



We have the legal right of way.

SPECIAL EDUCATION: Surrogate Parents for Children with Disabilities

The Individuals with Disabilities Education Improvement Act (IDEA) 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.

What is a surrogate parent?

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 makes decisions for 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 makes decisions for the child in all matters relating to the provision of Early Intervention services.

Who needs a surrogate parent?

A child in special education or Early Intervention needs a surrogate parent when:

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

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.

Who can be considered a parent?

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 step-parent 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 IDEA

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

A foster parent may act as a surrogate parent for children eligible for special education. The foster parent must follow the requirements of the Ohio Department of Education to become a surrogate parent, and not have a conflict of interest in acting as surrogate.

Ohio law prohibits a foster parent from acting as a "parent" in the special education process.

How is a surrogate parent assigned to a child?

For a child in special education, the child's school district of residence is responsible for the assignment of a surrogate parent. (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.) 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 case can also appoint the surrogate.

What are the qualifications of a surrogate parent?

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.

Who cannot be a surrogate parent?

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.

Can a surrogate parent be liable for decisions made as surrogate?

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.

How long can a surrogate parent act as surrogate parent?

A surrogate parent may continue to serve as surrogate as long as the person 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.

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

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.