

Foster Care & Education Q&A

SURROGATE PARENT PROGRAMS

Q: Who can be an IDEA Parent?

A: Under the Individuals with Disabilities Education Act (IDEA), a “parent” – the education decisionmaker in the special education system – can be a biological or adoptive parent, a foster parent (if permitted under state law), a guardian generally or specially authorized to make education decisions for the child, someone with whom the child lives who acts as the parent, someone who is legally responsible for the child’s welfare, or a surrogate parent. See 20 U.S.C. §1401(23); 34 C.F.R. 300.30(a).

Q: When and how is a surrogate parent appointed?

A: In general, the school district should appoint a surrogate parent for a child who does not have an IDEA parent, is a ward of the state under state law, or is an unaccompanied homeless youth. The juvenile court can appoint a surrogate parent for a child who is in the custody of a child welfare agency but does not have a foster parent who is permitted by state law to act as an IDEA parent. Every child must have a named individual who can advocate and make decisions for her in the special education system! For additional information regarding the rules on special education decisionmaking, go to: www.abanet.org/child/education.

Q: What are the key components of an effective surrogate parent program?

A: Effective surrogate parent programs have several components in common:

- Strong collaboration between the education and child welfare agencies, including developing a Memorandum of Understanding (MOU) outlining the responsibilities of each department;
- A proactive referral strategy through the child welfare agency;
- Effective recruitment through state and local organizations and school districts;
- A strong initial training program, including a clear and thorough curriculum, and continuing training and technical assistance;
- A strategy for retaining surrogate parents and ensuring continuity of representation through commitment contracts, salary, recognition, and support.

Q: Why have some states developed state level surrogate parent programs?

A: The IDEA mandates that all states develop procedures for assigning individuals to act as surrogate parents, including reasonable efforts to make those assignments within 30 days. In response, some states have created state level surrogate parent systems rather than rely on school districts to assign surrogate parents. Rather than have every district recruit, train, and assign volunteers, the state programs are responsible for these activities. Many of these programs have permanent staff and some pay surrogates as well as education consultants, especially in complex cases. Several states developed programs in response to complaints (and sometimes class action litigation) about school districts’ failure to appoint surrogate parents promptly or



school districts appointment of caseworkers in contravention of the IDEA.

Because federal law now clearly allows foster parents to be IDEA parents (without the need for a surrogate parent appointment), the children most often assigned surrogate parents are children in group or congregated care settings. These extremely vulnerable children are also highly mobile, and are often detached from family or friends whom school districts could designate as surrogate parents. For these children, a state level program is often particularly beneficial.

Q: How do state surrogate parent programs help find children in need of surrogate parents?

A: In some states, all school districts and child welfare workers can contact program staff to request the appointment of a surrogate parent for a child. In Vermont, the program receives monthly lists from the child welfare agency of children in care who have disabilities and who may need a surrogate parent appointed. In Illinois, the surrogate parent program serves only children in group or residential settings, and caseworkers in those settings are responsible for making referrals.

Q: How are statewide Surrogate Parent Programs funded?

A: Most surrogate parent programs are funded in whole or in part through federal IDEA Part B funds. In some states, costs are shared between the education and child welfare agencies. The costs of programs vary widely – from \$75,000 to \$650,000 a year – largely depending on whether the programs pay surrogate parents or rely on volunteers. Even programs that rely on volunteers usually pay volunteers' expenses.

Q: Where can I learn more about Surrogate Parent programs?

A: Please visit the Legal Center on Foster Care and Education Website for more information about surrogate parent appointments and programs at www.abanet.org/child/education.

