

SURROGATE PARENT REQUIREMENTS

The “Surrogate Parent Requirements” document is based on the laws and requirements regarding the appointment of Surrogate Parents. Included are the documents required for recruitment, training, and monitoring as outlined below.

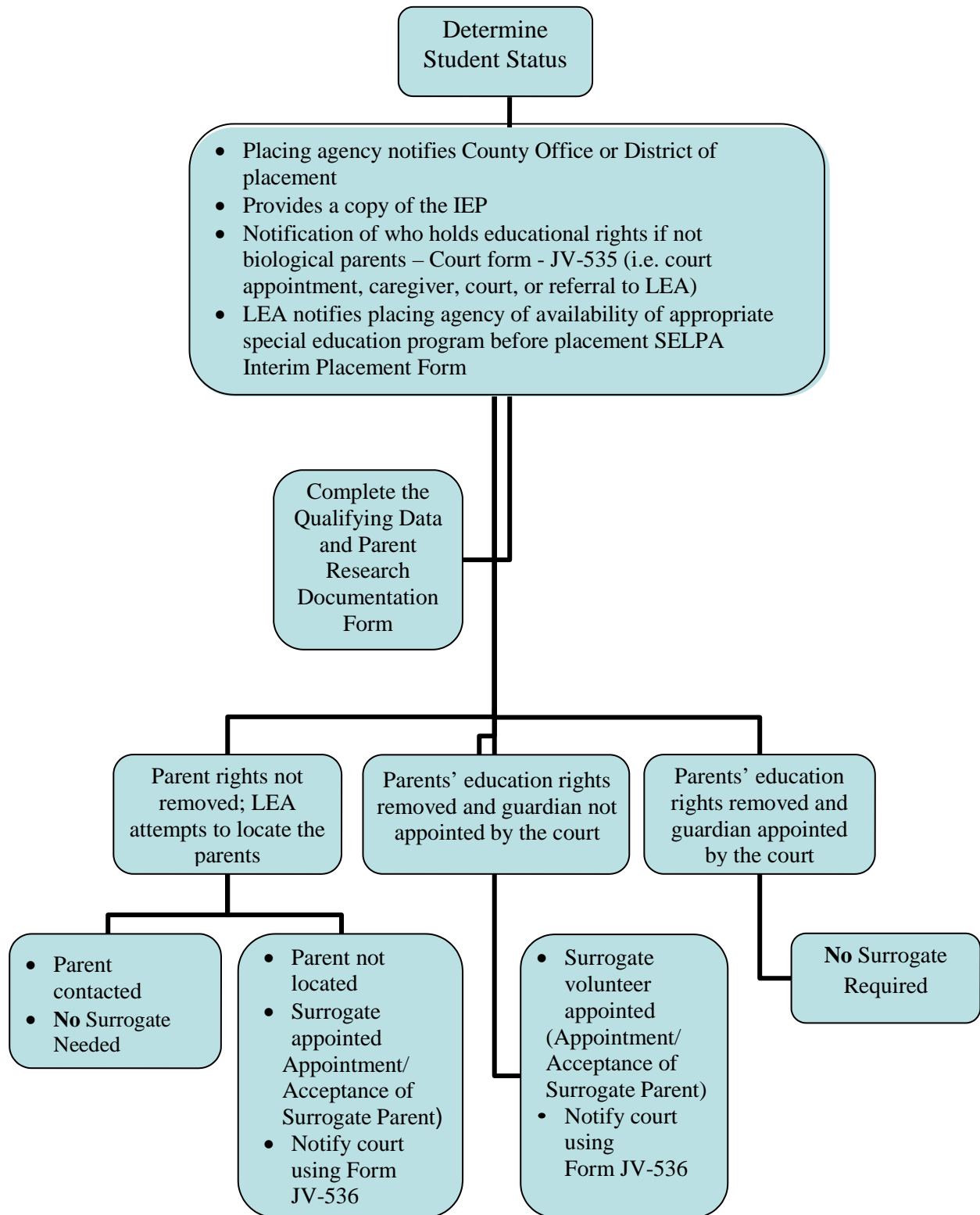
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Surrogate Parent Forms

- JV 535, Notification of Placement of Individual with Exceptional Needs in Licensed Children’s Institute or Foster Family Home
- JV 536, Notification to court regarding the appointment of the Surrogate Parent
- Educational Surrogate Parent Qualifying Data & Parent Search Documentation
- Educational Surrogate Parent Application
- Appointment/Acceptance of Surrogate Parent
- Acknowledgement of Training Completion
- Surrogate Parent Evaluation
- Roles and Responsibilities in the IEP Process Activity
- Brochure for Recruiting Surrogate Parents

This entire document has been replicated and adapted with permission from the Riverside County Special Education Local Plan Area (SELPA).

Surrogate Parent Appointment Flowchart



Definition

A “surrogate parent” is an adult appointed by a local educational agency (LEA) or special education local plan area (SELPA) to represent a pupil (aged birth-21) for the purpose of their individualized education program (IEP) to ensure that the rights of the pupil to a free appropriate public education (FAPE) are protected when the biological parents cannot be found or the courts have removed their educational rights and have not assigned them to another.

Appointment of a Surrogate Parent

A LEA shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

- (A) No parent (as defined in §300.30) can be identified;
- (B) The public agency, after reasonable efforts, cannot locate a parent;
- (C) The child is a ward of the State under the laws of that State;
- (D) 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))

A child may need an interim surrogate parent when he/she is initially placed in a SELPA in order to meet the requirements for an immediate educational placement while the status of location of the child’s parent is researched.

These children may be living in:

- Foster homes
- Private group homes
- State hospitals or other health facilities
- Correctional facilities
- Residential treatment centers
- With other family members (such as grandparents)

Reasonable efforts to contact parents include, but are not limited to, the following measures:

- Documented telephone calls
- Letters
- Certified letters with return receipts
- Documented visits to the parents’ last known address
- Placement of an agency notice of a court order that terminates parent rights

If the reasonable efforts described above fail to locate the parent or to obtain parent status notification from the placing agency, an interim surrogate parent appointment may be necessary. A surrogate parent shall be appointed not more than 30 days after the LEA determines that a student needs a surrogate parent (*California Government Code* Section 7579.5(a)). This appointment will facilitate a timely IEP review, establish consent for special education assessment, or both.

If the student is not a ward or dependent, and if the LEA cannot determine that the student is in a home with an adult who is acting as a parent or who could be appointed as the surrogate parent, the LEA is advised to consider making a report of neglect or abuse to the child welfare agency in the county (*California Penal Code* sections 11165.7 and 11165.9).

Wards and Dependents of the Court

Under California law, there are both “dependent” children as well as children who are described as “wards” of the courts (*California Welfare and Institutions Code* sections 300, 601 and 602). A minor may be declared a ward of the court for habitual refusal to obey parents or guardians or truancy from school (*California Welfare and Institutions Code* Section 601). A minor may also be declared a ward for commission of a crime (*California Welfare and Institutions Code* Section 602). A “dependent” child may be one that is at risk of abuse or neglect by his or her parents. (*California Welfare and Institutions Code* Section 300).

When a court decides that a minor is a ward or dependent, the court may limit the parent’s educational rights (*California Welfare and Institutions Code* sections 361(a) and 726). If the court limits parental rights, it must issue an order clearly assigning those educational rights to another responsible adult. After limiting the parent’s educational rights, the court must use Form JV-535 to document one of the following:

- Appointment of an educational representative
- Determination that the caregiver may make educational decisions
- Referral to the LEA, or
- Educational decisions made by the court with input from interested persons (*California Rules of the Court*, Rule 5.650(b)).

An educational representative is the responsible adult who holds the educational rights for a child when the parent’s or guardian’s educational rights have been limited by the court (*California Rules of the Court*, Rule 5.502(13)). The appointed educational representative has the same rights and responsibilities as a surrogate parent regarding special education. If the court cannot identify an educational representative and the child is or may be eligible for special education and related services, the court must refer to the LEA (*California Rules of the Court*, Rule 5.650(b)(2)).

- Forms JV-535 and JV-536 must be served on the LEA no later than seven calendar days after the date of the court’s order.
- The LEA must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court’s referral.
- If the LEA appoints a surrogate parent, it must send copies of the notice to the social worker or probation officer identified on Form JV-535.
- If the LEA does not appoint a surrogate parent within 30 days of receipt of the Form JV-535, it must, within the next five court days, notify the court on form JV-536 of its inability to appoint a surrogate parent and its continuing reasonable efforts to assign a surrogate parent.

Silence of the court on the issue means the parent's rights have remained intact. The LEA should be notified by the placing agency pursuant to *California Government Code* Section 7579.1 et seq.

When a child is placed by the juvenile court, determinations about residential placement are outside the scope of the IEP team. When residential placement for educational purposes is under consideration, conflicts of interest are improbable if the in-home care provider is advocating the change in placement. However, a conflict of interest could arise when the provider seeks to retain the child in the current placement since changing the residential placement of a child would mean a loss of income to the provider. Therefore, local "blanket" policies concerning conflicts of interest may be problematic regarding in-home care providers as educational parent representatives or surrogates. When substantial issues are likely to result in a change in residential placement are faced by the IEP team, it is suggested that the LEA review appointments to reflect conflict of interest concerns (34 *Code of Federal Regulations* Section 300.519(d)(i)(ii)), (*California Government Code* Section 7579.5 (i)(j)). Each case should be determined on its own merits.

Unaccompanied Homeless Youth

The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; and,
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and migratory children who qualify as homeless for the purposes of this part because the children are living in circumstances described in above bullet points. (42 *United States Code* Section 11434a(2)).

The term "unaccompanied youth" is defined as a youth not in the physical custody of a parent or guardian (42 *United States Code* Section 11434a(6)).

A temporary surrogate parent may be appointed for a child who is an unaccompanied homeless youth. Such temporary surrogates may include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs. These temporary surrogates may be employees of the State Education Agency (SEA), the LEA, or any other agency that is involved in the education or care of the child until a surrogate parent can be appointed that meets all of the appointment requirements.

When a Surrogate is Not Needed

1. The parent's educational rights pertaining to the student have not been removed by a court.
2. The parent maintains educational rights and has appointed their own educational representative for their child.
3. A court has appointed a guardian for the student (Court Minute Order or Form JV-535)
4. The student was voluntarily placed in a residential facility.
5. The student is 18 years of age, or older, and he/she does not have a conservator or guardian, regardless of the individual's functioning levels.
6. The student is an emancipated minor.
7. The student is married.

If the child has a legal guardian, then a surrogate parent is not needed. Also if someone (e.g., such as a grandparent) is "acting" as the child's parent at the request of the natural parent, this child does not need a surrogate parent.