

WHO IS THE PARENT AND WHEN SHOULD WE APPOINT A SURROGATE PARENT?

Definition of Parent

For the purposes of both Part C and Part B, “parent” is not limited to a biological or adoptive parent but also includes a foster parentⁱ, guardianⁱⁱ, a person the child is living with who is acting in place of the parent, a person who is legally responsible for the child’s welfare, or a surrogate. When more than one individual seeks to act as the parent, the biological or adoptive parent is presumed to be the parent unless that person does not have legal authority to make educational decisions for the child, or there is a judicial order or decree specifying another individual to act as the parent. When more than one person is qualified to act as the parent but the biological or adoptive parent is not attempting to act as the parent another qualified person may assume that role. 34 C.F.R. §303.27, 34 C.F.R. §300.30 and Minn. Stat. §125A.27

Appointing a Surrogate Parent

A school district is responsible to assign an individual to act as a surrogate parent to ensure that the rights of a child with a disability are protected under the following conditions:

1. No parent, as defined above, can be identified;
2. The public agency, after reasonable efforts, cannot locate a parent;
3. The child is a ward of the state under the laws of that state; or
4. The child is an unaccompanied, homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.
5. The child’s parent requests the appointment of a surrogate parent in writingⁱⁱⁱ. Minn.R. 3525.2440

There are restrictions to who can be appointed as a surrogate. A person cannot be a surrogate parent to a child for whom the person provides early intervention services. Minn. Stat. §125A.27, subd. 19. In addition, under federal law, the school district must ensure that the individual selected as a surrogate parent:

1. is not an employee of the state educational agency (SEA), the local educational agency (LEA), or any other agency that is involved in the education or care of the child;
2. has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

3. has knowledge and skills that ensure adequate representation of the child.
34 C.F.R. §300.519(d).

The Act does not require the automatic appointment of a surrogate parent for every child with a disability who is a ward of the State. States and LEAs must ensure that the rights of these children are protected and that a surrogate parent is appointed, if necessary. If a child who is a ward of the state already has a person who meets the definition of parent, and that person is willing and able to assume the responsibilities of a parent under the Act, a surrogate parent might not be needed.

ⁱ A foster parent may serve as the parent unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent.

ⁱⁱ A guardian may serve as the parent if the guardian is generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State).

ⁱⁱⁱ A parent's written request for the appointment of a surrogate may be revoked in writing at any time.