

Surrogate Parents

STATEMENT OF ISSUE

Rule 6A-6.0333, Florida Administrative Code (F.A.C.) defines the term *surrogate parent* and establishes minimum qualifications, procedures for appointments, responsibilities, limits, rights, liabilities, and allowable compensation for surrogate parents.

The purpose of this paper is to assist local school districts, agencies and those agencies under contract with the Department of Education (DOE), that provide education services to students with disabilities in the implementation of the surrogate parent rule. The Individuals with Disabilities Education Act (IDEA) provides information relevant to the appointment of a surrogate parent. This technical assistance paper addresses the provisions of IDEA and includes the following information:

- Background information regarding the assignment of surrogate parents;
- A series of questions and responses addressing specific issues;
- A series of tables to assist districts and agencies in determining a need for a surrogate parent for a student with disabilities. (Appendix A); and,
- A copy of Section 300.515 of Title 34 of the Code of Federal Regulations (Title 34) and State Board of Education Administrative Rule 6A-6.0333, F.A.C., (Appendix B).

BACKGROUND

Section 300.515 of Title 34 of the Code of Federal Regulations and Rule 6A-6.0333, F.A.C., outline the procedures for assigning surrogate parents to represent the educational interests of students with disabilities whose parents are unknown or whose whereabouts cannot be discovered. The rule applies only to students with disabilities as described in the IDEA who are both eligible for, or who are suspected of being eligible for special programs for students with disabilities and who are wards of the state or a court under the laws of the State of Florida or whose parents are unknown or whose whereabouts cannot be discovered. The rule requires that the school district or appropriate agencies:

- Determine which students need a surrogate parent;
- Ensure that persons appointed as surrogate parents meet certain minimum qualifications specified by law;
- Develop procedures for appointing, removing and re-appointing surrogate parents; and
- Ensure that surrogate parents exercise certain rights and assume certain responsibilities.

Students with disabilities who require surrogate parents are frequently students who live in state operated residential care facilities, private residential care facilities, or in community-based residential programs.

QUESTIONS AND RESPONSES

Definitions

1. How does IDEA define “parent”?

Section 300.20(a) of Title 34 defines “parent” as “A natural or adoptive parent of a child; a guardian but not the State if the child is a ward of the State; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare); or a surrogate parent who has been appointed in accordance with Section 300.515 [of Title 34].”

2. How does IDEA define a “foster parent”?

Section 300.20(b) of Title 34 states that: “Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if- The natural parents’ authority to make educational decisions on the child’s behalf has been extinguished under State law; and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under the Act; and has no interest that would conflict with the interests of the child.”

3. How is the determination made as to whether the foster parent has an “ongoing, long-term parental relationship” with the child?

The determination regarding the nature of the relationship between the child and the foster parent must be made through school personnel’s best professional judgment. For example, a child may have resided with a foster parent for more than a two-year period, the district may have knowledge that the foster parent has not demonstrated no interest in the child’s education. In such a situation, in the best interest of the child, the district should consider appointing a surrogate to represent the educational interest of the child. It is recommended that the documentation and information that the personnel relied upon to make this determination be retained in the appropriate file.

4. How does Florida law define “parent”?

Section 1000.21(5) of the Florida Statutes defines “parent” as “either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent..”

Appointment of Surrogate Parents

5. Which students need surrogate parents?

A student with a disability or a student who is suspected of having a disability, needs a surrogate parent when the natural parent or guardian is unknown, or the whereabouts of the natural parent or guardian cannot be determined, or the child is a ward of the state or ward of the court under the laws of the State of Florida.

6. What procedures are used to determine the need for a surrogate parent?

Documentation of the district’s efforts to determine a parent’s identity or whereabouts include inquiry with other agencies that may have had contact with the child; certified letters with return receipts; home visits and telephone calls. Once the district has exhausted all efforts to determine the identity or whereabouts of a parent or guardian, the district may proceed to appoint a surrogate parent.

All public schools require parents or guardians to register the child upon enrollment at any given school. The registration form will ask the guardianship status of the child and with whom the child resides. This information will assist schools in determining the need for a surrogate parent for any given child with a disability.

7. Must school districts and agencies have in place methods for determining whether a child is in need of a surrogate parent?

Yes. Section 300.515(b) of Title 34 states that it is the “duty” of the public agency to establish a “method [f]or determining whether a child needs a surrogate parent and [f]or assigning a surrogate parent to the child.” The district special programs and procedures document (SP&P) also indicates that a method must be in place to assist with the identification of students in need of a surrogate parent.

The methods may include the training of school-based personnel to review new students’ school registration forms. The review may include the assessment of the students’ potential need for a surrogate. For example, if a social-service agency case worker registers a child at a new school, or if the school registration form indicates that child does not live with his legal parents, such occurrences may lead school personnel to further investigate the child’s need for a surrogate.

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

No. The foster parent meets the definition of “parent” in Section 1000.21(5), Florida Statutes, as a “person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.” A foster parent is not considered an agency employee solely because payment is received for a child cared for in the foster home. Foster parents serve as “parent” for students with disabilities in educational matters.

If a child lives with a foster parent who is also an employee of the school district, the foster parent continues to represent the child’s educational interest as a parent; no surrogate parent is required.

If child lives with a foster parent, and the natural parents (or guardian) are known or their whereabouts have been determined and a court has not prohibited the natural parents’ (or guardian’s) rights to have contact with and make educational decisions for the child, the natural parents (or guardian) continue to represent the child in educational decisions.

9. Do students with disabilities who live in residential facilities other than foster homes need surrogate parents?

Yes, unless the student’s parents have retained their rights to make in educational decisions. Operators and staff of residential facilities other than foster homes may not serve as surrogate parents due to the requirement rule 6A-6.0333(1)(d), F.A.C., that surrogate parents have no interest that conflicts with the interest of the child represented. This would include any persons that are considered employees of the facilities or community homes that are paid a wage in exchange for the care that they provide the children.

10. Do students with disabilities who live with grandparents or other relatives need surrogate parents?

Children who live with grandparents or other relatives may be represented in educational meetings by these persons. Surrogate parents are not required in these cases.

11. Can an individual appointed as a “Guardian Ad Litem” serve as a surrogate parent?

Yes. An individual’s appointment as a Guardian Ad Litem does not prohibit that person from acting as a surrogate parent. The purpose of the Florida Guardian Ad Litem program is to advocate for the best interests of children, who have allegedly been abused, neglected, or abandoned and who are involved in court proceedings. “Best interests” include the child’s physical safety and emotional well-being and permanent placement in a stable, nurturing home environment that fosters the child’s healthy growth and development. These individuals volunteer their time. If the Guardian Ad Litem meets the legal criteria listed in Section 300.515 of Title 34, the individual may serve as a surrogate parent.

12. How should a surrogate parent be matched to a student with disabilities?

To the extent possible, a surrogate parent should be matched so that he/she is able to understand and speak the language of the child and be culturally familiar with the child’s background.

13. Who appoints surrogate parents for students attending programs operated by local school districts?

Rule 6A-6.0333(2), F.A.C. states that surrogate parents “shall be appointed by the district school superintendent.” The superintendent also appoints surrogate parents for students enrolled in private schools under contract with the district.

14. Who appoints surrogate parents for students enrolled in special programs operated through contracts with DOE?

Rule 6A-6.0333(2)(a), F.A.C. states that “Surrogate parents for students who are eligible for or who are suspected of being eligible for special programs made available through a contract from the Department of Education shall be appointed by the individual specified in the contract.” Each contract specifies the position of the individual who is responsible for the appointment of surrogate parents for students with disabilities who are enrolled in the contracted program.

15. Does the superintendent or the Department of Education contract designee appoint a surrogate parent to an individual student, or can the superintendent or contract designee simply verify that an applicant is approved as a surrogate parent?

Appointment of surrogate parents may be accomplished using either method. An appointment may be made specifying the student the surrogate is to represent. Alternatively, the superintendent or the Department of Education contract designee may approve the appointment of qualified surrogate parent applicants. Assignments for specific students would be made at a later date by exceptional student education (ESE) staff when the need for a surrogate parent is determined.

16. If a surrogate parent is appointed while a student is enrolled in either a Department of Children and Families contracted program or the Florida School for the Deaf and the

Blind, and the student transfers to a local school district program, can the same surrogate parent continue representing the student?

Yes. As long as the superintendent determines that the surrogate adequately represents the student, the surrogate parent may continue in the appointment.

17. May a school district pay surrogate parents for representing the students?

Yes. Compensation of surrogate parents is permissible under Rule 6A-6.0333(7), F.A.C. A surrogate parent is not considered an employee of the district solely because the surrogate is paid by the district to represent the child.

18. Can a surrogate parent represent more than one student?

Yes. The number of students represented by a surrogate parent is a decision made by the district based upon a surrogate parent's interest, ability, and availability of time.

Recruitment and Training

19. Who is responsible for the recruitment and training of surrogate parents?

The responsibility for the recruitment, training, and assignment of a surrogate parent rests with the school district, according to Rule 6A-6.0333(2), F.A.C. Recruitment may be done by anyone who has an understanding of the purpose of surrogate parents and the ability to establish contacts within the community. This may include public information officers, volunteer coordinators, school principals, and ESE administrative staff. These recruiters should be able to describe the need for surrogate parents and target interested persons.

Recruitment and training may be conducted by Florida Diagnostic and Learning Resources System (FDLRS) Associate Center staff, ESE district staff, or other persons designated by the district. The persons who conduct the training of surrogate parents must be familiar with the referral, evaluation, staffing and program planning aspects of ESE programs, including the rights and responsibilities of surrogate parents.

20. What are good sources of surrogate parent recruitment?

Civic organizations and service clubs, retired citizens' organizations, ministerial associations, churches, parent-teacher organizations, universities, community colleges, child care organizations, and members of advocacy or professional special education organizations may have members who are interested in serving as surrogate parents. Recruitment may also be accomplished through television and radio announcements and printed brochures. A parent or relative of an exceptional student who is enrolled in the district's program may be willing to serve as a surrogate for another student.

21. Is a surrogate parent application form required?

Developing procedures for recruiting and maintaining certain information about surrogate parents are responsibilities of the school district. An application form is not required by the State Board of Education's Administrative Rules; however, districts may develop such a form and use it to collect basic demographic and interest information on potential surrogate

parents. Sample forms are available from the Bureau. However, Rule 6A-6.0333(2)(c), F.A.C. does require that the appointment of a surrogate parent be documented in writing.

22. What kind of personal reference and background checks should be done on surrogate parent applicants?

Procedures used to conduct reference and background checks should conform to those procedures established for “school volunteers” as defined in Section 1012.01(5) F.S., who are assigned responsibilities pertaining to the welfare of pupils.

23. How often should surrogate parent training be made available?

The district’s need for surrogate parents will determine how often the training should be made available. Students should not be left without surrogate parents assigned due to failure to recruit or train applicants.

24. What is the content of training for surrogate parents?

Topics should include the following:

- Introduction to the surrogate parent program;
 - Exceptional Student Education in Florida;
 - Exceptional Student Education process;
 - Responsibility of the district to assign surrogate parents;
 - Resources/information;
 - Sample forms used in the ESE process; and,
 - Florida Department of Education policy information regarding surrogate parents.
- Sample forms and further information are available upon request from the Bureau.

25. What are a school district’s responsibilities to a surrogate parent?

A school district is responsible for ensuring that a surrogate parent is:

- properly trained;
- functionally familiar with ESE procedures and requirements;
- actively participating in the special education decision-making process; and,
- actively involved in the student’s educational program.

Termination

26. What is the duration of a surrogate parent appointment?

Rule 6A-6.0333 (2)(b), F.A.C., provides for a surrogate parent to continue in the appointed role until one of the following circumstances occurs:

- The child is determined to no longer be eligible for or in need of special education programs, except when termination of special programs is being contested;
- The legal guardianship for 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; or the whereabouts of parent which was previously undiscovered, is discovered; or

- The child reaches the age of majority as described in Section 300.517 of Title 34 and is in no longer need of a surrogate parent to represent him or her in educational matters.

A different surrogate parent would be appointed in the following circumstances:

- The appointed surrogate parent no longer wishes to represent, or is unable to represent, the child;
- The superintendent or Department of Education contract designee determines that the appointed surrogate parent no longer adequately represents the child; or
- The child moves to a geographic location that is not reasonably accessible to the appointed surrogate.

27. When is a surrogate no longer adequately representing a student?

A surrogate parent who does not attend individual educational plan (IEP) or family support plan (FSP) meetings, or does not respond to correspondence from the district regarding a student, would not represent the student adequately. District ESE staff must document the surrogate's involvement and keep the superintendent apprised of any non-involvement by the surrogate parent.

28. How is a surrogate parent appointment terminated?

The termination of a surrogate parent may occur as a result of any of the circumstances listed in the response to Questions 26 and 27. A notice of termination must be issued in writing from the superintendent or Department of Education contract designee. The notice must include the reasons for the termination. If a surrogate requests termination, the request must also be in writing and list the reasons for the request. The superintendent, Department of Education contract designee, or the surrogate parent may request a hearing under Chapter 120, Florida Statutes, regarding the termination.

Surrogate Parent Qualifications and Responsibilities

29. What are the minimum qualifications for a surrogate parent?

Rule 6A-6.0333(1), F.A.C., prescribes the following minimum qualifications for a surrogate parent:

- An individual over 18 years of age who is a citizen of the United States and a resident of the State of Florida;
- A non-employee of the local school board or other public or private agency involved in the education or care of the child;
- Knowledge, skills, and experience demonstrated by successful completion of training to ensure adequate representation of the child;
- No interest which conflicts with the interest of the child whom the surrogate represents; and,
- Appropriately trained using the materials developed and approved by the Bureau of Instructional Support and Community Services.

30. What constitutes a conflict of interest?

Rule 6A-6.0333 (1)(b), F.A.C., states that a qualified applicant for surrogate parent may not be an employee of either the local school board or a public or private agency involved in the education or care of the child. Beyond the non-employee qualification, an otherwise qualified surrogate parent should have no interest that conflicts with the interest of the child represented. An individual would have a conflict of interest if he or she held a position that might restrict or bias the ability to advocate for all the services required to ensure a free appropriate public education for the child represented.

Individuals could also have a conflict of interest in being appointed as surrogate for a child if they are also responsible for other children who may have competing interests with the same public agencies.

31. What is the extent of liability of a surrogate parent?

Rule 6A-6.0333 (6), F.A.C., states that a person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child, in protecting the special education rights of the child. Any specific questions regarding liability should be addressed to the school board attorney.

32. What is the surrogate parent's right of access to records?

The surrogate parent has the same right to review educational records as the natural parents. This includes all records regarding the student to which school administrators and teachers have access. Surrogate parents must protect the confidentiality of these records.

33. Can a surrogate parent sign field trip permission, release of records, and photographic release for an exceptional student whom the surrogate parent represents?

Yes, a surrogate parent acts in the place of a parent in all matters relating to the provision of a free appropriate public education to the student. The surrogate parent provides written permission when field trips, release of records, photographs, etc. are determined by the surrogate to be an appropriate part of the student's educational program.

34. What is expected of a surrogate parent?

A surrogate parent is expected to:

- Attend training sessions;
- Become functionally familiar with the district's procedures for providing services to students with disabilities;
- Attend IEP or FSP and other educational meetings regarding the student(s);
- Understand all due process rights available;
- Meet the student;
- Meet the student's teacher and others who know or work with the student;
- Observe the student's school day; and,
- Become familiar with the student's background, and disabilities.

35. Does a student with disabilities who becomes 18 years old need a surrogate parent?

A student with a disability does not require a surrogate parent upon reaching the age of majority. When the child reaches the age of majority as described in Section 300.517 of Title 34, he or she is no longer in need of a surrogate parent's representation in educational matters.

36. What are the limits of a surrogate parent's responsibilities?

Rule 6A-6.0333 (4), F.A.C., limits the responsibilities of a surrogate parent to matters relating to the provision of a free appropriate public education of a child. The rule specifically excludes from the purview of the surrogate parent areas of care, maintenance, custody, residential placement, and identification and evaluation activities not relating specifically to special education.

A surrogate parent is entitled to all of the procedural safeguards that are afforded a parent. Rule 6A-6.0333(5), F.A.C. guarantees that surrogate parents are provided the same procedural safeguards with respect to the identification, evaluation, educational placement and FAPE (free appropriate public education) of the child with disabilities.