# THE ROLE OF A SURROGATE PARENT

# Introduction

Under the Individuals with Disabilities Education Act (IDEA), every school district has an obligation to ensure surrogate parent is appointed for a student who is eligible for special education when there is no “parent” for the student. The district must also make sure that you have the knowledge and skills needed to represent the student. A student needs a surrogate parent to act in place of a parent of a special education student when: the parent(s) cannot be identified; the school district cannot discover the location of the parent(s); the student is a ward of the state, or is an unaccompanied homeless youth. If you are asked to serve as a surrogate parent, you will have all of the rights a parent would have to represent the educational interests of the student.

To be an effective surrogate parent, you should be aware of the procedural rights under the IDEA and your responsibilities to the student. You will be asked to represent the student’s interest in all matters that involve identification, evaluation, placement of, and provision of services to the student.

# Legal Authority for Appointment

One of the fundamental provisions of the IDEA and federal and state regulations implementing the law is parent involvement and participation in their child’s special education program. As a surrogate parent, you stand in the place of the parent in representing the student’s educational interests. Our state defines parents at WAC 392-172A-01125. The requirements of the school district to appoint surrogate parents and the qualifications to be a surrogate parent are located at WAC 392-172A-05130.

The WAC defines a “parent” to include the following people:

* The natural or adoptive parent of a child;
* A guardian, but not the state (meaning not the caseworker);
* A person acting in the place of a parent, such as a grandparent or relative with whom a special education student lives, or someone who is legally responsible for the student’s welfare;
* A foster parent; or
* A surrogate parent appointed by the district (see information below about surrogate parents).

Persons selected as surrogate parents should:

* Have no interest that conflicts with the interests of the student he or she represents, and
* Have knowledge and skills that assure adequate representation of the student.

If you are not already familiar with the student, you need to become acquainted with the student. Activities that will assist you in becoming a participant in this student’s educational program might include visiting and talking to the student his or her residence and at school, talking with the student’s teachers and others who provide services to the student, and reviewing educational information about the student.

**Conflicts of Interest**:

The regulations do not define conflicts. However, some of the listed limitations on appointments exist because of a potential conflict. For example, neither school district employees nor OSPI employees may be appointed as surrogates. This is because their employment may conflict with their role representing the student. Likewise, DSHS caseworkers may not be appointed as the surrogate parent. Again, their role in dependency proceedings may have the potential to conflict with the student’s needs at school. Other conflicts you might consider could include having a beneficial interest in a particular placement or outcome for a student. *Note: the District may provide you reimbursement for your role as a surrogate*

As the person who may be appointed as a surrogate, you should consider other issues that could impact on your ability to serve as a surrogate parent. Do you have the time and availability to attend meetings involving the student? Do you have the desire to keep informed of the student’s progress in his/her educational setting? If you have questions about your ability to represent the student because of a conflict involving the student or the student’s family, or if you have concerns about the responsibilities involved with the appointment please let the special education director know as soon as possible so another person can be selected.

**Knowledge and skills**

The regulations require that a school district make sure that the surrogate parent has knowledge and skills to act as a surrogate parent for the child. These materials are designed to assist you in understanding your responsibilities. Additionally, there are resources available for parents, teachers, school districts and others who have specific questions about special education law. While knowledge of special education is important, it is equally important to know about the student’s needs. This includes reviewing past school records and performance, talking to the child, and talking to others who are familiar with him or her.

Decisions about the student’s special education program are made through participation by the surrogate parent and the district in meetings. You will need to be an active participant at these meetings. The school district is required to give you an opportunity to participate in meetings involving the student. At a minimum, the district must notify you about a meeting with enough advance time for you to attend, including where the meeting will be held, the time and purpose of the meeting, and who will be in attendance. When the meeting is to discuss the student’s placement or individual educational program (IEP), the meeting must also be scheduled at a mutually agreeable time and place.

Informal discussions by the district about the student, and preparatory meetings to discuss or develop proposals are not considered meetings under special education regulations.

# Responsibilities of a Surrogate Parent

For purposes of the IDEA, a surrogate parent has the same duties and authority as a parent of a special education student.[[1]](#footnote-1) This means that you are involved as a parent participant in matters involving the:

* Identification of the student. This is the process of determining whether the student is eligible for special education.
* Evaluation of the student. Evaluations serve to assess whether a student is eligible for special education and to determine in what areas a student needs special education and related services. Reevaluations serve to determine both continuing eligibility for special education, and to determine whether the student needs additional services or no longer needs a particular service. You can assist in providing information about the areas needing evaluation or reevaluation, including whether outside sources might assist in determining the student’s needs.
* Placement of the student. For eligible students placement includes the appropriate services and the appropriate location to receive the services (least restrictive environment) for the student. Placement of a student is determined after the IEP is developed.
* The provision of a free appropriate public education (FAPE) for the student. The determination of FAPE includes ensuring that the services for the student are appropriately identified and provided, and that the services are provided at no cost to the student (FAPE is discussed in the section titled *Rights of a surrogate parent on behalf of a student*.)

As a surrogate parent, you will have the authority and responsibility for: providing authorization to the school for evaluations; making decisions about the appropriateness of the educational program; asking the school for additional or different services if the current program is not appropriate; and using either formal or informal dispute resolution processes if you disagree with the identification, evaluation, placement, or provision of FAPE to the student. Again, please remember that a surrogate parent, for purposes of the IDEA, is not a replacement for a parent in any other sense. State law controls all other aspects of the care of a child, such as medical treatment. Your role as a surrogate may include:

* Giving consent for evaluations of the student and consenting to the initial placement of the student into special education. In order for you to give consent, the district has an obligation to fully inform you about the reasons they need your consent and what you are authorizing them to do.
* Making sure that the evaluation or reevaluation of the student includes enough information that all areas of suspected disabilities are evaluated. If you disagree with the evaluation, you have the right to request an independent evaluation of the student at the district’s expense.
* Reviewing educational records. As a surrogate you have the right to inspect the student’s educational records. If you are asking the school for records that will assist you for an IEP meeting, they need to provide them to you by that meeting time. Otherwise the school has up to 45 days to provide them to you.
* Using the state’s dispute mechanisms to resolve issues that you and the district cannot agree upon. These mechanisms include mediation, citizen complaints and due process.
* The school district has a duty to make sure that all information about a student is confidential. As a surrogate parent, you have the duty to ensure that information about that student remains confidential.

You should also make sure that you inform the school of any information it may need to make appropriate educational decisions. Information that will assist the school might include any changes in the student’s home situation, recent illnesses, or other outside events that can have an impact on the student’s performance and behavior at school. If you are appointed as a surrogate parent, consider inviting others who have knowledge about the child to meetings regarding the student’s individualized education program. This might include the student’s caseworker, or group home care provider, if the district is not already inviting them to meetings.

# Rights of a Surrogate Parent on Behalf of a Student

Students who are either in the initial evaluation process or are currently eligible have rights conferred on them through the IDEA. As a surrogate parent, your role is to make that these rights are protected. Some of the protections in place for students include:

* The right to a free, appropriate public education (FAPE). This right has been defined as both the procedural protections provided to students eligible for special education, and an individualized education program (IEP) that provides the special education and necessary related services to allow the student to make appropriate educational progress. This right does not guarantee the most optimal or best program, but the services provided to the child should allow the child to make appropriate progress in both general and special education programs.
* Right to give or refuse consent when you are asked to provide consent.
* Prior written notice. Districts are required to provide the parent with notice of decisions that they make about the student. This notice is to be provided before the decision is implemented. Prior written notice is required when the district either proposes or refuses to take any actions that involve either the initiation or change involving the identification, evaluation, placement of the student, or provision of FAPE to the student.
* Parent participation in meetings. Surrogate parents have the opportunity to be involved in meetings involving decisions about the student’s special education program. This includes any meetings about the identification, evaluation, placement of or provision of FAPE to the student.
* Disciplinary protections. Students who are eligible for special education have rights to receive education even when they are subject to disciplinary actions. Special education students are not to be disciplined for reasons related to their disability. After 10 days of suspensions in a school year, districts are required to provide education to the student. How this is provided, and where this is provided depends on the type of suspension, and the reasons for the suspension.

The list provided above is not a complete recitation of all of the procedural rights involved with a special education. As a surrogate parent, you will be given notice of all procedural safeguards in accordance with the IDEA.

If you have questions regarding your rights as a surrogate parent or would like some support in your role as a surrogate parent the following resources are available:

***Special Education Ombudsman***

Kristin Hennessey kristin.hennessey@k12.wa.us (360) 725-6075 (360) 586-0247 Fax

***PAVE (Partnerships for Action Voices for Empowerment)***

6316 So. 12th St. | Tacoma, WA 98465

(253) 565-2266 (v/tty) | 1-800-5-PARENT (v/tty) | Fax: (253) 566-8052

E-mail: pave@wapave.org

***Office of Superintendent of Public Instruction-Special Education***

360/725-6075, www.k12.wa.us/specialed/

**Conclusion**

Thank you for considering an appointment to serve as a surrogate parent. This decision involves a commitment to participate in determining appropriate educational services to a student. Our district will assist in providing you with resources necessary to fulfill your responsibilities. If you determine that you are unable to act as a surrogate parent, or you have questions about your role please contact at .

# Note to Districts: This is intended to be adapted by the district for its use as a part of a training or individual session with a proposed surrogate. It is not intended to be a stand alone and districts would want to walk proposed surrogates through it. The district should also include resources about special education, information about the district, and district contacts.

1. Because a surrogate parent appointment is unique to special education, the appointment does not give you any rights, other than those associated with the student’s special education program. For example, depending on your current relationship with the child, you may give consent for an evaluation, however, someone other than you may have to authorize release of medical records. [↑](#footnote-ref-1)