate's roles and responsibilities.

- 34 CFR 300.515, OAR 581-015-0099

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**For additional resources and information:**

Coalition in Oregon for Parent Education (COPE)

<http://www.open.org/orcope>

1-800-505-COPE

Council for Exceptional Children Partnership Projects

<http://www.ideapractices.org>

1-866-915-5000

The National Information Center for Children and Youth with Disabilities (NICHCY)

<http://nichcy.org/pubs/newsdig/nd21.pdf>

1-800-695-0285

Oregon Administrative Rules

<http://www.ode.state.or.us/sped/spedlegal/oars/permanentoar.htm>

Oregon Advocacy Center (OAC)

<http://www.oradvocac.org>

1-800-452-1694 (voice)

1-800-556-5351 (TTY)

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