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# WVDE Surrogate Parents

## *A Guide to the Surrogate Parent Process*

*from the Office of Special Education*



**West Virginia Board of Education  
2018-2019**

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State Superintendent of Schools

West Virginia Department of Education

# WVDE Surrogate Parents

## *A Guide to the Surrogate Parent Process*

from The Office of Special Education

This document contains the West Virginia Department of Education's (WVDE) practices and procedures for surrogate parents that support enhanced services to West Virginia children and youth with disabilities residing outside West Virginia. All policy statements regarding the delivery of special education and related services are contained in the current TITLE 126, LEGISLATIVE RULE, BOARD OF EDUCATION, SERIES 16, REGULATIONS FOR THE EDUCATION OF STUDENTS WITH EXCEPTIONALITIES (2419). WVDE Policy 2419, Chapter 10, Section 8 A. B. Surrogate Parents.

If you have questions regarding the Surrogate Parents Process after reviewing this guide, please contact the WVDE Office of Special Education at 304-558-2696.

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# IDEA and Surrogate Parents

The Individuals with Disabilities Education Act (IDEA) was enacted to protect the rights of children with disabilities and ensure that they have available to them a free appropriate public education (FAPE). Parents play an integral role in the special education process. When a student is a “ward of the State,” the natural parent is no longer a part of this process. The IDEA has procedures in place to ensure a child’s rights are represented. In West Virginia these procedures involve the appointment of a West Virginia Department of Education (WVDE) “surrogate parent.”

For children who are eligible to receive special education and related services under the IDEA, the regulations at 34 CFR §300.30(a)(5) state that the term “parent” may include “a surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.” IDEA defines “ward of the State” (See 34 CFR §300.45).

34 CFR §300.519(a)(3) specifies that each public agency must ensure that the rights of a child are protected when “the child is a ward of the State.” The public agency must have a method for appointing a surrogate parent for a child who is a ward of the State pursuant to its duty under 34 CFR §300.519(b). Further, according to 34 CFR §300.519(c), “In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by a judge overseeing the child’s case, provided that the surrogate meets the requirements outlined in 34 CFR §300.519(d)(2)(i), and (e).” When the surrogate parent is appointed by a judge, that appointment indicates whether that surrogate parent is to represent the child’s educational rights. When there is uncertainty or when it is not stated in that appointment, the WVDE appoints a trained surrogate parent to protect the child’s rights.

Based on 34 CFR §300.519(d)(2)(i), a person selected as a surrogate parent may not be 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. The regulation at 34 CFR §300.519(e) explains that, “A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.” Note that when a public agency appoints a surrogate parent, rather than a judge, IDEA also requires the public agency to ensure that the person selected as surrogate parent has no personal or professional interest that conflicts with the interest of the child, and that the surrogate parent possesses the knowledge and skills that ensure adequate representation of the child (34 CFR §300.519(d)(2)(ii)-(iii)).

As noted above, where a judge appoints the surrogate parent, the applicable IDEA requirements are only those in 34 CFR §300.519(c) and not those in 34 CFR §300.519(d)(2)(ii)-(iii). That is, it is consistent with IDEA for members of a legal aid organization who also represent these children in other matters to be judicially appointed to act as the surrogate parent for IDEA purposes. The judge would be responsible for ensuring that the selected designee meets the requirements for a surrogate parent, as outlined in 34 CFR §300.519(d)(2)(i) and (e).

# Choosing to Become A WVDE Surrogate Parent

There is a commitment involved in becoming a surrogate parent for the WVDE Office of Special Education. That commitment involves your expertise, time, and energy. Though a special education surrogate parent has no legal parental claims for the child in which they serve, they have the responsibility to ensure that the child's educational needs are met. Generally, this work requires no more than 3-5 hours a month. WVDE Office of Special Education surrogate parents are compensated. However, surrogate compensation is not usually the main motivation for choosing to become a surrogate parent of a student with disabilities. Those who have served as surrogates explain that what is most important is that they have assisted in the educational welfare of a WV student who otherwise has no parent to protect their educational rights.

## Surrogate Parent Responsibilities

The surrogate parent's role in special education is the same as the role of a birth or adoptive parent—to represent the student in the special education process including, but not limited to, actions such as drafting the IEP, consent for evaluation and placement, and consent for release of information. A surrogate parent acting on the student's behalf for the purposes of special education is not authorized to act as a parent in any other sense.

### **Confidentiality**

WVDE surrogate parents have access to student private educational records. It is important to remember that those records are confidential. No information acquired through this process should ever be released or discussed with any person who does not have an educational interest in the student. This expectation exists during and after a surrogate parent's length of service.

### **Conflict of Interest**

If a WVDE is assigned a student where there might exist a conflict of interest or they are familiar with the family or school of the student, they must notify the WVDE Office of Special Education as soon as the conflict of interest is discovered. Teachers and other educators presently employed in the student's home county are not eligible to act as a surrogate parent for a student in their county. Additionally, a worker for a disability agency that provides services to individuals with disabilities, is unable to be a special education surrogate parent. It would be considered a conflict of interest. As well, a conflict of interest arises when, for example, a Speech Language Pathologist (SLP) works for an agency that offers a specific program that would benefit the student for whom she is a surrogate parent. The SLP could not in good conscience, without a conflict of interest, recommend the agency that they work for. If a surrogate parent is not sure if a conflict of interest exists, they should contact the WVDE Office of Special Education.

### **The Student**

The work of the surrogate will require learning about the student by reviewing the IEP and other documentation prior to any meetings so to best help the team meet the needs of the student. The surrogate parent can also ask the facility's professionals questions regarding the student. The WVDE Office of Special Education may be able to assist in obtaining additional information pertaining to the

student. In this arrangement, the surrogate parent does not meet the student because the student resides out of state. Any information obtained for the sake of acting in the best educational interest of the student is kept confidential during the service as a surrogate parent and after.

### ***The Disability***

The surrogate parent will also need to learn about the child's disability area(s). The PACER's website contains links to many disability agencies and groups at <http://www.PACER.org/parent/links.asp>. Use that website or research disabilities that are unfamiliar to gain an understanding of what the student's academic needs might be. Having a thorough understanding of the disability and the student's present level of performance is valuable when contributing to the work of the IEP or Re-evaluation team.

### ***Length of Service***

The length of service, although not defined in regulation or rule, should ensure minimum disruption to the student. The surrogate parent's service usually ends when the student returns to West Virginia. When deciding how long a surrogate parent should serve, the WVDE considers:

- Educational needs of the student
- Anticipated availability of the surrogate parent
- Age and grade level of the student

### ***Special Education Surrogate Parent Rights***

WVDE special education surrogate parents have the following rights:

1. Access all the student's educational records.
2. Review and inspection of any records collected, maintained, and used by an agency to make decisions affecting the student's educational program.
3. Request an amendment of student records as indicated in 34 CFR § 300.618.
4. Consent to the release of the student's educational records as indicated in 34 CFR § 300.613.

### ***Dismissal of a Surrogate Parent***

A surrogate parent should be dismissed if any of the following occur:

- The person is not properly performing the duties of a surrogate parent.
- The person has a conflict of interest with the appointment.
- The student is no longer in need of special education programs or services.
- Another responsible adult is appointed to make educational decisions for the student.
- The rights of the parent or guardian to make educational decisions for the student are fully restored.

## **WVDE Surrogate Parent Qualifications**

A surrogate parent must have extensive special education experience and knowledge of current special education law and the availability to serve in this capacity so to ensure adequate representation of the child. A person with such knowledge and skills may be a special education teacher, school administrator, or former advocate. To the extent possible, the surrogate parent should match the child's cultural and linguistic background. The WVDE Office of Special Education requires that surrogates successfully complete training for surrogate parents.

# Surrogate Appointment Procedures

When a student resides within WV and requires a surrogate parent, the county where the student resides appoints the surrogate parent. Contact individual county special education directors for surrogate appointment procedures.

When a student resides outside WV, the WVDE assigns a surrogate parent. The procedures for appointing a surrogate for WV students residing outside WV are outlined below.

1. WV students who are placed in other states' residential settings receive educational services within those settings.
2. When those students have an Individual Education Program (IEP), the facility must update the IEP in accordance with IDEA regulations.
3. The facility contacts the WVDE Office of Special Education with the student's name, county, and placement information.
4. The WVDE uses a rotation process from its list of qualified surrogates to assign a surrogate unless a facility specifically requests a surrogate.
5. The WVDE connects the assigned surrogate and the facility representative who agree upon a date for the meeting.
  - a. Unless otherwise agreed upon, at least 2 days prior to the meeting the facility provides a draft IEP and other pertinent documents to the surrogate.
  - b. The WVDE special education surrogate parent meets electronically (i.e., via telephone) with the IEP team.
6. The WVDE surrogate communicates questions and or concerns via email or phone call to the facility representative before the meeting.
7. The facility provides a final signed copy of the IEP and/or other documents to the surrogate and to the WVDE.

## **Compensation**

There is compensation available for those who serve as WVDE surrogate parents. Please contact the Office of Special Education at 304-558-2696.

## **Application Process**

Please contact the Office of Special Education at 304-558-2696.



# Appendix

## Applicable IDEA Regulations

### Part 300 (Part B) – Assistance to States for the Education of Children with Disabilities

#### Subpart E – Procedural Safeguards Due Process Procedures for Parents and Children.

##### 300.519 Surrogate parents.

- (a) **General.** Each *public agency* must ensure that the rights of a child are protected when -
- (1) No *parent* (as defined in §300.30) 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 (42 U.S.C. 11434a(6)).
- (b) **Duties of public agency.** The duties of a *public agency* under *paragraph (a)* of this section *include* the assignment of an individual to *act* as a surrogate for the parents. This must *include* a method -
- (1) For determining whether a child needs a surrogate *parent*; and
  - (2) For assigning a surrogate *parent* to the child.
- (c) **Wards of the State.** In the case of a child who is a ward of the *State*, the surrogate *parent* alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) **Criteria for selection of surrogate parents.**
- (1) The *public agency* may select a surrogate *parent* in any way permitted under *State* law.
  - (2) Public agencies must ensure that a person selected as a surrogate *parent* -
    - (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
    - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate *parent* represents; and
    - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) **Non-employee requirement; compensation.** A person otherwise qualified to be a surrogate *parent* under *paragraph (d)* of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate *parent*.
- (f) **Unaccompanied homeless youth.** In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate *parents* without regard to *paragraph (d)(2)(i)* of this section, until a surrogate *parent* can be appointed that meets all of the requirements of *paragraph (d)* of this section.
- (g) **Surrogate parent responsibilities.** The surrogate *parent* may represent the child in all matters relating to -
- (1) The identification, *evaluation*, and educational placement of the child; and
  - (2) The provision of FAPE to the child.
- (h) **SEA responsibility.** The SEA must make reasonable efforts to ensure the assignment of a surrogate *parent* not more than 30 *days* after a *public agency* determines that the child needs a surrogate *parent*.

Also See:

**Part 303 (Part C) – Early Intervention Program for Infants and Toddlers with Disabilities  
Subpart E – Procedural Safeguards Due Process Procedures for Parents and Children.  
303.422 Surrogate parents.**

***Applicable WV Policy 2419 Regulations***

**Chapter 10. Procedural Safeguards. Section 8. Surrogate Parents**

A surrogate parent is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004. The surrogate parent may represent a student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student.

**A. Referral for a Surrogate Parent**

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district’s special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

1. A parent cannot be identified.
2. A parent cannot be found after reasonable efforts to locate the parent.
3. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student’s education, including special education, provided he or she meets the criteria for a district-appointed surrogate.
4. The student is an unaccompanied homeless youth as defined in Section 725 (6) of the McKinney-Vento Homeless Assistance Act.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the natural parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth below. The district will make reasonable efforts to assign a surrogate within thirty days after it determines that the student needs a surrogate.

**B. Criteria for Serving as a Surrogate Parent**

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement and the provision of FAPE. The district must ensure the person selected and appointed as a surrogate parent:

1. Has knowledge and skills that ensure effective representation of the student
2. Has no personal or professional interest that conflicts with the interest of the student
3. Is not an employee of the WVDE, the district, or any other agency that is involved in the education or care of the student

A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

# WVDE Time Sheet

**(To be submitted with ALL Agreement/Stipend invoices)**

Vendor Name: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_  
 Vendor Number: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_

GAP/ACT#: \_\_\_\_\_  
 Officiating Office: Office of Special Education  
 Office Contact: Nancy Cline  
 Phone/Ext.: \_\_\_\_\_

Month	Date	Day of Week	Begin Time	End Time	Daily Rate	Hourly Rate	Other Rate (please specify)	Total
	1							
	2							
	3							
	4							
	5							
	6							
	7							
	8							
	9							
	10							
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	30							
	31							
TOTALS								

Project Manager Signature \_\_\_\_\_  
 Vendor Signature \_\_\_\_\_

Date: \_\_\_\_\_  
 Date: \_\_\_\_\_

# SERVICE AGREEMENT

I, \_\_\_\_\_ of \_\_\_\_\_  
<sup>1</sup>(complete name as it appears on your social security card or SS-4)

\_\_\_\_\_ <sup>2</sup>Mailing Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

agree to perform the following services for the: \_\_\_\_\_ WV Department of Education  
(organization name)

at <sup>3</sup> (location) \_\_\_\_\_

<sup>4</sup> (detailed description of services to be performed – if WV certified teacher, please state in this section and complete certification below)  
\*Attach a WV-50 – See Following Page\*

<sup>5</sup>Date(s) of service: From: \_\_\_\_\_ To: \_\_\_\_\_

The rate of pay shall be \$	0.00	per <sup>6</sup>	0	not to exceed \$	0.00
The rate of pay shall be \$	0.00	per <sup>7</sup>	0	not to exceed \$	0.00
The rate of pay shall be \$	0.00	per <sup>8</sup>	0	not to exceed \$	0.00

Authorized Travel Expense <sup>9</sup>: (check only one box) <sup>10</sup>Total: \$ \_\_\_\_\_

- Will not be reimbursed.
- Will be reimbursed upon proper documentation in accordance with the travel regulations of the Agency not to exceed \$ 0.00 .

Please check the appropriate box below <sup>11</sup>: (check only one box)

- I am not currently a full-time employee of the State of West Virginia or a county board of education.
- I am currently a full-time employee of the State of West Virginia. - **Complete Certification 1**
- I am currently a full-time employee of \_\_\_\_\_ BOE - **Complete Certification 2**  
(enter county name)

WV DEPARTMENT OF EDUCATION

VENDOR

\_\_\_\_\_  
Authorizing Signature<sup>12</sup> \_\_\_\_\_ Date<sup>13</sup> \_\_\_\_\_ Vendor's Signature<sup>14</sup> \_\_\_\_\_ Date<sup>15</sup> \_\_\_\_\_

\_\_\_\_\_  
Print Name<sup>16</sup> \_\_\_\_\_ Taxpayer Identification Number (SSN/FEIN) <sup>17</sup> \_\_\_\_\_

\_\_\_\_\_  
Originating Office Name \_\_\_\_\_ **Office of Internal Operations**

**1 CERTIFICATION: Full-time employees of the State of West Virginia must complete.**

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee. The amount of annual compensation received by \_\_\_\_\_ (above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be \$ \_\_\_\_\_ The vendor serves as \_\_\_\_\_ with the title of \_\_\_\_\_

\_\_\_\_\_  
(position) \_\_\_\_\_ (title)

\_\_\_\_\_  
Signature of Vendor's Supervisor/Agency Head \_\_\_\_\_ Title \_\_\_\_\_ Agency Name \_\_\_\_\_

**2 CERTIFICATION: Full-time employees of the WV Boards of Education must complete.**

We certify that the time period covered under this contract is one of the below – check only one box: **(Employee is REQUIRED to sign below)**

- That there is no compensation for the services covered by this contract; (i.e. travel only)
- That the services covered by this contract occur outside the hours in which this employee receives compensation; or
- That both this employee and our organization are in compliance with Title 158, Series 14, regarding the filing of verified time records - **(If you check this box, then supervisor MUST also sign)**

\_\_\_\_\_  
(Signature of Employee) \_\_\_\_\_ (Signatures of Employee's Supervisor)

**WVDE USE ONLY**

Document ID #: <sup>18</sup> \_\_\_\_\_ Acct: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Vendor #: <sup>19</sup> \_\_\_\_\_ Program<sup>20</sup> \_\_\_\_\_ PPC<sup>21</sup> \_\_\_\_\_ Unit<sup>22</sup> \_\_\_\_\_ Fund<sup>23</sup> \_\_\_\_\_ Approp<sup>24</sup> \_\_\_\_\_

Check here if approval is required by the Attorney General.  Approved: \_\_\_\_\_



Steven L. Paine, Ed.D.  
West Virginia Superintendent of Schools