

## Q&A: Identification of Parent for Participation in Special Education Planning for a Child with a Disability

The Minnesota Department of Education (MDE), Division of Compliance and Monitoring, has developed this document to address questions raised by parents and school districts regarding identification of a parent to participate in special education planning for a child with a disability. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

### **Question 1: Who is considered a parent of a child with a disability?**

**Answer:** A parent under the Individuals with Disabilities Education Act (IDEA) is defined as follows:

1. A biological or adoptive parent;
2. A foster parent, unless precluded under state law;
3. A relative or other individual acting in place of a biological/adoptive parent, with whom the child lives, or an individual who is legally responsible for the child's welfare;
4. A guardian who is generally authorized to act as the child's parent, or authorized to make educational decisions for the child. If the child is a ward of the state, the state is not considered a parent under IDEA; or
5. A surrogate parent appointed under Title 34, section 300.519, of the Code of Federal Regulations.

If more than one person meets the definition of a parent and attempts to act as the parent for special education purposes, then the biological or adoptive parent is presumed to be the parent under IDEA. However, if a judicial decree or order identifies a specific person or persons to act as the parent of the child or to make educational decisions on behalf of that child, then that person or persons would be considered the parent under IDEA.

**Authority:** 34 C.F.R. § 300.30(a) and 34 C.F.R. § 300.30(b).

### **Question 2: Under federal law, when would a surrogate parent be appointed to act as the parent under IDEA?**

**Answer:** Under federal law, 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 in Title 34, section 300.30, of the Code of Federal Regulations 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.

**Authority:** 34 C.F.R. § 300.519(a).

**Question 3: Does any other entity have the authority to appoint an individual to act as a surrogate parent to ensure that the rights of a child with a disability are protected?**

**Answer:** Yes. If a child with a disability is a ward of the State, a judge overseeing the child's case may alternatively appoint the surrogate parent. The appointed surrogate parent must meet the requirements in Title 34, sections 300.519(d)(2)(1) and (e) of the Code of Federal Regulations. The appointed surrogate parent would then meet the definition of parent under Title 34, section 300.30(a)(5), of the Code of Federal Regulations.

**Authority:** 34 C.F.R. § 300.519(c), and 34 C.F.R. § 300.30(a)(5).

**Question 4: Does state law address the appointment of a surrogate parent?**

**Answer:** Yes. Under Minnesota law, a school district is also responsible to assign an individual to act as a surrogate parent when the child's parent requests the appointment of a surrogate parent in writing. That request may be revoked in writing at any time.

**Authority:** Minn. R. 3525.2440.

**Question 5: Under federal law, what are the duties of the school district in appointing a surrogate parent?**

**Answer:** The duties of a school district include developing and implementing a process for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child.

**Authority:** 34 C.F.R. § 300.519(b).

**Question 5: Are there specific criteria a school district must follow when appointing a surrogate parent?**

**Answer:** Yes. The school district's selection of a surrogate parent is based upon state law. 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.

**Authority:** 34 C.F.R. § 300.519(d).

**Question 6: Are there state laws related to the selection of a surrogate parent?**

**Answer:** Yes. A school district must make reasonable efforts to locate the parent of a child with a disability. Reasonable efforts may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent's last known address.

A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting and the reasons for the proposed removal. The surrogate parent will be given the opportunity to be heard at that meeting. A school district may remove a surrogate parent for one of the following reasons:

1. Failure to perform the duties required in the individualized education program (IEP) team meeting and IEP process and those cited in IDEA federal statutes and regulations;
2. A conflict of interest as referenced in Title 34, section 300.515(c)(2), of the Code of Federal Regulations;
3. Actions that threaten the well-being of the assigned student;
4. Failure to appear to represent the student; or
5. The student no longer needs special education and related services.

A school district must ensure that the surrogate parent has the knowledge and skills necessary for adequate representation of the child by either making the information and training available to the surrogate parent or appointing a surrogate parent who has:

1. a knowledge of state and federal requirements related to IDEA;
2. a knowledge of district structure and procedures;

3. an understanding of the nature of the student's disability and needs; and
4. an ability to effectively advocate for an appropriate educational program for the student.

**Authority:** Minn. R. 3525.2435; Minn. R. 3525.2450; and Minn. R. 3525.2455.

**Question 7: Do courts follow the same criteria as school districts when appointing a surrogate parent?**

**Answer:** For surrogate parents appointed by the court for children who are wards of the state, the only requirement is that the surrogate parent must not be an employee of the SEA, LEA, or any other agency that is involved in the education or care of the child. A surrogate parent is not an employee of an agency solely because they are paid by the agency to serve as a surrogate parent.

In response to comments to the new regulation addressing wards of the state, the Office of Special Education Programs (OSEP) explained that the regulation followed the Act so as to interfere as little as possible with state practice in appointing individuals to act for the child.

However, we would expect that in most situations, the court appointed individuals will not have personal or professional interests that conflict with the interests of the child and will have the knowledge and skills to adequately represent the interests of the child.

F. Reg. Vol. 71, page 46711. (August 14, 2006).

**Authority:** 34 C.F.R. § 300.519(c); 34 C.F.R. § 300.510(e); and Fed. Reg. Vol. 71, page 46711(August 14, 2006.); Letter to Thompson OSEP (September 15, 1995) 23 IDELR 890, 23 LRP 343.

**Question 8: Under Minnesota law, when is a child with a disability considered a ward of the state?**

**Answer:** Under Minnesota law, a child would be considered a ward of the state based upon a court order that transfers guardianship and the legal custody the child to the commissioner of human services.

In a juvenile court proceeding, the court may transfer guardianship and legal custody of the child to the commissioner of human services if:

1. The rights of the parents have been terminated, or
2. Both parents or the only known parent, are or is deceased and no guardian has been appointed pursuant to the Uniformed Probate Code.

**Authority:** Minn. Stat. § 260C.325; Minn. Stat. §§ 524.5-201-524.5-317 (Part of Uniform Probate Code).

**Question 9:** **Can a guardian ad litem (GAL), who has been appointed in a family or juvenile proceeding, be appointed as a surrogate parent to make educational decisions on behalf of a child with a disability?**

**Answer:** A guardian ad litem (GAL) is appointed in a family or juvenile court proceeding for the limited role of representing the best interest of the child in the court proceedings. The Minnesota rules addressing GAL responsibilities do not specifically address education.

If a child is a ward of the state, as defined under state law, and there is a court appointed guardian ad litem, the court overseeing the child's case could appoint a surrogate parent. If the GAL is not an employee of the SEA, LEA, or other agency involved in the education or care of the child, the court is not precluded from appointing a GAL as a surrogate parent.

If a school district is unable to identify a parent under Title 34, section 300.30, of the Code of Federal Regulations and determines that a surrogate parent should be appointed, the school district would need to determine if the GAL would meet the requirements for a surrogate parent. School districts should consider the GAL's role (family court custody proceedings, or child protection juvenile proceeding), whether that role would result in a conflict of interest and the availability of other individuals who meet the requirements for a surrogate parent.

**Authority:** Minn. Gen. R. Prac.108.01-03; Minn. Gen. R. Prac. 901-07; Minn. R. Juv. Del. P. 24.0-03; Minn. R. Adopt. P. 24.01-24.03; Minn. R. Juv. P. 26.01-05; Minn. Stat. § 518.165; Minn. Stat. § 260B.163; Minn. Stat. § 260C.163; Minn. Stat. § 260D.06; 34 C.F.R. § 300.519(c), and 34 C.F.R. § 300.30(a)(5).