

21. EDUCATIONAL SURROGATES (SURROGATE PARENTS)



Many times a child in dependency does not have a parent available to act as an educational advocate. If the child's parents (parents can include: parent; a guardian; a person acting as a parent, such as a grandmother, or a step parent) cannot be located, are unknown, or if the educational rights of the parent (right to make decisions regarding their child's education) have been terminated, then the school district can appoint an educational surrogate or surrogate parent for the child.

This surrogate ensures that the child's rights and interests are protected in their educational program.

Surrogates represent the child involving:

- Identification
- Assessment
- Instructional planning and development
- Placement
- Review and revision the child's education program-including the child's IEP
- Other matters relating to the child's education

The surrogate parent may sign any consent relating to the child's educational program or placement, including, but not limited to, non-emergency medical services, mental health treatment services, and occupational or physical therapy services.

Appointed Surrogate

Surrogate parents must have the knowledge or be willing to acquire the knowledge and skills necessary to adequately represent the child. Surrogate parents must also be willing to make the educational decisions required to ensure the child receives a FAPE.

POTENTIAL SURROGATES include:

- A relative caretaker

- Foster parent
- CASA (Court Appointed Special Advocate)
- Other non-public agency representative (such as care provider)
- Volunteer advocate (trained in special education laws by the County Office of Education)

Special rules regarding foster parents

A willing foster parent can legally act as a parent without formal appointment by the County Office of Education if the natural parents' educational rights have been terminated and the foster parent has an ongoing, long-term parental relationship with the child and no conflict of interest.

The foster parent may represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, if necessary, and in all other matters relating to the provision of a free appropriate public education of the child. Foster parents in this situation can also provide written consent to the individualized education program (IEP), including non-emergency medical services, mental health treatment services, and occupational or physical therapy services.

Any surrogate or foster parent acting on the child's behalf is urged to consult with the parent or guardian of the child whenever practical to ensure continuity of education, health, mental health, or other services.

An advocate can petition the court to sever a biological parents educational rights for the child if the advocate believes the parent cannot adequately represent the child's best interest. The advocate should contact the child's attorney, CASA or social worker for more information.

Cannot be a surrogate

Any person who is responsible for providing educational services to the child CANNOT act as the child's surrogate parent due to potential conflict of interest.

Individuals that may not act as parent surrogate include:

- Social worker
- Regional Center social worker/case manager
- Staff member or owner of a group home
- Staff member of a residential treatment center
- School teacher or staff member

If a CASA is concerned that a parent, foster parent or relative caretaker may not be qualified to

make effective decisions regarding the child's education, the CASA can request that the court limit that individual's educational rights for the child. The CASA must be able to document reasons for the request and should present alternatives to ensure the child receives adequate representation.

APPOINTING A SURROGATE

The school district or County Office of Education has the legal authority to appoint surrogate parents. Interested individuals should contact the County Office for an application.

Legal guardians also have the legal authority to make all decisions regarding the child's education. In this situation a surrogate parent is not necessary.

For more information:

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