

POLICY 21
SURROGATE PARENTS

Adopted by Superintendents' Council 3/7/94
Revised 11/6/00, 1/26/04, 5/10/04

SONOMA COUNTY SELPA**SURROGATE PARENTS****DEFINITIONS**

A parent is defined (34CFR 300.20) 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)
- An adult who has been appointed as a surrogate parent
- A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.

A student will be considered to have a parent or parental representation, if any of the above conditions exist.

A parent has the right to appoint another adult as his/her educational representative. This educational representative is NOT a surrogate parent.

The Juvenile Court has the authority to appoint a "Responsible Adult" as his/her educational representative. This person is NOT a surrogate parent.

The term parent does not include the State or any political subdivision thereof. The term parent does not include the State if the child is a ward of the State.

- In California children classified as "dependents" are assigned to social workers employed by the Department of Social Services who in turn are charged with the general care, custody, and control of these abandoned, abused, or neglected children.
- In California, children classified as "wards of the court" are assigned to probation officers pursuant to Section 601 or 602 of the Welfare and Institutions Code (WIC). The probation officer, like the social worker, has general responsibility for the minor's care, custody, and control.

- The term “ward” as used in federal regulations is a generic term for children placed in the custody of a public agency by a court order. Thus, in California, the fact that some children are “dependents” and others are “wards” relates more to the public agency charged with their care and control than to the issue of surrogate parents.

Regardless of which agency is assigned responsibility for a child, that child may be eligible for appointment of a surrogate parent.

A surrogate parent is an adult appointed by the Local Educational Agency (LEA) to represent a student under terms specified in state and federal law, when that student is being referred for, or is currently receiving, special education services.

WHEN TO APPOINT A SURROGATE PARENT

Surrogate parents must be appointed when:

- No parent as defined above can be identified or located after reasonable efforts at search. Reasonable effort is defined as 3 attempts over a three week period utilizing 2 or more different types of contact techniques e.g., phone calls, home visits, written communication, etc.

Reasonable effort also means documented history by social service or other placing agencies of having conducted reasonable search with verification that no parent, guardian, or adult with custody of the student can be identified or located.

- The child is a ward/dependent of the court AND the court has removed or limited the parent’s rights to make educational decisions for their child. When the court limits the parent’s rights it will notify the LEA/SELPA of the need for a surrogate parent. If the court has not specifically removed or limited parental rights to make educational decisions, then the parent remains responsible and must be included in the IEP process, and no surrogate will be needed.

If a parent is located but refuses to exercise his/her rights to represent the student, that fact shall be documented by the LEA or agency and a referral may be made to the court. The LEA may request/suggest that the social worker or probation officer petition the court to remove the educational rights of that parent, or to otherwise have the court provide legal representation for that student for educational purposes.

Interim surrogate parents will be used in order to assure no delay in the provision of special education or related services. Interim surrogate parents have the same authority, rights, responsibilities, and restrictions as a regularly appointed surrogate parent. Interim surrogate parents will be appointed when:

- A special education student with an active IEP for whom no parent has been identified or located moves or transfers into the SELPA and requires an administrative special education placement.
- A regularly appointed surrogate parent has to be replaced in the event of a resignation or termination of appointment.

A surrogate parent will be appointed as soon as possible after the need for one has been established, but no later than 5 school days after the receipt of an LEA Request for Surrogate Parent.

DETERMINING STUDENT STATUS

Prior to placing a child who is suspected of requiring special education services, or who has an existing IEP, into an out-of-home situation, the placing agency is responsible for notifying the receiving SELPA where the child will be placed. The SELPA administrator will provide the placing agency with information about the availability of an appropriate special education program in the SELPA where the residential facility is located

Prior to the discharge of any student with disabilities from a medical facility or out-of-home placement, the placing agency shall, at least ten days prior to the discharge, notify in writing the LEA which is currently providing the student's special education services AND the receiving SELPA to which the student is being transferred, of the impending discharge.

It is the responsibility of the LEA working in conjunction with LCIs and placing agencies to determine which of their students require the services of a surrogate parent.

Agencies that place children into out-of-home placements will work collaboratively with school districts to provide the requisite information to expedite the determination for the need of surrogate parent representation.

Placing agencies must include with the student records the following information:

- Name of school and school district of last school attendance
- Legal status of parents to make educational decisions
- Identity, address and phone number of the individual responsible for representing the educational interests of the child
- For wards of the court, information regarding whether the court has limited or removed parental rights over the student's educational decisions

In order to ensure a free and appropriate education in the least restrictive environment, and consistent with requirements in the Government Code, the SELPA will execute an

administrative placement and/or conduct an individualized education program team meeting when the required information is received. This information shall include: current IEP, psycho-educational reports within three years, health and developmental history, therapy/counseling discharge summary, identity and whereabouts of individual responsible for representing the interests of the student.

RESPONSIBILITIES OF SURROGATE PARENTS

The surrogate parent's role on the IEP team is to represent the rights and needs of the student in all educational matters to ensure that the student receives a free, appropriate public education.

As far as practical, a surrogate parent should be culturally sensitive to the background of the child being represented.

A surrogate parent must have requisite knowledge and skills to represent the student with disabilities. A surrogate parent should be knowledgeable about the student's particular disabilities and special education needs, laws affecting special education, and the continuum of program placements and services available in the SELPA.

A surrogate parent assumes the rights and duties to act as a parent for the student on educational matters. The surrogate parent will represent the student in matters relating to the identification, assessment, instructional planning and development, educational placement, review and revision of the IEP. Surrogate parents' educational rights and responsibilities include, but are not limited to, giving consent for assessment, IEP meeting attendance, acquiring access to student records, requesting and giving consent to program placements and related services, securing independent assessments when appropriate, initiating mediation or due process hearings when necessary, and otherwise ensuring the provision of a free and appropriate public education for the student.

The surrogate parent will observe laws relating to the confidentiality of student information and records.

LIABILITY

Surrogate parents and the appointing agency are held harmless when acting in their official capacity except in acts or omissions found to have been wanton, reckless, or malicious.

LIMITATIONS

- Surrogate parents shall have access to records and students under supervision.
- A surrogate parent cannot be an employee of the LEA, SELPA, or any public or private agency involved in the education of the child.

- A surrogate parent cannot have an interest that conflicts with the interests of the child.
- Social workers, probation officers, employees of public agencies involved in the care or education of students, employees or owners of LCIs and group homes may not act as surrogate parents.
- Foster parents may act as surrogate parents only if there is not a conflict of interest. Foster parents who are affiliated/contracted/employed by LCIs as Foster Family Agency foster homes may not act as surrogate parents.
- A surrogate parent should not hold a position that might subject him/her to administrative influence or reprimand for acting as the child's educational representative.
- A person serving on the board of any public or private agency involved in the care, education, or provision of services to special education students may not act as a surrogate parent.

SELECTION OF SURROGATES

When selecting surrogate parents, Sonoma County SELPA recommends the following in order of priority:

- Close relative, foster parent, court appointed special advocate, close adult friend, adult sibling.
- A pool of already knowledgeable individuals such as retired special education professional personnel and members of Community Advisory Council.
- A pool of individuals who can be recruited and trained, coming from various sources: parent volunteers, members of community service agencies, retired regular education professional personnel.

ADMINISTRATIVE GUIDELINES

Recruitment of Volunteers:

The Sonoma County SELPA will coordinate the efforts at recruitment of surrogate parents with local school districts parent organizations, and community service organizations.

Screening of Surrogate Parents:

- Surrogate parent applicants must pass both a tuberculosis test as well as a fingerprinting/background check.

The LEA will underwrite the expenses and provide for the fingerprinting and background check of all applicants.

The LEA will fund TB testing of applicants, unless otherwise funded by applicant's insurance at no cost to the applicant.

- The applicant must have no criminal background (arrest/conviction) involving abuse or neglect of others, or contributing to the delinquency of minors, or any felony convictions. Misdemeanor convictions within the past 5 years will be considered on a case-by-case basis.
- The applicant must have no criminal background involving the abuse or sale of illegal drugs or alcohol.
- The surrogate parent must have the ability to provide for his/her own mobility and transportation.
- The applicant must display a willingness to learn about the role and responsibilities of the surrogate parent, special education laws and regulations, any pertinent cultural and individual needs of the students.
- No person who meets the description of the Limitations category of 34CFR 300.515 may be considered for surrogate parent.

Training and Certification of Surrogate Parents:

- The SELPA will develop materials and conduct training programs for applicant surrogate parents.

Special Education Content: federal and state laws and regulations, eligibility criteria, placement and service options within the SELPA, community resources.

Social Services Content: laws, regulations, policies, options.

Probation Content: laws, regulations, policies, options.

Surrogate Parent Content: policies, procedures, duties and responsibilities, working and communicating with schools and agency staff, confidentiality, record keeping, site and student visitations, child abuse reporting laws.

Student Needs Content: cultural and socio-economic sensitivity, strengths, learning styles, and disability-related needs.

Mental Health Content: laws, regulations, policies, options.

- The SELPA will certify competency and issue a *Certificate of Completion* to candidates who successfully complete the training.
- The SELPA will work with placing agencies within Sonoma County to secure their cooperation and input into training and recruitment of surrogate parents.
- The SELPA will maintain a master list of certified surrogate parents along with information on any particular specialized field of expertise of each surrogate parent.

Term of Surrogate Parents:

Surrogate parents are appointed on an academic year basis.

Surrogate parents can withdraw their names and services from the pool of certified people at any time they choose.

A surrogate parent's involvement on any particular student ends when:

- Student moves out of Sonoma SELPA
 - The student's natural parent is located
 - The parent's educational rights are reinstated
 - Another responsible adult is appointed to make educational decisions for the student
 - The student is no longer eligible for special education
 - The student reaches the age of 18 and no conservator has been appointed
 - The student becomes emancipated, married, or meets other criteria which eliminate the need for a surrogate parent.
 - The surrogate parent resigns. In this case a surrogate parent **MUST** give notice to the LEA before resigning.
- ** Upon termination of the surrogate parent appointment, the surrogate parent will return all student records to the LEA.

A surrogate parent will be removed from services when:

- Surrogate parent violates confidentiality.
- Surrogate parent's decisions indicate bias against the student based on race, religion, ethnicity, gender, handicapping condition, sexual orientation.

- A conflict of interest situation arises.
- Surrogate parent demonstrates continued ignorance of student needs and rights despite training and monitoring.
- Surrogate parent is accused or suspected in any incident involving child abuse, child molestation, abuse or sale of illegal drugs or alcohol, or other criminal acts. When an accused surrogate parent has been cleared of the charges, that person may be reinstated as a surrogate parent.
- A surrogate parent will be terminated if s/he does not perform duties adequately as determined by an ongoing evaluation process.

REMOVAL OF SURROGATE PARENT

When an LEA/SELPA administrator or designee receives information/request indicating the possible need to remove a surrogate parent, the director shall make a decision to terminate or not terminate immediately, but not to exceed five school days, of the receipt of the information/request.

If the administrator determines that the surrogate parent should be removed, the surrogate parent will be notified by documented phone call or certified mail. The LEA, placing agency, group home operator or care provider, and the student will all be notified in writing within five school days of the decision to remove a surrogate parent.

At removal, the surrogate parent will return all student records and the SELPA photo identification card to the LEA/SELPA director within ten days of the notice of removal. If necessary to ensure adequate representation of the child, a new surrogate parent will be appointed by the LEA/SELPA.

ACCESS TO STUDENT RECORDS

The LEA will make student records available to the surrogate parent. Any copies of the record made must be signed out by the surrogate parent and returned at the end of their term. The LEA will list which records have been duplicated for the surrogate parent and ensure that all copies are returned at the end of the term of service.

ACCESS TO THE STUDENT

The surrogate parent who is not also the state licensed foster parent for the student may only meet with the student under the supervision of the student's group home provider, foster parent, person with whom the student resides, placing agency social worker/probation officer, or designated school staff. The surrogate parent should meet the

student on the grounds of the group home, care provider home, agency office, or school. The surrogate parent **MUST** meet with the student at least one time.

School personnel should make every reasonable effort to ensure that the surrogate parent has access to the student as it relates to the performance of the duties and responsibilities of the surrogate parent role.

EVALUATION PROCESS

LEAs will monitor and evaluate annually the work of the surrogate parents.

LEAs and placing agency will make decisions as to when the services of a surrogate parent are no longer needed.

LEAs will notify the SELPA when a surrogate parent's services will be terminated due to incompetency or violation of the roles and duties of surrogate parents. The SELPA will then remove that person's name from the master list of surrogate parents.

CONFLICT RESOLUTION

Conflicts that arise, including those involving protest of appointment decisions, performance evaluation, termination/removal of surrogate parent appointments, will be decided by a subcommittee of the Steering Committee. This subcommittee shall be composed of 2 official members of the SELPA Steering Committee (but excluding the SELPA Director) and 1 official voting member of the SELPA CAC.

Steering Committee subcommittee decisions can be appealed to the SELPA Director, whose decision will be final.

Disagreements which occur in regard to the pupil's individualized education plan are resolved through the usual due process procedures set forth in EC 56500 et seq. Complaints are handled pursuant to Title 5 CCR 4600-4671. Complaints arising under the interagency coordination statute can be addressed pursuant to Government Code 7585.

FORMS

The SELPA will develop the following forms:

- Notification of Placement of IWEN into LCI or Foster Home
- Request for Surrogate Parent
- Surrogate Parent Applicant Information/Application
- Individual Assignment of Student to Surrogate Parent

- Certification of Surrogate Parent Training
- Appointment/Acceptance of Surrogate Parent
- Photo identification card for Surrogate Parent
- Evaluation and Monitor of Surrogate Parent