

Regulation 6159.3: Appointment Of Surrogate Parent For Special Education Students

Status: DRAFT

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Conditions Necessitating a Surrogate

The Superintendent or designee shall appoint a surrogate parent to represent a student with disabilities under one or more of the following circumstances: (Government Code 7579.5; 20 USC 1415(b)(2); 34 CFR 300.5159)

1. No parent/guardian for the student can be identified;
2. The district, after reasonable efforts, cannot discover the location of a parent or legal guardian of the student;
3. The student is adjudicated a dependent or ward of the court pursuant to Welfare and Institutions Code 300, 601 or 602 and all of the following conditions are satisfied:
 - 1a. The court has referred the student for special education and related services or the student has a valid individualized education program (IEP)
 - 2b. The court has specifically limited the right of the parent/guardian to make educational decisions for his/her child
 - 3c. The student has no responsible adult to represent him or her pursuant to Welfare and Institutions Code 361 or 726 or Education Code 56055

(cf. 6159 – Individualized Education Program)

4. The student is an unaccompanied homeless youth not in the custody of a parent/guardian, as defined in 42 USC 11434a

(cf. 6173 – Education for Homeless Children)

5. The student has reached the age of majority but has been declared incompetent by a court of law

Appointment of Surrogate Parents

Upon a determination that a student needs a surrogate parent, the Superintendent / or designee shall make reasonable efforts to ensure that the surrogate is appointed within 30 days. (20 USC 1412(b)(2)(B))

When appointing a surrogate parent, the Superintendent or designee shall give first preference to a relative caretaker, foster parent or court-appointed special advocate, provided any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the Superintendent or designee shall select the surrogate parent of his/her choice. If the student is moved from the home of the relative caretaker or foster parent who was appointed as the student's surrogate parent, the Superintendent or designee shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the student. (Government Code 7579.5)

(cf. 6173.1 – Education for Foster Youth)

The Superintendent or designee shall ensure that individuals to be appointed as surrogate parents have passed a criminal background check and have demonstrated interest and skill in working with students with disabilities.

Surrogate parents shall have no interests that conflict with the student's educational interests and shall have knowledge and skills that ensure adequate representation of the student. If a conflict of interest arises after the appointment of a surrogate parent, the Superintendent or designee shall terminate the appointment and appoint another surrogate parent. (34 CFR 300.5159; Government Code 7579.5)

Duties of Surrogate Parent

The surrogate parent shall have all the rights relative to the student's education that a parent has under the Individuals with Disabilities Education Act pursuant to 20 USC 141400-1482 and 34 CFR 300.1-300.756818. The surrogate parent may represent the student in all matters relating to identification, assessment, instructional planning and development, educational placement, review and revision of the IEP, and in other matters relating to the provision of a free and appropriate public education. (Education Code 56050; Government Code 7579.5)

~~{cf. 6164.4 – Identification of Individuals for Special Education}~~

In addition, the representation of the surrogate parent shall include the provision of written consent to the IEP including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Government Code 7570-75887. (Education Code 56050)

~~{cf. 5141 – Health Care and Emergencies}~~

Surrogate parents shall volunteer their services to the district and serve without compensation. The district may reimburse them for mileage and other incidental expenses directly associated with their duties as surrogate parents.

~~{cf. 3350 – Travel Expenses}~~

Surrogate parents shall have access to the student's school records as necessary to fulfill their responsibilities as surrogate parents and in accordance with Board policy and administrative regulation.

~~{cf. 5125 – Student Records}~~

Termination of Appointment

The Superintendent or designee shall terminate the appointment of a surrogate parent under the following conditions:

1. When the student is no longer in need of special education (Government Code 7579.5)
 2. When the student reaches 18 years of age, unless he/she chooses not to make education decisions for himself/herself or is deemed by a court to be incompetent (Government Code 7579.5)
 3. Another responsible adult is appointed to make educational decisions for the student (Government Code 7579.5)
 4. The right of the parent/guardian to make educational decisions for the student is fully restored (Government Code 7579.5)
 5. When the surrogate parent no longer satisfies the requirements for appointment as a surrogate parent, as specified above
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