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# Surrogate Parents in California Special Education Training Module



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# The California Department of Education's Mandate

## California *Government Code* §7579.5

“(m) The State Department of Education shall develop a **model surrogate parent training module and manual** that shall be made available to local educational agencies [LEAs].”



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# Goal of the Manual

The manual and training module were developed “to assist LEAs, placing agencies, and other service providers in the implementation of state and federal requirements pertaining to the appointment of surrogate parents.”

Note: See page 2 of the manual.



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# Topics Covered in the Manual and this Presentation

- Legal requirements for LEAs
- Definition of a parent
- When must a surrogate parent be appointed?
- Who can be a surrogate parent?
- Responsibilities of a surrogate parent
- The appointment process
- Appointment duration, termination, and resignation of a surrogate parent
- Appendices: legal citations, sample forms, link to special education local plan area (SELPA) directory, a word about court-appointed special advocates



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# Legal Requirements for Local Educational Agencies

## Title 34, *Code of Federal Regulations*, §300.519

“(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.”



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# Definition of a Parent

## California *Education Code* §56028 (1)

“(a) ‘Parent’ means any of the following:

- (1) A **biological** or **adoptive** parent of a child.
- (2) A **foster** parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.”



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# Definition of a Parent

## California *Education Code* §56028 (2)

“(3) A **guardian** generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code.

(4) An **individual acting in the place** of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.”



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# Definition of a Parent

## California *Education Code* §56028 (3)

“(5) A **surrogate parent** who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.”





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# When Must a Surrogate Parent Be Appointed?

Title 34, *Code of Federal Regulations*, §300.519 (1)

“(h) *SEA responsibility.* The SEA [state education agency] [LEA] 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.”

Note: See also *Government Code* §7579.5(a).



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# When Must a Surrogate Parent Be Appointed?

Title 34, *Code of Federal Regulations*, §300.519 (2)

- “(a) *General.* Each public agency must ensure that the rights of a child are protected when-
- (1) **No parent** (as defined in §300.30 [*EC* 56028]) 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)).”



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# When Must a Surrogate Parent Be Appointed?

Title 34, *Code of Federal Regulations*, §300.519 (3)

“(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)...of this section.”



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# Ward of the Court

## California *Government Code* §7579.5

“(a)(1)(A) The child is adjudicated a dependent or **ward of the court** pursuant to **Section 300, 601, or 602 of the Welfare and Institutions Code** upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program,

(B) the court specifically has **limited the right** of the parent or guardian **to make educational decisions** for the child, and

(C) the child has **no responsible adult** to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.”



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# Homeless Youths

Title 34, *Code of Federal Regulations*, §300.519

“(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.”



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# Who Can Be a Surrogate Parent?

## Title 34, Code of Federal Regulations, §300.519 (1)

“(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.”



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# Conflict of Interest

## California *Government Code* §7579.5

“(i) Individuals who would have a **conflict of interest** in representing the child, as specified in Section 300.519(d) of Title 34 of the Code of Federal Regulations, shall not be appointed as a surrogate parent. ‘An individual who would have a conflict of interest,’ for purposes of this section, means **a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.**”



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# Who Can Be a Surrogate Parent?

## California *Government Code* §7579.5 (2)

“(b) When appointing a surrogate parent, the local educational agency, as **a first preference, shall select a relative caretaker, foster parent, or court-appointed special advocate**, if 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 local educational agency shall select the surrogate parent of its choice**. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, **the local educational agency shall appoint another surrogate parent** if a new appointment is necessary to ensure adequate representation of the child.”





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# Who Can Be a Surrogate Parent?

California *Government Code* §7579.5 (3)

“(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, **foster care providers, retired teachers, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.**”



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# Who Can Be a Surrogate Parent?

California *Government Code* §7579.5 (4)

“(j) (1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an **employee of a nonpublic agency that only provides noneducational care** for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section **is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.**”



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# Who Can Be a Surrogate Parent?

## California *Government Code* §7579.5 (5)

“(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs **from designating another adult individual to represent the interests of the child for educational and related services.**”



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# Responsibilities of a Surrogate Parent

## California *Government Code* §7579.5 (1)

“(c) For purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights **relative to the child's education** that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations.”



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# Responsibilities of a Surrogate Parent

## California *Education Code* §56050 (2)

“(b) A surrogate parent may represent an individual with exceptional needs in matters relating to **identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program,** and in other matters relating to the provision of a free appropriate public education to the individual...



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# Responsibilities of a Surrogate Parent

## California *Education Code* §56050 (3)

“(b cont.)...Notwithstanding any other provision of law, this representation shall include the provision of **written consent** to the individualized education program including **nonemergency medical services, mental health treatment services, and occupational or physical therapy services**... The surrogate parent may sign any consent relating to individualized education program purposes.”



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# Responsibilities of a Surrogate Parent

## California *Government Code* §7579.5 (4)

“(d) The surrogate parent is required to meet with the child **at least one time**. He or she may also meet with the child on additional occasions, attend the child's individualized education program team meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.”



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# Responsibilities of a Surrogate Parent

## California *Government Code* §7579.5 (5)

“(e) As far as practical, a surrogate parent should be **culturally sensitive** to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the **confidentiality** of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.”





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# The Appointment Process (1)

## (Guidance Only)

### Step 1: Contacting the Parents

- Efforts to locate the parents should begin immediately once a student is referred for assessment.
- Reasonable efforts include documented phone calls, letters, certified letters with return receipts and documented visits to the parents' last known address.
- If these efforts fail to locate a parent or obtain parent status notification from a placing agency (e.g., foster home, relative, pre-adoptive home), a surrogate parent appointment may be necessary.



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# The Appointment Process (2)

## (Guidance Only)

### Step 1: Contacting the Parents (cont.)

Note: If a student has not been adjudicated a ward or dependent, and 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 a surrogate parent, **the LEA is advised to consider making a report of neglect or abuse to the county child welfare agency** (see California *Penal Code* §11165.7 and §11165.9).



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# The Appointment Process (3)

## (Guidance Only)

### Step 1: Contacting the Parents (cont.)

Note: If a surrogate parent is appointed for a child who is a ward or dependent of the court, the LEA must notify the court **within five court days** of the appointment. If the child has been referred by a placing agency, it is helpful for the LEA to inform the placing agency of the appointment.



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# The Appointment Process (4)

## (Guidance Only)

### Step 2: Selecting a Surrogate Parent

- The LEA shall give first preference to a relative caregiver, foster parent, or court-appointed special advocate (CASA).
- Volunteers may be foster care providers, retired teachers, social workers, probation officers and can be found at local school-parent organizations, community advisory committees, service clubs (e.g., Rotary, Big Brothers/Sisters, Kiwanis), the CASA Association, and through local interagency network groups.



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# The Appointment Process (5)

## (Guidance Only)

### Step 2: Selecting a Surrogate Parent

- Reasonable efforts should be made to ensure that persons representing all racial, ethnic, linguistic, and economic subgroups within the community are recruited.
- The local surrogate parent appointment program is more likely to be successful if an ongoing process of recruitment, screening, and training is used to develop and maintain a pool of potential surrogate parents.



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# The Appointment Process (6)

## (Guidance Only)

### Step 2: Selecting a Surrogate Parent

Note: When a court has limited the right of the parent to make educational decisions and has not assigned another responsible adult to do so, foster parents and care providers who live with the child in small foster family homes have the usual rights of parents to participate in educational decisions, **unless a court expressly excludes the foster parents from such decisions in a written order** (*Education Code §56055[b]*).



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# The Appointment Process (7)

## (Guidance Only)

### Step 3: Reviewing the Surrogate Parent Application

Look for the following items:

- Facts that show the applicant does not have interests that will conflict with the student's interests in the area of special education
- Assurances that the applicant has or is willing to acquire the necessary knowledge to be a surrogate parent



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# The Appointment Process (8)

## (Guidance Only)

### Step 3: Reviewing the Surrogate Parent Application

Look for the following items:

- Facts that show the applicant is not an employee of a public, non-public, or private agency involved in the care or education of the student
- Assurance that the applicant is willing to commit the time and energy needed to effectively represent and advance the best interests of the student in educational matters





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# The Appointment Process (9)

## (Guidance Only)

### Step 3: Reviewing the Surrogate Parent Application

Consider including the following items in the application package:

- A disclosure statement to screen for potential conflicts of interest
- An acknowledgment that the potential appointee will complete the local training program for surrogate parents
- An agreement that includes an assurance of confidentiality for student records



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# The Appointment Process (10)

## (Guidance Only)

### Step 3: Reviewing the Surrogate Parent Application

Consider also including the following items in the application package:

- A personal-interest questionnaire
- Personal references for verification of personal information
- Releases of information for Department of Motor Vehicle screening
- Fingerprinting documentation



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# The Appointment Process (11)

## (Guidance Only)

### Step 4: Screening for Conflict of Interest

Look for the following items:

- Whether the volunteer is employed by an LEA or any agency involved in the education or care of the student
- Whether the volunteer holds a position that might restrict or bias his or her ability to represent the student's educational needs



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# The Appointment Process (12)

## (Guidance Only)

### Step 4: Screening for Conflict of Interest

Look for the following items:

- Whether the volunteer holds a position that might subject the volunteer to administrative influence or reprimand for acting as the student's educational representative
- Whether the volunteer has interests that might restrict or bias his or her ability to advocate for all the services required to ensure a free appropriate public education for a student with a disability



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# The Appointment Process (13)

## (Guidance Only)

### Step 4: Screening for Conflict of Interest

Possible terms and conditions that may be agreed on between the surrogate parent and the LEA in the Surrogate Parent Agreement:

- Responsibilities of a surrogate parent to the student
- LEA's responsibility to provide training regarding disabilities
- Laws applicable to surrogate parents' responsibilities
- Continuum of program placements and opportunities
- Term of appointment
- Termination of the agreement
- Confidentiality of student information



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# The Appointment Process (14)

## (Guidance Only)

### Step 5: Training of Potential Surrogate Parents

Consider covering the following topics:

- The educational needs of the student to be represented
- The local programs and related services available in the SELPA or LEA
- Procedural safeguards to ensure that the student's needs are met and individualized education program (IEP) services are delivered
- Time commitments of surrogate parents



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# The Appointment Process (15)

## (Guidance Only)

### Practices for Consideration

- Match the student's needs to the most appropriate volunteer applying to be a potential surrogate parent
- Introduce the student and the potential surrogate parent
- Obtain a written agreement with the surrogate parent to serve the specific student in the IEP process and to maintain the student's and the family's rights to confidentiality



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# The Appointment Process (16)

## (Guidance Only)

### Practices for Consideration

- Inform all involved persons and agencies responsible for the residential care and education of the student of the surrogate parent's appointment
- Review surrogate parent appointments annually to determine whether the appointment is still warranted





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# Appointment Duration, Termination, and Resignation of a Surrogate Parent *California Government Code §7579.5 (1)*

- “(k) The surrogate parent may represent the child until
- (1) the child is **no longer in need** of special education,
  - (2) the minor reaches **18 years of age**, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent,
  - (3) **another responsible adult** is appointed to make educational decisions for the minor, or
  - (4) the **right of the parent** or guardian to make educational decisions for the minor **is fully restored.**”



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# Appointment Duration, Termination, and Resignation of a Surrogate Parent

## California *Government Code* §7579.5 (2)

- “(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.
- (h) The local educational agency shall terminate the appointment of a surrogate parent if
- (1) the person **is not properly performing** the duties of a surrogate parent or
  - (2) the person has an **interest that conflicts** with the interests of the child entrusted to his or her care.”



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# Appointment Duration, Termination, and Resignation of a Surrogate Parent (3)

- A surrogate parent's appointment concludes when an LEA no longer has the responsibility to provide a free appropriate public education (FAPE) to a student who is represented by a surrogate parent. For example, if a child ceases to be a resident of a particular LEA, the new LEA of residence would be obligated to provide FAPE.
- The sending LEA should notify the new LEA that a surrogate parent was previously appointed.
- The former surrogate parent may provide information about the student's educational needs to the new LEA and any new surrogate parent appointed.



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# Appointment Duration, Termination, and Resignation of a Surrogate Parent (4)

- It is advisable for LEAs to establish policies and procedures for the termination and resignation of appointed surrogate parents.
- It is also advisable for LEAs to monitor the surrogate parents who are appointed to ensure that they perform their duties in the special education process and stay free of conflicts of interest.
- Parental rights automatically revert to the student's parents when the parents return to assume their roles, unless their rights have been limited by a court.
- When the student reaches the age of majority, the student will assume the parental role within the IEP process.



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# Manual Appendixes

Appendixes A–D contain the following items:

- Legal citations
- Sample forms
- A link to the SELPA directory
- A word about court-appointed special advocates



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# A Final Note

California *Government Code* §7579.5

“(I) The surrogate parent and the local educational agency appointing the surrogate parent shall be **held harmless** by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.”