

**SONOMA COUNTY SELPA**  
**SURROGATE PARENT POLICY**

**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.

A **surrogate parent** is defined (34CFR 300.519) as:

- A representative for an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program (IEP), and in other matters relating to the provision of a free appropriate public education (FAPE) to the individual. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Chapter 26.5 (commencing with

Section 7570) of Division 7 of Title 1 of the Government Code. The surrogate parent may sign any consent relating to individualized education program purposes.

- Shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.
- Shall also be governed by Section 7579.5 of the Government Code.

Surrogate parents are appointed by the Sonoma County SELPA to represent a pupil (aged birth-21) for the purpose of his or her individualized education program (IEP) to ensure that the rights of the pupil to a free and appropriate public education (FAPE) are protected when (a) the biological parents cannot be found or (b) the courts have removed the biological parents' educational rights and have not assigned them to another.

### **BASIC CRITERIA FOR APPOINTING A SURROGATE PARENT**

The Surrogate Parent's role on the IEP team is to represent the rights of a student with special needs in all educational matters related to the provision of a free appropriate public education (FAPE). It is the responsibility of each local education agency (LEA) to ensure that the rights of a child are protected in determining the need for and assigning a surrogate parent whenever the child is referred or eligible for special education and either:

- (1) No parent (as defined in §300.30) can be identified;
- (2) The public agency such as a local education agency (LEA), after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of the State;
- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(6))

When any of the following conditions prevail, the Director of Special Education of the LEA in which the student is educated, shall notify the Sonoma SELPA designated program specialist of the need for the assignment of an interim surrogate parent:

- If no parent is immediately available, and the student has been referred for an assessment; or
- The student transfers into a Sonoma County SELPA and is provided an interim placement for special education and related services.

These students may be living in:

SONOMA COUNTY SELPA  
SURROGATE PARENTS

*Adopted 3/7/94*

*Revised 11/6/00, 1/26/04, 5/10/04, 6/6/16*

- Foster homes
- Private group homes
- State hospitals or other health facilities
- Correctional facilities
- Residential treatment centers
- With other family members

Reasonable efforts to contact parents or legal guardians include, but are not limited to:

- Documented phone calls
- Letters
- Certified letters with return receipts
- Documented visits to parents' or legal guardians' last known address
- The placement of an agency notice of a court order that terminates parents rights

The Sonoma SELPA designated administrator shall assign a surrogate parent upon receipt of an LEA request for Surrogate Parent accompanied by documentation ( a completed Sonoma County Special Education Local Plan Area Educational Surrogate Parent Qualifying Data and Parent Search Documentation form) assuring that reasonable efforts as previously described fail to locate the parent or to obtain parent status notification from the placing agency. The designated program specialist will appoint a surrogate parent within thirty (30) calendar days of the request in accordance with California Government Code Section 7579.5(a).

If the student is not a dependent or ward and the LEA is unable to determine that the student resides in a home with an adult who is acting as a parent or who could be appointed as the surrogate parent, the LEA shall consider reporting the neglect or abuse to the child welfare agency in the county (California Penal Code sections 11165.7 and 11165.9).

### **Process and Procedures**

- (1) Sonoma SELPA designated administrator receives notification of Placement of Individual with Exceptional Needs in Licensed Children's Institution (LCI) or Foster Family Home.
- (2) The courts appoint a specific person with the educational rights or generate a Local Education Agency Response to JV 535-Appointment of Surrogate Parent
- (3) Upon request by the court (JV 535) the Sonoma SELPA designated administrator appoints a Surrogate Parent and sends Sonoma County SELPA Appointment/Acceptance of Surrogate Parent application to surrogate parent for signature.
- (4) Upon return of signed appointment/acceptance document of Surrogate Parent, the Sonoma SELPA designated administrator notifies the Court regarding the appointment of the Surrogate Parent by completing form Notification to Court regarding Local Educational Agency Response to JV-535- Appointment of Surrogate Parent – JV 536 and sending it to the Court

- (5) The Sonoma SELPA designated administrator sends notification to the receiving LEA of appointment/acceptance of Surrogate Parent completing form Sonoma County Special Education Local Plan Area Notification to Local Education Agency of Appointment/Acceptance of Surrogate Parent.

### **Wards and Dependents of the Court**

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. When a court decides that a minor is a dependent or a ward, the court may limit the parent’s educational rights (California Welfare and Institutions Code sections 361(a) and 726. When this occurs, the court issues an order assigning the educational rights to another responsible adult. The court must use JV-535 form to document one of the following:

- Appointment of an educational representative
- Determination that the caregiver may make educational decisions
- Referral to the LEA, or
- Educational decisions made by the court with input from interested persons (*California Rules of the Court*, Rule 5.650(b))

An educational representative is the responsible adult who holds the educational rights for a child when the parent’s or legal guardian’s educational rights have been limited by the court (*California Rules of the Court*, Rule 5.502(13)). The appointed educational representative has the same rights and responsibilities as a surrogate parent regarding special education. If the court cannot identify an educational representative and the child is or may be eligible for special education and related services, the court must refer to the LEA (*California Rules of the Court*, Rule 5.650(b)(2)).

- JV-535 and JV-536 must be served on the LEA no later than seven (7) calendar days after the date of the court's order
- The LEA must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court's referral
- If the LEA appoints a surrogate parent, it must send copies of the notice to the social worker or probation officer identified on JV-535.
- If the LEA does not appoint a surrogate parent within 30 days of receipt of the JV-535, it must, within the next five (5) court days, notify the court on form JV-536 of its inability to appoint a surrogate parent and its continuing reasonable efforts to assign a surrogate parent.

Silence of the court on the issue means the parent's rights have remained intact. The LEA should be notified by the placing agency pursuant to *California Government Code* Section 7579.1 et seq.

When a child is placed by the juvenile court, determinations about residential placement are outside the scope of the IEP team. When residential placement for educational purposes is under consideration, conflicts of interest are improbable if the in-home care provider is advocating the change in placement. However, a conflict of interest could arise when the provider seeks to retain the child in the current placement since changing the residential placement of a child would mean a loss of income to the provider. Therefore, local "blanket" policies concerning conflicts of interest may be problematic regarding in-home care providers as educational parent representatives or surrogates. When substantial issues are likely to result in a change in residential placement are faced by the IEP team, it is suggested that the LEA review appointments to reflect conflict of interest concerns (34 *Code of Federal Regulations* Section 300.519(d)(i)(ii)), (*California Government Code* Section 7579.5 (i)(j)). Each case should be determined on its own merits.

### **Unaccompanied Homeless Youth**

The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and migratory children who qualify as homeless for the purposes of this part because the children are living in

circumstances described in above bullet points. (42 *United States Code* Section 11434a(2))

The term “unaccompanied youth” is defined as a youth not in the physical custody of a parent or guardian (42 *United States Code* Section 11434a(6)).

A temporary surrogate parent may be appointed for a child who is an unaccompanied homeless youth. Such temporary surrogates may include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs. These temporary surrogates may be employees of the State Education Agency (SEA), the LEA, or any other agency that is involved in the education or care of the child until a surrogate parent can be appointed that meets all of the appointment requirements.

### **RECRUITMENT OF CANDIDATES**

The Sonoma County SELPA will work with local education agencies (LEAs), community service organizations, and local school districts parent agencies to secure applicants for the position of surrogate parent.

Reasonable efforts will be made to ensure that persons representing all sections of the community and all racial, ethnic, linguistic, and economic subgroups within the community are recruited and made available for appointment as educational representatives (California Government Code Section 7579.5(e)).

Each candidate interested in the surrogate parent position must complete the Sonoma County Special Education Local Plan Area Surrogate Parent Information/Application form.

### **SCREENING OF APPLICANTS**

The following areas must be addressed by the Sonoma County SELPA designated administrator in the screening process for the appointment of surrogate parents.

- (1) The candidate must pass both a tuberculosis test and background check. The Sonoma SELPA will underwrite the expenses and provide for the background check.
- (2) The candidate must have a willingness to learn the requirements of special education system and student.
- (3) The candidate must have no criminal background (arrest/conviction) that includes a misdemeanor involving abuse or neglect or others, or contributing to the delinquency of minors, or any felony conviction.

- (4) The candidate must have a valid *California Drivers License* and provide proof of insurance or demonstrate the ability to fulfill all duties of a surrogate parent without needing to drive.
- (5) The candidate must be willing to be fingerprinted. The Sonoma SELPA will underwrite the expenses and provide for the fingerprinting.
- (6) The candidate must not have a conflict of interest, including financial, with the specific student represented, or other interests, including institutional or other biases that might restrict or interfere with his or her ability to advocate for all the services required to ensure a free appropriate public education for the assigned individual with exceptional needs.
- (7) The candidate must not be an employee of an agency that has a direct relationship to the student, e.g., school employees, probation officers, social workers, group home providers, or others who may have a conflict of interest.
- (8) The candidate should display sensitivity to the cultural, socio-economic, and individual needs of the student served.

Federal law mandates that the surrogate parent not have a conflict of interest (34 *Code of Federal Regulations* Section 300.519(d)(2)(ii)). Some factors to consider are whether the volunteer:

- (a) Is employed by the state education agency, the LEA or any agency involved in the education or care of the student;
- (b) Holds a position that might restrict or bias his or her ability to represent the student's educational needs;
- (c) Holds a position that might subject the volunteer to administrative influence or reprimand for acting as the student's educational representative; and/or,
- (d) Has interests that might restrict or bias his or her ability to advocate for all the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in *California Government Code* Section 7579.5(i).

## APPOINTMENT OF A SURROGATE PARENT

Upon satisfactory completion of the surrogate parent training session and upon passing the SELPA screening process, the surrogate parent candidate shall be assigned to one or more students, using the following criteria:

- (1) Cultural and socio-economic sensitivity.
- (2) Location, based on reasonable travel time for the surrogate parent.
- (3) Ability to understand and relate to the disability and needs of the student.
- (4) The interest of the surrogate parent candidate.

## RESPONSIBILITIES

The surrogate parent shall serve as the child's parent for the purpose of the IEP process and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program (IEP), and in all other matters relating to the provision of a free and appropriate public education (FAPE) of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the IEP including non-emergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The surrogate parent may sign any consent relating to individualized education program purposes (*California Education Code Section 56050*).

The surrogate parent is **required to meet** with the student under the supervision of the student's group home provider, foster parent, person with whom the student resides, placing agency representative, or designated school staff at least one time.

The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information. The surrogate parent shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

School personnel shall make every reasonable effort to ensure that the surrogate parent has access to the student and student records as it relates to the student's educational needs. The surrogate parent retains the same rights as a parent/legal guardian to access student records. He or she must request copies of school records and other records in the same manner that is required by the parent/legal guardian. Due to the continual need for confidentiality, when

a surrogate parent discontinues representing a specific student, he or she must return to the district all copies of the student's records in his or her possession.

## **SURROGATE PARENT RIGHTS**

Surrogate Parents have the right to:

- (a) Inspect and have a copy of all of the child's educational records.
- (b) Request changes with inappropriate or inaccurate information contained in the student's records.
- (c) Be informed about assessment procedures, tests, and all results.
- (d) Seek an independent assessment if he/she believes that the school's assessment methods and/or results were inappropriate.
- (e) Participate fully in the planning of the student's IEP.
- (f) Receive information about available special education programs.
- (g) Question the appropriateness of the student's educational program.
- (h) Decide if a proposed special education placement and program is appropriate for the child, indicating the decision by either signing or refusing to sign the IEP.
- (i) Talk with people involved with the student's education and receive both regular progress reports and routine communications.
- (j) Review and make decisions on any proposed changes in the student's educational program.
- (k) Request a parent/school conference, new evaluation, or planning meeting when necessary.
- (l) Have an outside person and the student attend any meeting, if appropriate.
- (m) Be notified in writing when the school proposes any of the following:
  - i. Assessment of the student
  - ii. Changing the student's placement
  - iii. Changing the student's IEP
  - iv. Calling an educational planning meeting
- (n) Receive information from the school about free or low cost legal services in the SELPA that might be needed for legal guidance in performance of surrogate parent duties.
- (o) Initiate due process proceedings if needed.
- (p) Be informed if any due process proceedings have been initiated.
- (q) Receive information about all other state and local agencies that provide services to special education students.

- (r) The surrogate parent and the LEA appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious (*California Government Code Section 7579.5(l)*).

## **TRAINING**

Prior to assigning a surrogate parent to represent a student, the SELPA designated program specialist will arrange for training for the surrogate parent. The Sonoma County SELPA has developed materials including a PowerPoint presentation as part of the training process. Training shall include, but not be limited to, the following topics:

### **Special Education and Related Services**

1. Special Education programs available within Sonoma County SELPA as well as other educational placement options.
2. Sonoma County SELPA Policies.
3. Federal and State laws and regulations regarding Special Education.
4. Parent and student rights under federal and State Special Education laws and regulations.
5. Surrogate parent responsibilities, including participating in Individualized Education Program (IEP) meetings and suspension/expulsion proceedings for the assigned student.
6. Conflicts of Interest.
7. Visiting with the student's classroom(s) and consulting with the student's teacher(s) and personnel providing related services.
8. Visiting with the student outside the educational environment.
9. Consulting with the student's foster parent(s), group home provider/staff members, or the person(s) with whom the student resides.
10. Ethical concerns, including the responsibility to hold all information regarding the assigned student in confidence.
11. Information about cultural awareness.
12. The Community Advisory Committee (CAC) and parent support groups.
13. Child and adult abuse reporting laws.

### **Training Sessions**

Training sessions shall be provided at convenient locations, and shall be scheduled on days and at times that are suited to meet the needs of the surrogate parent candidates.

Following the training, the candidates will receive a Sonoma County Special Education Local Plan Area Acknowledgement of Training Completion as documentation that they have attended and successfully completed the Sonoma County SELPA Surrogate Training Program.

The Sonoma SELPA designated administrator shall maintain records of the dates surrogate parents received training so that update/review training may be provided for the surrogate parents as needed.

### **TERMINATION OF SURROGATE PARENT APPOINTMENT**

Surrogate parents are appointed on an academic calendar basis. A surrogate parent can withdraw his or her name and services from the pool of certificated candidates at any time. The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency (LEA) (*California Government Code* Section 7579.5(d-f)). Upon resignation of the surrogate parent appointment, the surrogate parent will return all student records to the appropriate LEA.

The Sonoma SELPA designated administrator shall terminate the appointment of a surrogate parent, when the Director of Special Education of the LEA in which the student is educated notifies the SELPA Director of any of the following conditions:

1. Notice is received from the court that the student is no longer a dependent or ward of the court, under Section 300.601 or 602 of the Welfare and Institutions Code. A copy of said notice should be forwarded to the Sonoma SELPA designated administrator within two (2) working days of receipt.
2. Notice is received from the court that the right of the parent or legal guardian to make educational decisions for the student, who is a ward, has been reinstated. A copy of said notice should be forwarded to the Sonoma SELPA designated administrator within two (2) working days of receipt.
3. The student reaches the age of majority, as documented by the LEA or Sonoma County Office of Education (SCOE) and no conservator has been appointed.
4. The student exits from the special education, as documented by an IEP team.
5. The parent or legal guardian appears and assumes the responsibility for making educational decisions for the student.
6. The student moves out of Sonoma SELPA.
7. The student becomes emancipated or married.
8. The surrogate parent will be removed from service when:
  - The surrogate parent is alleged to have committed a misdemeanor involving the abuse or neglect of others or contributing to the delinquency of minors, or any felony.
  - A surrogate parent violates confidentiality

- A surrogate parent's decisions indicate bias against the student based on race, religion, ethnicity, gender, handicapping condition, or sexual orientation.
- A conflict of interest situation arises.
- A surrogate parent does not perform duties adequately as determined by an ongoing evaluation process ( Sonoma County Special Education Local Plan Area Surrogate Parent Evaluation).

When an LEA or SELPA designated administrator receives information/request indicating the possible need to remove a surrogate parent, the SELPA Director shall make a decision to terminate or not terminate immediately, but not to exceed five (5) 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 (5) school days of the decision to remove the surrogate parent.

At removal, the surrogate parent will return all student records and the SELPA identification photo card to the SELPA administrator within ten (10) days of the notice of removal. If necessary to ensure adequate representation of the child, a new surrogate parent will be appointed by the Sonoma SELPA designated program specialist.