

# FLORIDA DEPARTMENT OF EDUCATION



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Commissioner of  
Education



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## Technical Assistance Paper

### Surrogate Parents for Students with Disabilities

#### Summary:

This technical assistance paper (TAP) reflects the requirements of the Individuals with Disabilities Education Act of 2004 with regard to surrogate parent eligibility and requirements and student rights. Students with disabilities without a parent or guardian who can act in their educational interests have the right to have a surrogate parent appointed. This TAP outlines the eligibility requirements and duties of surrogate parents and describes the responsibilities of school districts to recruit, train, appoint, and terminate the appointment of surrogate parents.

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# Technical Assistance Paper

## Surrogate Parents for Students with Disabilities

### A. Background

#### A-1. What rights do parents of students with disabilities have?

The parents of students with disabilities (and students suspected of having disabilities) have specific roles and rights throughout the exceptional student education (ESE) process. These rights are afforded by the Individuals with Disabilities Education Act of 2004 (IDEA 2004) and other federal laws and by the statutes and rules of the state of Florida. Parents' rights include the right to be notified of certain actions the district has taken or proposes to take, the right to give or withhold consent for certain actions the district proposes to take, the right to participate in educational meetings and decisions, and the right to review the educational records of their child. Parents also have procedural safeguards, including the right to request mediation, file a State complaint, and/or request a due process hearing.

#### A-2. What rights do students with disabilities have to ensure their representation in the ESE process?

The ESE process provides many opportunities for parent participation; in fact, there are certain times during the process when parent participation is required. A student who does not have a parent or guardian to represent his or her interests in the ESE process and make educational decisions has the right to have a surrogate parent appointed to fulfill these responsibilities.

When a student reaches the age of majority as described in 34 CFR §300.520, the student is no longer legally required to have surrogate parent representation in educational matters. In Florida, the age of majority is 18 years of age. At that time, parental rights in the ESE process transfer to the student. However, if a student with a disability has been determined to be incapacitated under State law (sections 744.3201 and 744.3215, Florida Statutes (F.S.)) and cannot make educational decisions, parental rights have therefore not been transferred to the student. In this circumstance, the provision of a surrogate may be extended at the district's discretion.

#### A-3. What responsibility does the school district have to ensure that students are represented in the ESE process?

School districts have the responsibility to determine which students need a surrogate parent to represent their interests throughout the ESE process. In addition, it is the responsibility of school districts to recruit, train, and appoint qualified surrogate parents to meet this need. (34 CFR §300.519(d))

## **B. Definitions and Explanations**

### **B-1. How does Florida law define “parent”?**

Section 1000.21(5), F.S., defines “parent” as “either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.”

### **B-2. How does the Code of Federal Regulations define “parent”?**

Section 300.30(a) of Title 34, Code of Federal Regulations (CFR) defines “parent” as

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (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; or
- (5) A surrogate parent who has been appointed in accordance with 34 CFR §300.519 or section 639(a)(5) of the Act.

### **B-3. What is a surrogate parent?**

A surrogate parent is a person who has been appointed to represent the educational interests of a student with a disability who does not have a parent or guardian who can act in his or her interests.

### **B-4. Does the right to have a surrogate parent apply to students who are gifted?**

No. The IDEA 2004 gives students with disabilities the right to have a surrogate parent appointed. In the past, Florida’s State Board of Education rules extended this right to all exceptional students, which in Florida includes students with disabilities and students who are gifted. However, s. 39.0016, F.S., (enacted in 2009) and Rule 6A-6.0333, Florida Administrative Code (F.A.C.), (effective April 21, 2011) provide for the appointment of a surrogate parent only for students under IDEA, which does not include students who are solely gifted.

### **B-5. Which “parent” takes precedence for educational purposes when a student has “parents” in more than one category of the definition provided in the federal regulations?**

According to 34 CFR §300.30(b), unless there is a judicial decree or order identifying a specific person or persons under the definitions of parent in 34 CFR §300.30(a)(1) through (4) (see B-2, above), the biological or adoptive parent, when attempting to act as the parent, “must be presumed to be the parent...unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.” If there is a judicial decree or order identifying a specific person or persons to act as the “parent” of a child or to make educational decisions for the child, then this person or persons “shall be determined to be the ‘parent’....”

## **C. Surrogate Parent Qualifications**

### **C-1. What are the minimum qualifications of a surrogate parent?**

In accordance with s. 39.0016(3)(b)2., F.S., the following are the minimum qualifications of a surrogate parent:

- Be at least 18 years of age
- Have no personal or professional interest that conflicts with the interests of the child whom the surrogate represents
- Not be an employee of the local school board or other public or private agency involved in the education or care of the child (including, not be the operator or staff of a group home, therapeutic foster home, or residential facility—other than a foster home)
- Have knowledge, skills, and experience demonstrated by successful completion of training using materials developed and approved by the Bureau of Exceptional Education and Student Services

Operators and staff of group homes, therapeutic foster homes, and residential facilities—other than foster homes—may not serve as a surrogate parent due to the requirement that surrogate parents have no interest that conflicts with the interest of the child represented.

### **C-2. What constitutes a conflict of interest?**

A qualified applicant for surrogate parent may not be an employee of the local school board, Florida Department of Education (FDOE), Florida Department of Children and Families (DCF), a community-based care provider, or any other public or private agency involved in the education or care of the child. Further, an otherwise qualified surrogate parent should have no interest that conflicts with the interest of the child represented.

### **C-3. Can an individual appointed as a guardian ad litem serve as a surrogate parent?**

Yes. The purpose of the Florida Guardian ad Litem Program is to advocate for the best interests of children who have allegedly been abused, neglected, or

abandoned and who are involved in court proceedings. Guardian ad litem appointees are volunteers, and if they meet the legal criteria listed in questions C-1 and C-2, they may serve as surrogate parents. In fact, the school district superintendent must first consider the child's guardian ad litem when appointing a surrogate parent, if they have not previously appointed a surrogate parent. (s. 39.0016(3)(b)3., F.S.)

**C-4. Are there any exceptions to the eligibility requirements for surrogate parents?**

Appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as the temporary surrogate parent for a student who is an unaccompanied homeless youth. Such appointments are temporary—until a surrogate parent who meets all the requirements can be appointed. (34 CFR §300.519(f))

**D. Surrogate Parent Responsibilities and Rights**

**D-1. What are the duties of a surrogate parent?**

A surrogate parent is expected to

- Attend training sessions
- Become familiar with the district's procedures for providing services to students with disabilities
- Meet the student
- Meet the student's teacher(s) and others who work with the student
- Observe the student's school day
- Become familiar with the student's background, abilities, and disabilities
- Participate in individual educational plan (IEP) team meetings, individualized family support plan (IFSP) meetings, and other educational meetings regarding the student
- Help make decisions about the student's education
- Give or withhold consent for actions proposed by the district, as appropriate
- Ask the school to take actions related to the student's education
- Understand all procedural safeguards available and invoke them, as appropriate

**D-2. Which duties are not part of a surrogate parent's responsibilities?**

The responsibilities of a surrogate parent are limited to matters relating to the provision of a free appropriate public education (FAPE) for a student. The following areas are specifically excluded from the purview of the surrogate parent: care, maintenance, custody, residential placement, or any other area not specifically related to the education of the child unless the same person is appointed by the court for such other purposes. (s. 39.0016(3)(b)9., F.S.)

**D-3. What is the extent of liability of a surrogate parent?**

A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the child. (s. 39.0016(3)(b)11., F.S.) Any specific questions regarding liability should be addressed to the school board attorney.

**D-4. What are the rights of a surrogate parent in the exceptional student education process?**

A surrogate parent of a student with disabilities has the same rights as any parent of a student with disabilities. This includes the rights to receive notice, to participate, and to give consent, as required under IDEA 2004 and Florida law. A surrogate parent of a student with disabilities has the same procedural safeguards given to the parent of a student with disabilities under IDEA 2004, including the rights to participate in mediation, file a formal written complaint, and request a due process hearing. (34 CFR §300.519(g))

**D-5. What is the surrogate parent's right of access to educational records?**

The surrogate parent has the same right to review educational records as parents have. This includes all records regarding the student to which school administrators and teachers have access. Just like any parent, surrogate parents must protect the confidentiality of educational records.

**D-6. Can a surrogate parent sign for field trip permission, release of records, and photographic release for a student whom the surrogate parent represents?**

Yes. A surrogate parent acts in the place of a parent in all matters pertaining to the provision of a free appropriate public education to the student. The surrogate parent provides written permission when field trips, release of records, photographs, etc., are determined by the surrogate parent to be an appropriate part of the student's educational program.

**E. Circumstances Requiring the Appointment of a Surrogate Parent**

**E-1. Which students need surrogate parents?**

A student with a disability who is eligible to receive services under IDEA—or a student who is suspected of being eligible for IDEA services—needs a surrogate parent under the following circumstances: when the natural parent or guardian is unknown or the whereabouts of the natural parent or guardian cannot be determined; when the child is a ward of the State or ward of the court under Florida law; when the child is an unaccompanied homeless youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act



(42 United States Code (U.S.C.) 11434a(6)); or when a court of competent jurisdiction has determined that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the student without judicial action. (Rule 6A-6.0333, F.A.C.)

A foster parent (excluding therapeutic foster parents) may act as a parent and make educational decisions for the child (s. 39.0016(b)2., F.S.); however, if the foster parent is unwilling or unable to represent the child's educational interests, a surrogate parent may need to be appointed. (s. 1001.21(5))

**E-2. What procedures are used to determine the need for a surrogate parent?**

The district's efforts to determine a parent's identity or whereabouts should include inquiry with other agencies that may have had contact with the child, certified letters, home visits, and telephone calls. These efforts should be documented in writing. Once the district has exhausted all efforts to determine the identity or whereabouts of a parent or guardian, the district may appoint a surrogate parent.

All public schools require parents or guardians to register their children for school. The registration form typically requests information about the guardianship status of the child, persons who have legal parental rights over the child, and persons with whom the child resides. Therefore, this document is a good starting place for school staff as they seek to identify students with disabilities who may need surrogate parents.

**E-3. Must school districts and contracted agencies have in place methods for determining whether a child is in need of a surrogate parent?**

Yes. The district's *Exceptional Student Education Policies and Procedures* (SP&P) document indicates that a method must be in place to assist with identifying students in need of a surrogate parent.  
(34 CFR 300.519 and Rule 6A-6.03411(2), F.A.C.)

The methods may involve training school-based personnel to review new students' school registration forms for indications of potential need for a surrogate. For example, if a social service agency caseworker registers a student at a new school or if the school registration form indicates that the student does not live with their legal parents, these facts may lead school personnel to investigate the child's need for a surrogate parent.

**E-4. Do students with disabilities who live with grandparents or other relatives need surrogate parents?**

No. Children who live with grandparents or other relatives may be represented in educational matters by these persons. Section 1000.21(5), F.S., defines

“parent” as “either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.”

Surrogate parents are not required in these cases.

**E-5. Do students with disabilities who live with foster parents need surrogate parents?**

It depends. A therapeutic foster parent may not serve as a surrogate parent. (s. 39.0016(b)2., F.S.) Otherwise, a foster parent meets the definition of “parent” in s. 1000.21(5), F.S., as a “person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent.” A foster parent is not considered an agency employee solely because they receive payment for a child cared for in the foster home. Foster parents serve as “parents” to students with disabilities in educational matters.

However, if the foster parent does not have an “ongoing, long-term parental relationship” with the child or is unwilling or unable to represent the child’s educational interests, a surrogate parent may be needed. The determination regarding the nature of the relationship between the child and the foster parent must be made using school personnel’s best professional judgment. For example, if the child has resided with the foster parent for a very short time or if the district has knowledge that the foster parent has not demonstrated an interest in the child’s education, it may be in the best interest of the child that a surrogate parent be appointed. It is recommended that the information that school personnel relied upon to make this determination be documented in the appropriate file.

**Note:** If a foster child’s natural parent (or guardian) is available and a court has not prohibited the natural parent’s (or guardian’s) right to have contact with and make educational decisions for the child, the natural parent (or guardian) continues to represent the child in educational decisions. (34 CFR 300.30(b))

**E-6. Do students with disabilities who live in group homes, therapeutic foster homes, and residential facilities other than foster homes need surrogate parents?**

Yes. Unless the student’s parent or guardian has retained the right to make educational decisions. Operators and staff of group homes, therapeutic foster homes, and residential facilities—other than foster homes—may not serve as a surrogate parent due to the requirement that surrogate parents have no interest that conflicts with the interest of the child represented. This would include any persons who are considered employees of the facilities or community homes and who are paid a wage in exchange for the care they provide the children. (s. 39.0016(3)(b)2, F.S.)

**E-7. Does a student with a disability need a surrogate parent after turning 18 years of age?**

No. When a student reaches the age of majority as described in 34 CFR §300.520, the student is no longer legally required to have surrogate parent representation in educational matters. In Florida, the age of majority is 18 years of age. At that time, parental rights in the ESE process transfer to the student. However, if a student with a disability has been determined to be incapacitated under State law (s. 744.3201 and s. 744.3215, F.S.) and cannot make educational decisions, parental rights have therefore not been transferred to the student. In this circumstance, the provision of a surrogate may be extended at the district's discretion. In addition, some districts continue to provide a surrogate parent after a student reaches age 18 if the student requests it.

**F. Appointment and Oversight of Surrogate Parents**

**F-1. How soon must the district appoint a surrogate parent?**

Rule 6A-6.0333(1), F.A.C., requires that a school district or agency under contract with the school district shall appoint a surrogate parent not more than 30 calendar days after the school district determines that the student needs a surrogate parent.

**F-2. Who appoints surrogate parents for students receiving special education and related services in local school districts?**

The district school superintendent appoints surrogate parents for students who are eligible or suspected of being eligible for special education and related services. The superintendent also appoints surrogate parents for students enrolled in private schools under contract with the district. (Rule 6A-6.0333(1), F.A.C.)

**F-3. Who appoints surrogate parents for students who are wards of the court?**

A surrogate parent for a student who is a ward of the court may be appointed as described above (F-2) or may be appointed by the judge overseeing the student's case, provided the surrogate meets the qualifications described in s. 39.0016(3)(b)2., F.S.

**F-4. When should a temporary surrogate parent be appointed for an unaccompanied homeless youth or ward of the State?**

As the process of appointing a surrogate parent may take several weeks, the school district should appoint an immediate temporary surrogate parent for an unaccompanied homeless youth or ward of the State. The temporary surrogate may give consent for evaluations and/or sign IEPs so that assessments and

services can begin immediately. Due to their more limited role, temporary surrogates may be staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs, along with McKinney-Vento liaisons and other school district staff.  
(34 CFR §300.519(f); 71 Fed. Reg. 46712)

**F-5. Must the superintendent directly appoint a specific surrogate parent for each individual student?**

The superintendent may directly appoint a specific surrogate parent to each individual student who needs one. Alternatively, the superintendent may approve the appointment of qualified individuals as surrogate parents and then allow ESE staff to assign each surrogate parent to a specific student as the need arises.

**F-6. If a surrogate parent is appointed for a student in a DCF-contracted program or the Florida School for the Deaf and the Blind and the student transfers to a local school district program, can the surrogate parent continue to represent the student?**

Yes. As long as the superintendent determines that the surrogate parent adequately represents the student, the surrogate parent may continue in the appointment.

**F-7. May a school district pay surrogate parents for representing students?**

Yes. Compensation of surrogate parents is permissible. A surrogate parent is not considered an employee of the district solely because the surrogate receives compensation from the district to represent the child.  
(34 CFR §300.519(e)) and Rule 6A-6.0333(2), F.A.C.)

**F-8. How should a surrogate parent be matched to a student?**

To the extent possible, a surrogate parent should be matched so that they are able to understand and speak the language of the child and are familiar with the child's cultural background.

**F-9. May a surrogate parent represent more than one student?**

Yes. The number of students represented by a surrogate parent is a decision made by the district based on the surrogate parent's interest, ability, and availability. Consideration should be given to the possibility of a conflict of interest on the part of an individual who is responsible for representing multiple children who may have competing interests with the same public agencies, as referenced in C-2.

**F-10. Are surrogate parent application forms required?**

Developing procedures for recruiting and maintaining certain information about surrogate parents is the responsibility of the school district. An application form is not required; however, districts may develop such forms to collect basic demographic and interest information on potential surrogate parents. Sample forms are available in the training materials provided by the Bureau of Exceptional Education and Student Services. It is required that the appointment of a surrogate parent be entered as an order of the court, with a copy of the order provided to the school as soon as possible. (s. 39.0016(3)(b)7., F.S.)

**F-11. What reference and background checks should be done on surrogate parent applicants?**

The Jessica Lunsford Act resulted in the amendment of s. 1012.465, F.S. It requires Level 2 screening for “noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds.” The Level 2 background screening is a process of the Florida Department of Law Enforcement (FDLE) and includes background and fingerprint checks against State and national databases. Level 2 screening is required for those surrogate parents who are compensated financially for their services.

Level 2 screening is not required for surrogate parents who are volunteers. To screen surrogate parents who are volunteers (as defined by s. 1012.01(5), F.S.), the district must conduct reference and background checks that conform to those procedures established for school volunteers who are assigned responsibilities pertaining to the welfare of pupils. Districts may also elect to require additional background or reference checks.

**F-12. In addition to ensuring that eligible students have surrogate parents, what are a school district’s responsibilities regarding surrogate parents?**

A school district is responsible for ensuring that

- The surrogate parent’s background has been properly checked.
- The surrogate parent has been properly trained.
- The surrogate parent is familiar with ESE procedures and requirements.
- The surrogate parent actively participates in the ESE decision-making process.
- The surrogate parent is actively involved in the student’s educational program.(s. 1012.465, F.S., and s. 39.0016(3)(b)6.e., F.S.)

## **G. Recruitment and Training**

### **G-1. Who is responsible for recruiting and training surrogate parents?**

The responsibility for the recruiting, training, and assigning of surrogate parents rests with the school district. Recruitment may be done by anyone who has an understanding of the purpose of surrogate parents and the ability to establish contacts within the community. This may include public information officers, volunteer coordinators, school principals, and ESE administrative staff. These recruiters should be able to describe the need for surrogate parents and target interested persons. (Rule 6A-6.0333(2), F.A.C.)

Surrogate parents may be recruited and trained by Florida Diagnostic and Learning Resources System (FDLRS) staff, district ESE staff, or other persons designated by the district. The persons who conduct the training must be familiar with the referral, evaluation, staffing, and program planning aspects of ESE programs, including the rights and responsibilities of surrogate parents.

### **G-2. What are typical sources of surrogate parent applicants?**

Civic organizations and service clubs, retired citizens' organizations, ministerial associations, churches, parent-teacher organizations, universities, community colleges, child-care organizations, and members of advocacy or professional special education organizations may have members who are interested in serving as surrogate parents. Volunteers may also be recruited through television and radio public service announcements; printed and electronic brochures; online announcements; and social media postings. A parent or relative of a student may be willing to serve as surrogate parent for another student; however, attention should be given to the possibility of a conflict of interest, as referenced in C-2.

### **G-3. How often should surrogate parent training be made available?**

The district's need for surrogate parents determines how often the district should make training available. Students should not be left without assigned surrogate parents due to failure to recruit or train applicants.

### **G-4. What are recommended training topics for surrogate parents?**

Training topics should include the following:

- Introduction to the surrogate parent program
- Overview of exceptionalities
- ESE in Florida
- ESE evaluation, identification, and eligibility and the provision of a free appropriate public education
- IEP process

- Procedural safeguards
- Confidentiality of student records (including the provisions of the Family Educational Rights and Privacy Act)
- Information and assistance available to surrogate parents

## **H. Termination**

### **H-1. What is the duration of the surrogate parent appointment?**

Section 39.0016(3)(b)6., F.S., provides for a surrogate parent to continue in the appointed role until one of the following circumstances occurs:

- The child is determined to no longer be eligible for or in need of special education services, except when termination of special education services is being contested.
- The legal guardianship of the child is assigned to a person who is able to assume the role of the parent, such as through adoption.
- The parent who was previously unknown becomes known, whose whereabouts were previously undiscovered are discovered, or who was unavailable becomes available.

Another surrogate parent would be appointed if any of the following circumstances occurs:

- The appointed surrogate parent no longer wishes to represent, or is unable to represent, the child.
- The superintendent or court that appointed the surrogate determines that the surrogate no longer adequately represents the child.
- The child moves to a geographic location that is no longer reasonably accessible to the appointed surrogate.

### **H-2. When is a surrogate parent no longer adequately representing a student?**

A surrogate parent who does not attend educational meetings or does not respond to correspondence from the district regarding the student is not representing the student adequately. District ESE staff must document the surrogate's involvement and keep the superintendent apprised of any non-involvement by the surrogate parent.

### **H-3. How is a surrogate parent appointment terminated?**

The termination of a surrogate parent appointment may occur as a result of any of the circumstances listed in the response to question H-1. This termination may be documented by a letter from the district school superintendent, including the reason(s) for the termination. A surrogate parent may request termination as well, and it is helpful for this request to be provided in writing, listing the reason(s) for the request.

## Appendix A: Section 39.0016, Florida Statutes

- (3)(b) 1. Each district school superintendent or dependency court must appoint a surrogate parent for a child known to the department who has or is suspected of having a disability, as defined in s. 1003.01(3), when:
- a. After reasonable efforts, no parent can be located; or
  - b. A court of competent jurisdiction over a child under this chapter has determined that no person has the authority under the Individuals with Disabilities Education Act, including the parent or parents subject to the dependency action, or that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the child without judicial action.
2. A surrogate parent appointed by the district school superintendent or the court must be at least 18 years old and have no personal or professional interest that conflicts with the interests of the student to be represented. Neither the district school superintendent nor the court may appoint an employee of the Department of Education, the local school district, a community-based care provider, the Department of Children and Family Services, or any other public or private agency involved in the education or care of the child as appointment of those persons is prohibited by federal law. This prohibition includes group home staff and therapeutic foster parents. However, a person who acts in a parental role to a child, such as a foster parent or relative caregiver, is not prohibited from serving as a surrogate parent if he or she is employed by such agency, willing to serve, and knowledgeable about the child and the exceptional student education process. The surrogate parent may be a court-appointed guardian ad litem or a relative or nonrelative adult who is involved in the child's life regardless of whether that person has physical custody of the child. Each person appointed as a surrogate parent must have the knowledge and skills acquired by successfully completing training using materials developed and approved by the Department of Education to ensure adequate representation of the child.
3. If a guardian ad litem has been appointed for a child, the district school superintendent must first consider the child's guardian ad litem when appointing a surrogate parent. The district school superintendent must accept the appointment of the court if he or she has not previously appointed a surrogate parent. Similarly, the court must accept a surrogate parent duly appointed by a district school superintendent.
4. A surrogate parent appointed by the district school superintendent or the court must be accepted by any subsequent school or school district without regard to where the child is receiving residential care so that a single surrogate parent can follow the education of the child during his or her entire time in state custody. Nothing in this paragraph or in rule shall limit or prohibit the continuance of a surrogate parent appointment when the responsibility for the student's educational placement moves among and between public and private agencies.



5. For a child known to the department, the responsibility to appoint a surrogate parent resides with both the district school superintendent and the court with jurisdiction over the child. If the court elects to appoint a surrogate parent, notice shall be provided as soon as practicable to the child's school. At any time the court determines that it is in the best interests of a child to remove a surrogate parent, the court may appoint a new surrogate parent for educational decisionmaking purposes for that child.
6. The surrogate parent shall continue in the appointed role until one of the following occurs:
  - a. The child is determined to no longer be eligible or in need of special programs, except when termination of special programs is being contested.
  - b. The child achieves permanency through adoption or legal guardianship and is no longer in the custody of the department.
  - c. The parent who was previously unknown becomes known, whose whereabouts were unknown is located, or who was unavailable is determined by the court to be available.
  - d. The appointed surrogate no longer wishes to represent the child or is unable to represent the child.
  - e. The superintendent of the school district in which the child is attending school, the Department of Education contract designee, or the court that appointed the surrogate determines that the appointed surrogate parent no longer adequately represents the child.
  - f. The child moves to a geographic location that is not reasonably accessible to the appointed surrogate.
7. The appointment and termination of appointment of a surrogate under this paragraph shall be entered as an order of the court with a copy of the order provided to the child's school as soon as practicable.
8. The person appointed as a surrogate parent under this paragraph must
  - a. Be acquainted with the child and become knowledgeable about his or her disability and educational needs.
  - b. Represent the child in all matters relating to identification, evaluation, and educational placement and the provision of a free and appropriate education to the child.
  - c. Represent the interests and safeguard the rights of the child in educational decisions that affect the child.
9. The responsibilities of the person appointed as a surrogate parent shall not extend to the care, maintenance, custody, residential placement, or any other area not specifically related to the education of the child, unless the same person is appointed by the court for such other purposes.
10. A person appointed as a surrogate parent shall enjoy all of the procedural safeguards afforded a parent with respect to the identification, evaluation, and educational placement of a student with a disability or a student who is suspected of having a disability.

11. A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the child.

- (4) TRAINING.—The department shall incorporate an education component into all training programs of the department regarding children known to the department. Such training shall be coordinated with the Department of Education and the local school districts. The department shall offer opportunities for education personnel to participate in such training. Such coordination shall include, but not be limited to, notice of training sessions, opportunities to purchase training materials, proposals to avoid duplication of services by offering joint training, and incorporation of materials available from the Department of Education and local school districts into the department training when appropriate. The department training components shall include
- (a) Training for surrogate parents to include how an ability to learn of a child known to the department is affected by abuse, abandonment, neglect, and removal from the home.
  - (b) Training for parents in cases in which reunification is the goal, or for preadoptive parents when adoption is the goal, so that such parents learn how to access the services the child known to the department needs and the importance of their involvement in the education of the child known to the department.
  - (c) Training for caseworkers and foster parents to include information on the right of the child known to the department to an education, the role of an education in the development and adjustment of a child known to the department, the proper ways to access education and related services for the child known to the department, and the importance and strategies for parental involvement in education for the success of the child known to the department.
  - (d) Training of caseworkers regarding the services and information available through the Department of Education and local school districts, including, but not limited to, the current Sunshine State Standards, the Surrogate Parent Training Manual, and other resources accessible through the Department of Education or local school districts to facilitate educational access for a child known to the department.

History.—s. 3, ch. 2004-356; s. 1, ch. 2009-35.

## **Appendix B: Individuals with Disabilities Education Act of 2004 (IDEA 2004)**

### SEC. 615(b)(2)

- (A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—
- (i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and
  - (ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.
- (B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

## Appendix C: IDEA 2004 Federal Regulations

### §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 Sec. 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.

*(Authority: 20 U.S.C. 1415(b)(2))*

## **Appendix D: Section 1000.21, Florida Statutes**

### **Systemwide Definitions**

- (5) "Parent" is either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.

## Appendix E: Rule 6A-6.0333, Florida Administrative Code

### Surrogate Parents

A surrogate parent is an individual appointed to act in the place of a parent in educational decision-making and in safeguarding a student's rights under the Individuals with Disabilities Education Act and Section 39.0016, F.S., when no parent can be identified; the student's parent, after reasonable efforts, cannot be located by the school district; the student is a ward of the State under State law; the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(6)); or a court of competent jurisdiction over the student has determined that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the student without judicial action. In addition to the requirements of Section 39.0016, F.S., the following requirements regarding the appointment of a surrogate parent for a student who has or is suspected of having a disability apply.

- (1) Appointment of a surrogate parent.** A surrogate parent for a student who is eligible for or who is suspected of being eligible for special programs made available through a school district or agency under contract with the school district shall be appointed by the district's school superintendent not more than thirty (30) days after the school district determines that the student needs a surrogate parent. The surrogate parent for a student who is eligible for or who is suspected of being eligible for special programs made available through a contract from the Department of Education shall be appointed by the individual specified in the contract. In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided the surrogate meets the qualifications in subparagraph (3)(b)2. of Section 39.0016, F.S.
- (2) Compensation of a surrogate parent.** A school district may compensate persons appointed as surrogate parents. A person acting as a surrogate parent is not an employee of the school district or Department of Education contracted program solely because he or she is paid by the school district or Department of Education contracted program to serve as a surrogate parent.
- (3) Unaccompanied homeless youth.** In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency or transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the requirements in subparagraph (3)(b)2. of Section 39.0016, F.S., until a surrogate can be appointed who meets all of the requirements in subparagraph (3)(b)2. of Section 39.0016, F.S.

*Rulemaking Authority 1001.02(1), 1003.571 FS. Law Implemented 1003.57, 1003.571 FS. History—New 6-28-83, Formerly 6A-6.333, Amended 12-22-08, 4-21-11.*

## **Appendix F: The Jessica Lunsford Act**

Section 1012.465, Florida Statutes, as amended by the 2007 Florida Legislature:

- (1) Except as provided in s. 1012.467 or s. 1012.468, noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in s. 1012.32. Contractual personnel shall include any vendor, individual, or entity under contract with a school or the school board.



## **Appendix G: McKinney-Vento Homeless Assistance Act**

Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (Title X, Part C, of the No Child Left Behind Act) defines “homeless” as follows:

- (2) The term homeless children and youths —
- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and
  - (B) includes —
    - (i) 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;
    - (ii) 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 (within the meaning of section 103(a)(2)(C));
    - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
    - (iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

[Note: The full text can be found at [http://www.serve.org/nche/downloads/mv\\_full\\_text.pdf](http://www.serve.org/nche/downloads/mv_full_text.pdf) ]