

# *Louisiana Department of Education*

## *Surrogate Parent Handbook*

# NOTICE OF ANTI-DISCRIMINATION

## LOUISIANA DEPARTMENT OF EDUCATION

*Equal education opportunity is a priority of the Louisiana Department of Education and its employees.* The Louisiana Department of Education does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. For inquiries about our anti-discrimination policies, please contact:

<https://www.louisianabelieves.com/resources/ask-ldoe> or LDOE's Communication Center at 1-877-453-2721.

*CIVIL RIGHTS STATEMENT: The Louisiana Department of Education (LDE) does not discriminate in its educational programs, activities, or employment practices, based on race, color, national origin, sex, sexual orientation, disability, age, religion, ancestry, union membership, or any other legally protected category. Announcement of this policy is in accordance with State law including the Louisiana Human Relations Act and with Federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1967, and the Americans with Disabilities Act of 1990, and the American with Disabilities Act Amendments of 2008.*

November 2020

# CONTENTS

Process Overview – Diagram 1.....	4
Introduction .....	5
Public School District & Charter School Policies and Procedures .....	5
Identifying When Students Need an Educational Surrogate Parent Appointed.....	6
<i>What are the Basic Criteria for Appointing an Educational Surrogate Parent?</i> .....	6
<i>How and When are Children in the Custody of the Office of Child Welfare Assigned Surrogate Parents?</i> .....	6
<i>How are Surrogate Parents Assigned to Children Residing in Group Homes, Residential Treatment Facilities, and/or Institutions?</i> .....	6
<i>How are Unaccompanied Homeless Youth Assigned Surrogate Parents?</i> .....	7
The Educational Surrogate Appointment Process .....	7
<i>What are the Steps in Getting Started?</i> .....	7
<b>STEP 1: CONTACTING PARENTS</b> .....	7
<b>STEP 2: SELECTING SURROGATE PARENTS</b> .....	7
<b>STEP 3: IDENTIFYING AND RECRUITING EDUCATIONAL SURROGATE PARENTS</b> .....	8
<b>STEP 4: SCREENING FOR CONFLICTS OF INTEREST</b> .....	9
<b>STEP 5: TRAINING POTENTIAL EDUCATIONAL SURROGATE PARENTS</b> .....	9
<b>STEP 6: ADDITIONAL CONSIDERATIONS</b> .....	10
<i>Does the LDE Recommend Any Optional Steps or Suggested Best-Practices?</i> .....	10
Rights, Responsibilities, and Requirements for Surrogate Parents .....	11
<i>What is the Surrogate Parent’s Role?</i> .....	11
<i>What is the Authority of the Surrogate Parent?</i> .....	11
<i>What is the Relationship of the Surrogate Parent to Other Agencies?</i> .....	11
<i>What about Educational Surrogates for Homeless Students?</i> .....	11
<i>What about Foster Parents as Educational Surrogate Parents?</i> .....	11
<i>What are the Rights of the Surrogate Parent to Access Educational Records?</i> .....	12
<i>Child Welfare Agencies’ Access to Education Records: The Uninterrupted Scholars Act</i> .....	12
<i>What are the Rights of the Surrogate Parent in Suspensions, Expulsions and Other Changes in Placement for Disciplinary Reasons?</i> .....	12
Length, Continuation, and Termination of Educational Surrogate Appointment .....	13
<i>When Should the Services of a Surrogate Parent Be Legally Terminated?</i> .....	13
<i>What is the Role of Public Noneducational Agencies and Foster Care Providers?</i> .....	13
<i>How are the Parents’ Educational Rights Determined?</i> .....	13
<i>How are State Complaints and Due Process Complaints Handled?</i> .....	14
Frequently Asked Questions .....	14
Appendix A – Guide to the Laws and Regulations .....	22
APPENDIX B – SAMPLE/EXAMPLE FORMS .....	28
APPENDIX C – EDUCATIONAL SURROGATE PARENT TRAINING GUIDE .....	37

A student is suspected of having a disability and has been/will be referred for evaluation

OR

A student has been identified as an eligible student with a disability and has an IEP

A person designated by the school district reviews documentation to determine the status of the student's parent(s) and/or legal custodian

The student's parent(s) or legal custodian are located and are available to make educational decisions for the student **OR** a judge/court has appointed an EDM

Appointing an educational surrogate parent is unnecessary

If a parent or legal custodian cannot be identified or found, the school district's surrogate parent appointment procedures must begin

The school district's designee appoints an educational surrogate parent for the student from a list of qualified and trained surrogate parents

The educational surrogate parent becomes the parent for all IDEA related matters involving the student with a disability, including identification, evaluation, program placement, and free appropriate public education

---

**APPOINTING A SURROGATE PARENT—  
AN OVERVIEW FOR SCHOOL DISTRICTS**

---

## INTRODUCTION

The Louisiana Department of Education (LDE) is responsible for ensuring that the rights of students with exceptionalities are protected. The Individuals with Disabilities Education Improvement Act (IDEA) requires each public agency to guarantee that the rights of the student with a disability are protected whenever the parent(s) or legal custodian(s) of the student with a disability are unknown, unavailable, or the student is a ward of the state. This requirement is met when Local Education Authorities (LEA) assign an individual to act as the educational surrogate parent for the student within 30 days after determining the student meets the criteria. Louisiana’s LEAs, public school districts and charter schools, are responsible for safeguarding these rights ([Appendix A](#)).

This *Surrogate Parent Handbook (Handbook)* provides information to assist public schools and school districts to fulfill their obligation to develop and implement a comprehensive educational Surrogate Parent Program (SPP). These guidelines can not only assist LEAs, but also private and public placing agencies as well as other community partners and service providers to implement the requirements necessary to appoint educational surrogate parents. Each section will provide guidance and information about the essential components that should be considered when school districts examine their policies and procedures for assigning educational surrogate parents for students with disabilities.

## PUBLIC SCHOOL DISTRICT & CHARTER SCHOOL POLICIES AND PROCEDURES

Louisiana public school districts and charter schools must have written policies and procedures for determining whether a student with a disability requires an educational surrogate parent, identifying candidates, training them, and assigning individuals to be a surrogate parent for that student. This requirement can be found in the IDEA, 34 C.F.R. 300.519 and the LDE’s regulations, Bulletin 1706 §516. ([Appendix A](#)) A public school district’s written policies and procedures must contain:

- criteria used to identify when a student requires an educational surrogate parent;
- standards for selecting appropriate surrogate parents;
- an educational surrogate parent referral process;
- a list of qualified individuals who can serve as surrogate parents;
- a surrogate parent training program; and
- monitoring and termination conditions for surrogate parent services.

The IDEA defines “parent” as a parent, foster parent, a guardian authorized to act as the child’s parent, a person authorized to act in the place of the biological or adoptive parent such as a grandparent, stepparents with whom the student lives ([Appendix A](#)). This definition also includes persons who are legally responsible for the student’s welfare or an individual appointed by a judge. Parental consent and participation are required in many parts of special education’s processes and procedures. For example, the IDEA requires LEAs to get informed, written parental consent before conducting an evaluation or providing initial special education services. However, a child may not have a parent or legal custodian available to serve as an Education Decision Maker (EDM). Whenever parents of a child are unknown or cannot be located after reasonable efforts, the child is a ward of the state, or an unaccompanied homeless youth, the IDEA requires LEAs to appoint an educational surrogate parent. This legal obligation also applies to public charter schools in Louisiana. This duty generally requires LEAs to develop methods to (1) determine when a student requires a surrogate parent and (2) assign an educational surrogate parent to a student in need.

This *Handbook* covers the federal and state requirements for LEAs to appoint surrogate parents including:

- Identifying children who need an educational surrogate parent,
- Having a process for appointing surrogates,
- Outlining the rights, responsibilities, and requirements of surrogate parents,
- Recruiting surrogate parents,
- Training surrogate parents, and
- Confirming the responsibilities and roles of public agencies in this process.

This *Handbook* also provides LEAs references to relevant statutes and regulations, some sample forms, and other information about appointing and training educational surrogate parents. (Appendices A, B, and C)

## IDENTIFYING WHEN STUDENTS NEED AN EDUCATIONAL SURROGATE PARENT APPOINTED

### *What are the Basic Criteria for Appointing an Educational Surrogate Parent?*

Each public agency must ensure that an IDEA-eligible or suspected-to-be-eligible child, including unaccompanied homeless youth and wards of the state, has a parent to represent the child in all matters relating to the identification, evaluation, educational placement and provision of FAPE. Again, the public school district must ensure that the rights of the child are protected when a “parent” as defined in 34 CFR §300.30 is unknown or cannot be identified; the LEA, after reasonable efforts, cannot locate a parent; the child is a ward of the state (in Louisiana a ward of the court or a state agency); or, the child is an unaccompanied homeless youth, as defined in the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)(6)). (Appendix A)

A parent or legal custodian is unknown when the school district does not have a record of or information about the parent or that a court has appointed a tutor or EDM for the child. A parent cannot be located when after the LEA takes reasonable steps to find the parent it is unable. An unavailable parent may also be one who is incarcerated or otherwise unable to actively participate in the educational decision making process due to circumstances beyond their immediate control.

### *How and When are Children in the Custody of the Office of Child Welfare Assigned Surrogate Parents?*

LEAs must ensure that all children within their jurisdiction who are suspected of having a disability are identified, located, and evaluated, that the rights of children are protected throughout the special education process, and that they receive special education and related services. The identification and timely assignment of surrogate parents is critical for children in need of care, especially students with disabilities. When the IDEA was substantially amended in 2004, Congress took steps to ensure students assigned to child welfare agencies would involve a parent in the educational decision making, or that surrogate parents would be promptly assigned to children who need them.

The LEA cannot assign an educational surrogate parent to a child who is the custody of a child welfare agency if there is a biological or adoptive parent who can be identified and whose rights to make educational decisions for the child have not been terminated. The LEA should also not assign a surrogate parent if the child has a foster parent who is willing to act as the child’s IDEA parent, or if a court has assigned an EDM to serve in this role for a suspected-to-be-eligible or eligible child.

Courts overseeing a child’s case can appoint surrogate parents or EDMs for children without an available parent or legal custodian or for a child whose birth or adoptive parent can be located but the court believes that appointing another EDM will be in the child’s best interest. When a court makes the appointment, not all of the criteria for selection of an IDEA-surrogate apply. However, the person selected still cannot be an employee of an agency involved in the education or care of the child.

### *How are Surrogate Parents Assigned to Children Residing in Group Homes, Residential Treatment Facilities, and/or Institutions?*

Decisions by the courts and child welfare agencies to place a child in a residential facility occur regularly without the LEA’s knowledge. Children can be placed in many types of settings, e.g. group homes, residential treatment facilities, juvenile justice facilities, parish prisons, or state correctional institutions. The school district where these residential facilities are located is usually logistically and financially responsible for providing the special education and related services. In many cases, students that are in the legal custody of our child welfare or juvenile justice agencies, and that are placed in care settings, are likely to need an educational surrogate parent because the biological parent or legal custodian may be difficult to locate. School districts can provide educational services directly to students with disabilities or enter into a written agreement with a contractor or state agency; however, the final responsibility to provide FAPE rests with the school district where the facility is located. Appointing an educational surrogate parent is one of the procedural safeguards that a LEA has a responsibility to effectuate.

## *How are Unaccompanied Homeless Youth Assigned Surrogate Parents?*

Unaccompanied homeless youth are young people without a fixed night time residence and are not in the care of a parent or legal custodian. They may have run away from home or been forced to leave by their parents. Unaccompanied youth can be found living in many types of temporary situations, including shelters, the homes of friends or relatives (“couch surfing”), hostels, cars, campgrounds, public parks, abandoned buildings, motels, and bus or train stations.

A temporary educational surrogate parent may be appointed for an IDEA-eligible or suspected-to-be-eligible child who is an unaccompanied homeless youth. The surrogate parent could include staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs until a surrogate parent can be appointed who meets all the appointment requirements. The IDEA does not specify how long a temporary surrogate parent can represent the child. The need for a surrogate parent will depend on the specific and unique circumstances faced by each unaccompanied homeless youth. However, attempts should be made to appoint permanent surrogate parents for the students.

In addition to an LEA’s duty to appoint an educational surrogate parent for unaccompanied homeless youth, an LEA may also need to appoint a surrogate parent for a child who falls within the definition of “homeless” child “awaiting foster care placement.” These are children in the custody of the Office of Child Welfare and living in a temporary situation who may not have an IDEA parent. In this situation, an educational surrogate parent must be appointed and meet all IDEA criteria.

## THE EDUCATIONAL SURROGATE APPOINTMENT PROCESS

### *What are the Steps in Getting Started?*

To fulfill its duty to assign educational surrogate parents, the LEA must develop and implement procedures to make sure a surrogate parent is assigned within 30 calendar days after the LEA determines that the child needs a surrogate parent. Any child who has been referred for an initial evaluation because of a suspected disability, who is already eligible for special education services, or who is enrolled in special education may need a surrogate parent. If after an LEA’s documented, reasonable efforts it cannot locate the parent (or if a parent’s right to make educational decisions have been restricted or terminated by a court), there is no current foster parent or relative caregiver (relative with whom the child lives) to serve this role, the child is an unaccompanied homeless youth, and/or the child does not have a court-appointed EDM or guardian, the LEA should appoint a surrogate parent.

#### **STEP 1: CONTACTING PARENTS**

An LEA should begin its efforts to locate a parent immediately after a student enrolls in one of its schools. Since a parent must participate in educational decisions, the determination whether to appoint a surrogate parent should be made promptly and must be made within 30 calendar days. LEAs should continue to send notices to the parent whose educational rights have not been terminated.

Examples of reasonable efforts to contact the parent include but are not limited to:

- Documented telephone calls and contact logs;
- Letters and emails;
- Certified letters with return receipts;
- Documented visits to the parents’ last known address(es); and,
- Requesting a copy of the court order terminating parental rights, limiting or restricting the parent’s right to make educational decisions, or appointed an alternate EDM.

If an LEA’s reasonable efforts to locate a parent fail, if it cannot obtain information about the parent’s status from the placing agency, if is no other IDEA “parent” available, and the child does not have a court-appointed EDM or guardian, the LEA must appoint an educational surrogate parent. Appointing a surrogate parent should fulfill evaluation consent requirements, facilitate IEP development, and aid in appropriate educational placement.

#### **STEP 2: SELECTING SURROGATE PARENTS**

When appointing an educational surrogate parent, the LEA should give first preference to a relative, friend, or other person already in the child’s life. If none of these individuals are willing or able to act as a surrogate parent, the LEA must be

prepared to appoint another qualified responsible adult to act in that capacity. The child welfare caseworker may be a source for identifying a potential surrogate parent who knows and has a relationship with the child. The educational surrogate parent must have the knowledge and skills to assure that the child is adequately represented. Therefore, LEAs must provide training to educational surrogate parents. Each school district must also ensure that a person selected as an educational surrogate parent has no interests that conflict with the interests of the student whom they are assigned to represent. (*Sample forms are in Appendix C*).

The LDE expects public-facing school district policy and procedures to include a statement that it will make reasonable efforts to make certain educational surrogate parents are assigned within 30 days after it determines that the child needs a surrogate parent.

An educational surrogate parent must:

- be at least 18 years old and a resident of the state of Louisiana;
- have no personal or professional interests that conflict with the interest of the student being represented;
- have sufficient knowledge and skills that ensure adequate representation of the student; and
- not be an employee of a public or private agency involved in the education or care of the student.

Additional criteria that should be considered when selecting an educational surrogate parent are:

- shared or similar cultural or ethnic backgrounds as the student;
- knowledge or familiarity with the student's primary language;
- student's participation in the surrogate parent selection process (if appropriate);
- the surrogate parent's residence/proximity to the student; and
- the surrogate parent's awareness, familiarity, and commitment to the education of a student with a disability.

### STEP 3: IDENTIFYING AND RECRUITING EDUCATIONAL SURROGATE PARENTS

The school district is responsible its schools maintain a list of qualified individuals who have agreed to serve as educational surrogate parents. Identifying individuals willing to assume the role of a surrogate parent involves a concerted effort by the schools and school district. The LDE recommends that school districts designate qualified individuals within schools to manage and coordinate recruitment efforts.

School districts may consider contacting their local Parent Teacher Association (PTA), Parent Teacher Organization (PTO), Special Education Advisory Council (SEAC), or other parent advisory groups to assist them. Local Parent Training and Information Centers (PTIC) or Community Parent Resource Organizations, like Families Helping Families (FHF), or non-profit community service organizations such as Court Appointed Special Advocates (CASA), Kiwanis, or Lions, may also provide viable recruitment forums. Some school districts may choose to use radio, television, or their social media forums to relay information about the opportunity for volunteers to serve as an educational surrogate parent.

Local or regional interagency networks may also be avenues to disseminate information about recruiting surrogate parents. Other resources for volunteers could include parents of recent graduates, local senior citizen volunteer groups, or civic volunteer organizations. Local youth services organizations, retired school employees, church groups, and other community groups, are all excellent resources for possible, qualified candidates.

Contact appropriate community groups to recruit educational surrogate parents. Give them a clear explanation of the roles and responsibilities of a surrogate parent, as well as an overview of the time commitments involved in making special education decisions for children who have special and sometimes unique needs. Candidates must be willing to be trained to act as educational surrogate parents and be effective representatives for students.



Some examples of community groups that could assist in identifying surrogate parent volunteers include the following:

- CASA;
- Big Brothers/Big Sisters;
- Fraternities/Sororities;
- Local Parent-Teacher organizations;
- Local advocacy groups;
- Retired business men's/women's organizations;
- Men's/Women's service organizations;
- Retired educators' groups; and,
- Community service clubs/organizations.

LEAs should use an application process to get specific information from potential educational surrogate parents that show:

- the applicant does not have any interests that will conflict with the students;
- the applicant has been or is willing to be trained about the special education interests of the student and the qualities and skills necessary to fulfill the duties of an educational surrogate;
- the applicant is not an employee of a public, non-public, or private agency involved in the education or care of the student; and
- the applicant is willing to commit the time and energy necessary to effectively present and advance the best interest of students in educational matters.

#### STEP 4: SCREENING FOR CONFLICTS OF INTEREST

The LEA must ensure that a person selected as an educational surrogate parent:

- Is not an employee of the LDE, the LEA, or any other agency that is involved in the education or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- Has knowledge and skills that ensure adequate representation of the child.

Remember, staff of residential facilities where the child is living are technically involved in the "care" of the child and are not eligible to serve as surrogate parents.

#### STEP 5: TRAINING POTENTIAL EDUCATIONAL SURROGATE PARENTS

LEAs are responsible for training educational surrogate parents to confirm they have the knowledge and skills that guarantee adequate representation of the student.

It is important that the school district provide information to the educational surrogate parent about the procedural safeguards. When training a surrogate parent, the school district should include information on parental rights and a review of the LDE's *Louisiana's Educational Rights of Children with Disabilities Handbook*.

In addition to the topics included in this *Handbook*, the educational surrogate parent also should receive an overview of school district policies and procedures, especially special education, and an overview of available school district resources, parent groups, and community partners.

While LEAs are primarily responsible for the recruitment, selection, training, and assignment of surrogate parents, community partners may also be a beneficial resource. The educational surrogate parent training must provide each individual with the knowledge and skills needed to properly represent the child in all aspects of the special education process. The training sessions should be comprehensive and the LDE recommends including the following areas:

- Legal Rights and Responsibilities
  - Introduction to the IDEA and Louisiana's Special Education Laws
  - Review of the surrogate parent provisions in state and federal laws
  - Responsibilities of the LEA to students and surrogate parents
- The Special Role of the Educational Surrogate Parent
  - Rights and responsibilities of the surrogate parent

- Building relationships with the child and school staff
- Federal confidentiality laws and state personal identifying information statutes
- Monitoring and recording student progress
- Obtaining and reviewing student education records
- Local resources available to support surrogate parents, including reimbursement, technical assistance, and legal assistance
- Developing an Effective Special Education Program
  - Identification: Understanding the student's disability/disabilities
  - Evaluations: Preparing for the evaluation process and development of the IEP
  - IEP: Developing goals and objectives and other sections of the IEP
  - Special program concerns: Discipline, behavior support, assistive technology, transition services, and related services
- Understanding Procedural Safeguards, Mediation, and Due Process
  - Overview of IDEA and state procedural safeguards
  - IEP Facilitation, Mediation and other non-adversarial dispute resolution alternatives
  - Formal state complaint and due process hearing procedures
- Questions and Responses
  - Review and receipt of LEA educational surrogate parent procedures and responsibilities
  - Basic educational surrogate parent questions and responses

#### STEP 6: ADDITIONAL CONSIDERATIONS

LEAs should:

- Have a process to determine the parent's status and availability;
- Develop creative methods and programs designed to recruit educational surrogate parents;
- Ensure that there is an adequate number of surrogate parents to represent students when necessary;
- Ensure that LEA and school level staff are aware that educational surrogate parents have the same rights as other parents of students with disabilities in the LEA;
- Review the training provided to surrogate parents to ensure that surrogate parents have sufficient knowledge and skills; and,
- Ensure that educational surrogate parents are appointed within 30 calendar days of the determination that a surrogate parent is necessary to represent the student.

#### *Does the LDE Recommend Any Optional Steps or Suggested Best-Practices?*

- Match the student's needs to the strengths of the potential surrogate parent;
- Introduce the student and the potential educational surrogate parent;
- Obtain a written agreement from the surrogate parent to serve the specific student in his or her IEP process and to maintain the student's and the family's rights to confidentiality; and,
- Inform all involved persons and agencies responsible for the residential care and education of the student of the surrogate parent's appointment.

To assist LEAs with their educational surrogate appointment process, and help ensure LEAs assign a surrogate parent within 30 days after deciding one is necessary, the LDE is providing the following sample forms in ([Appendix C](#)) of the *Handbook*:

- Surrogate Parent Determination Form
- Surrogate Parent Request Form
- Agreement to Serve as a Surrogate Parent
- Application to Serve as a Surrogate Parent
- Personal Assurance Statement
- Notification of Assignment as a Surrogate Parent

## RIGHTS, RESPONSIBILITIES, AND REQUIREMENTS FOR EDUCATIONAL SURROGATE PARENTS

### *What is the Educational Surrogate Parent's Role?*

The surrogate parent's role is to participate as an educational decision maker in the special education process on behalf of the child.

### *What is the Authority of the Surrogate Parent?*

When a parent is unknown or unidentified, the surrogate parent represents the student in all matters relating to identification, evaluation, and educational placement, as well as the provision of FAPE, including submitting a dispute to mediation or due process for resolution. It is important to note that a surrogate parent for the purposes of the IDEA is not a replacement for a parent in any other sense, or for non-IDEA decision making.

### *What is the Relationship of the Surrogate Parent to Other Agencies?*

There is nothing in the IDEA that would prohibit an LEA from collaborating with judges and child advocates in establishing a process for assigning surrogate parents. In fact, such practices are advantageous. However, when LEAs involve other parties in determining whether a surrogate parent is needed, the LEA must ensure that the confidentiality of personally identifiable data, information, and records are protected according to the provisions of the Family Education Rights and Privacy Act (FERPA), as amended by the Uninterrupted Scholars Act. Also review the amendments to FERPA that permit LEAs to share the educational records of children in dependent care with authorized representatives of child welfare agencies without the need for written parental consent or the consent of the child at age 18.

### *What about Educational Surrogates for Homeless Students?*

In the case of a child who is an unaccompanied homeless youth, appropriate emergency shelter, transitional shelter, independent living program, and street outreach program staff may be considered for temporary appointment as surrogate parents.

### *What about Foster Parents as Educational Surrogate Parents?*

There are many factors to consider when determining whether to appoint an educational surrogate parent for a student with a disability who is in foster care, and if the foster parent could serve as the student's surrogate parent. It depends on the results of a careful analysis of all the facts, case status, and individual circumstances.

Generally, a foster parent may act as an educational surrogate parent when:

- A court order has restricted or extinguished the biological parents' authority to make educational decisions on the child's behalf; and
- The foster parent—
  - Has an ongoing, long-term parental-like relationship with the child;
  - Is willing to make the educational decisions required of parents under the IDEA; and
  - Has no interest that would conflict with the best or education interests of the child.

Other factors to consider are:

What is the status of the natural parents' rights?

There are a variety of possibilities for the status of the natural parent's rights. The person a LEA makes responsible for appointing educational surrogate parents must know the status or have the skills to discover the status of natural parent's rights before appointing an educational surrogate parent.

How long has this individual been a foster parent for the child?

IDEA does not define when a "long-term" foster parent relationship exists. The longer a student and foster parent have been involved (i.e., four to six months or more) the better that foster parent will understand the needs of that student

with a disability. Again, this must be decided on a case by case basis after confirming the status of the parent’s rights and that the foster parent met the criteria to be an education surrogate parent.

Does the compensation received by an individual serving as a foster parent, represent his/her sole source of income?

The school district and placing agency can determine whether receiving compensation for being a foster parent is a conflict of interest or would make the foster parent an employee of a public agency involved in the education or care of the child.

### *What are the Rights of the Surrogate Parent to Access Educational Records?*

State and federal regulations protect confidentiality of all student records and limit their disclosure. FERPA is a federal law that, in most cases, prohibits schools from disclosing personally identifiable information from a student’s education records to a third party unless the parent (or the student at age 18) provides written consent. FERPA does not define “surrogate parent” or “IDEA parent” as an individual authorized to consent to **release** personally identifiable information. However, federal regulations expressly permit the surrogate parent to access education records and give the surrogate parent has the same rights under the IDEA as the biological or adoptive parent, legal custodian, or court appointed guardian. Accordingly, a surrogate parent has the right to review and inspect any records collected, maintained, and used by an agency to make decisions affecting the child’s educational program, when appropriate.

### *Child Welfare Agencies’ Access to Education Records: The Uninterrupted Scholars Act*

The Uninterrupted Scholars Act (P.L. 112-278) made key revisions to FERPA that make it easier for child welfare agencies to access educational records. This amendment creates an exception under FERPA that authorizes an agency caseworker or other representative of a state or local child welfare agency, or tribal organization to have access to the student’s educational records without having to obtain written parental consent or a court order. This exception applies to children for whom the public child welfare agency has legal responsibility for their care and protection, specifically those children in the legal custody of the agency.

Typically, those who have the right to access the child’s education records, include the following:

- The child’s caseworker from the public children and youth agency;
- The child’s caseworker from a private children and youth agency with whom the public agency contracts; and,
- The supervisors or managers of such agencies.

Please review the Uninterrupted Scholars Act and FERPA to confirm that a parent or surrogate parent consent is unnecessary the transfer records under these limited circumstances.

### *What are the Rights of the Surrogate Parent in Suspensions, Expulsions and Other Changes in Placement for Disciplinary Reasons?*

The surrogate parent assigned to an eligible or suspected-to- be-eligible child who is being considered for suspension or expulsion is entitled to participate in the discipline proceedings as the parent. The LEA must comply with the procedural safeguards and federal and state regulations related to suspension and expulsion, including those set out in the IDEA, state law, and LDE Bulletins.

A LEA must include a surrogate parent in a Manifestation Review Determination (MDR) meeting (that should be held within 10 days after a decision to make a disciplinary placement change), any related IEP team meeting, any suspension hearing or expulsion proceeding, or a due process hearing that involves a change in placement.

## LENGTH, CONTINUATION, AND TERMINATION OF EDUCATIONAL SURROGATE APPOINTMENT

An educational surrogate parent may remain in that capacity as long as:

- he or she meets the eligibility criteria for an educational surrogate parent;
- the student remains eligible for special education services;
- the surrogate parent continues to represent the best interest of the child;
- the student remains a resident of the school district in which he or she is served; and
- the student does not have a legal parent or custodian who is able to represent him/her in the educational decision making process.

When a student with a disability turns 18, that student may assume responsibility for educational decision-making and a surrogate parent may no longer be legally required.

### *When Should the Services of a Surrogate Parent Be Legally Terminated?*

The student, the surrogate parent, or the school district acting on behalf of the student can request for a modification or termination of the educational surrogate parent services. School district procedures should include a method of requesting and documenting this process and for identifying the LEA designee responsible for determining whether the change in or termination of assignment is warranted. (Appendix C)

The educational surrogate parent may no longer represent the child when:

- The child is no longer needs or is no longer eligible for special education for special education and related services;
- A court appoints another adult to make educational decisions for the child;
- The rights of the parent to make educational decisions for the minor are fully restored by a court;
- The child is adopted; or,
- A child with no birth or adoptive parent moves from a residential setting (such as a group home) to a foster family placement, and the foster parent serves as the IDEA parent.

If the new LEA agrees, the surrogate parent can continue to serve when a child moves from one LEA to another unless and until a new educational surrogate parent is appointed.

The LEA must terminate the surrogate parent appointment if:

- The person is not performing the duties of a surrogate parent; or,
- The person has an interest that conflicts with the best interest of the child they are appointed as surrogate parent.

The LEA may not terminate the appointment of a surrogate parent solely because it disagrees with the positions, advocacy, or decisions of the surrogate parent.

### *What is the Role of Public Noneducational Agencies and Foster Care Providers?*

Prior to placing an IDEA-eligible child or suspected-to-be- eligible child, the placing agency should notify the LEA in which the student will be placed and the receiving agency that the child is being transferred to whether the child needs a surrogate parent.

### *How are the Parents' Educational Rights Determined?*

In the case of a child in a noneducational placement, if parental rights have not been limited or terminated by the courts, the placing agency should provide any additional information related to the address, telephone numbers, and location of the parents. If the placing agency does not promptly provide this information, the LEA should specifically request it. The LEA should make a reasonable effort to contact the parents. While the surrogate parent is responsible for participation in educational matters, the placing agency representative remains responsible for all other aspects of the placement,

including day-to-day supervision, care, and services. Placing a child in a residential facility does not automatically limit the right of biological or adoptive parents to serve as their child's IDEA parent.

### *How are State Complaints and Due Process Complaints Handled?*

If an individual disagrees with an LEA's failure to appoint a surrogate, the individual may file a Formal State Complaint with the LDE, Legal Division. An educational surrogate parent may also file a state complaint, request mediation or IEP facilitation, and file a due process complaint on behalf of the student. If the LDE receives a written complaint from a surrogate parent that meets the required criteria, it will treat it the same as if a biological parent filed it and follow all applicable regulations.

## FREQUENTLY ASKED QUESTIONS

### How Many Students May be Served by One Educational Surrogate Parent?

There are no specific legal limitations in the IDEA on the number of students who may be served by each educational surrogate parent. When deciding whether to appoint multiple students to a person, the school district should consider whether the demands on the surrogate parent will allow him or her the time to effectively perform the required duties.

### Who is Responsible for Monitoring the Services of the Educational Surrogate Parent?

The person designated by the school district to appoint educational surrogate parents is responsible for monitoring the services provided by the surrogate parent.

### Can an Employee, Such as a Social Worker or Case Worker, Serve as an Educational Surrogate Parent?

The non-employee requirement of IDEA (**Appendix A**) prohibits only those employees involved in the education or care of the child from serving as an educational surrogate parent. Therefore, if the employee is not involved with the care or education of the child, he or she would be able to serve as a surrogate parent, provided all the requirements for surrogacy are met. This includes having the knowledge and skills to be a surrogate parent, and having no other interests that conflict with the interests of the student being represented.

### When is a Student a Ward of the State vs. in the Custody of the State?

A student is a ward of the state when a guardian has been appointed. The state has assumed the legal responsibility to make decisions concerning the student's educational and financial needs, and parental rights have been terminated. However, if the parent retains the rights to make decisions concerning education, the student is not a ward of the state, but rather in the custody of the state. Both procedures require court action. A copy of the court order will provide the necessary documentation to make the final decision.

### If a Child is a Ward of the State and has a Guardian Appointed for Him or Her, is an Educational Surrogate Parent Appointment Required?

If a child, who is a ward of the state, has a guardian who holds that position by virtue of his or her employment by the state, that guardian may not represent the child as a parent under federal law. Those children would require an educational surrogate parent under IDEA regulations (**Appendix A**).

### Can an Official of a Facility, Such as the Director of a Juvenile Detention Center, Serve as an Educational Surrogate Parent for a Student Who is Placed in the Facility?

Officials of such facilities cannot act as an educational surrogate parent because of the conflict of interest requirements of IDEA regulations (**Appendix A**). However, he or she could be a surrogate parent for a child placed at another facility where he/she is not employed or involved in the education or care of the child.

### Does the IDEA Address the Roles of Foster Parents?

IDEA does not expressly address the role of foster parents. The willingness of the foster parent to participate in the process of making educational decisions on the child's behalf is not sufficient to establish that individual's right to be an educational surrogate parent. The decision for a foster parent to become the educational surrogate parent for a student with a disability must be made on a case by case basis and is based on length of relationship (i.e., six month or more), the status of the rights of the natural parents, and only when all criteria for being an educational surrogate parent have been met.

#### Does an Educational Surrogate Parent Need to be Appointed when a Student has Someone "acting" in the Parental Role?

According to IDEA regulations (see Appendix B), the term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom the child lives, as well as persons who are legally responsible for the student's welfare. In such instances, the appointment of an educational surrogate parent may not be necessary.

#### Should an Educational Surrogate Parent be Appointed if the Natural Parent(s) are Uncooperative?

Under present federal regulations, "uncooperative" should not be construed as "unavailable". An educational surrogate parent should not be appointed for a student in situations where the natural parents or guardians, when known, do not respond to communications, or are uncooperative, or do not act to protect the interests of their child.

#### What is Considered a "reasonable effort" in Discovering the Whereabouts of the Parent?

The IDEA does not define what constitutes a reasonable effort. Determination of what is reasonable must be made on a case by case basis. The school district responsible for the education of the child must make and document attempts to locate the child's parent(s) or guardians.

#### Does a Child with a Disability who is Voluntarily Placed in a Residential Facility Need an Educational Surrogate Parent?

The school district of residence must determine the status of the rights of the parent. If the parent rights have not been terminated, the school district responsible for the child's education must make a reasonable effort to discover the whereabouts of the parents. If these efforts fail to locate the parent, the school district of residence will appoint a surrogate parent for the child.

#### Who is Responsible for Appointing an Educational Surrogate Parent?

The school district responsible for delivering the student's education is responsible for determining if the student needs the services of an educational surrogate parent, and for identifying, assigning, and training the surrogate parent. While an LEA retains the option to operate their program independently and solely within its own geographical jurisdiction, it may prove more practical to form one regional program with a consortium of parishes to serve the parishes within that region. If a student is placed out of district and/or in a residential facility, it is suggested that the agency in which the student has been placed and the responsible school district work together in this process.

#### What is the Definition of "Parent" in the IDEA?

In the IDEA, a parent is defined as:

- A biological or adoptive parent of a child;
- A foster parent;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (with limited exceptions, Child Welfare case- workers are not permitted, by federal law, to serve in this role);
- An individual acting in the place of the 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 (such as a person with an order granting that person custody of the child); or
- A surrogate parent who has been appointed in accordance with 34 CFR §300.519 or Section 615(a)(2) of the IDEA.

Whenever the biological or adoptive parent is “attempting to act as the parent,” that person is presumed to be the IDEA parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. So, if the biological or adoptive parent is “attempting to act as the parent” and has not been divested by a court of his/her legal authority to make education decisions for the child, that parent is the child’s special education decision maker or IDEA parent.

In addition, if a judicial decree or order identifies a person or persons to act as the “parent” for a child or to make educational decisions on behalf of a child, then such person or persons shall be the “parent.”

Finally, a foster parent may fulfill the role as education decision maker under IDEA. If the biological or adoptive parent cannot be located, the LEA may treat the foster parent as the child’s IDEA education decision maker. The appointment of a surrogate parent is not required in this case since under the definition of parent in IDEA, foster parent is listed as an individual that may act in place of a biological or adoptive parent.

Since the IDEA includes a surrogate parent within the definition of parent, a surrogate parent, once appointed, has all the procedural rights provided to the parent. It is the surrogate parent’s responsibility to assert these rights on behalf of the assigned child.

### When Must an Educational Surrogate Parent Be Appointed?

State Educational Agencies (SEAs) like the LDE are required to establish procedures to protect the rights of the child when a parent cannot be located or identified. The SEA must also make reasonable efforts to ensure an LEA assigns a surrogate parent not more than 30 days after it determines that the child needs a surrogate parent.

As part of this responsibility, the LDE has issued Bulletin 1706 §519 and this guidance that explains the duties and responsibilities of LEAs to appoint surrogate parents in a timely manner. Most importantly, LEAs are required to ensure that the rights of a child are protected when: (1) the LEA cannot, after reasonable efforts, identify or locate a biological or adoptive parent, legal custodian, or appointed educational decision maker; (2) the child is in the custody of the Office of Child Welfare and does not have a parent, foster parent, or other appointed guardian who may make educational decisions; or (3) the child is an unaccompanied homeless youth. An LEA must appoint a surrogate parent for any IDEA eligible or suspected-to-be eligible child in Louisiana who meets this criteria and who does not have an IDEA parent/education decision maker to act on the child’s behalf.

However, an LEA cannot appoint a surrogate parent if the biological or adoptive parent is disinterested and refuses to participate in the special education process. The IDEA states that a public agency does not have the authority to appoint a surrogate parent where a child’s parent is available or can be identified and located after reasonable efforts, but refuses, or is unable to attend a meeting or otherwise represent the child.” Also, LEAs are not permitted to appoint an educational surrogate parent when, in the opinion of the LEA, the biological or adoptive parent acts in a manner that is opposed to, or inconsistent with, the best interest of the child. In its publication of the 2006 IDEA regulations, 71 Fed. Reg. 46540 (August 2006), the United States Department of Education (USDE) provided clarification to the surrogate parents appointment process. Specifically, the USDE noted on page 46689 of the regulations that “[t]here is no statutory authority to permit the appointment of a surrogate parent when a parent is either unable or unwilling to attend a meeting in which a decision is made relating to a child’s educational placement.”

Public agencies, specifically as school districts and public charter schools, must develop a method for the:

- Determination of the need for surrogate parent; and,
- Assignment of surrogate parent to the child.

In the case of a child who is a ward of the state as defined in the IDEA, the judge overseeing the child’s case may appoint an EDM or alternatively an educational surrogate parent, provided that the surrogate is not an employee of an agency that is involved in the education or care of the child.



Public agencies may consider the following options to ensure that the student eligible for special education and related services, or suspected-to-be eligible child, has an educational decision maker. These options include, but are not limited to:

- Use alternative methods such as individual or conference telephone calls when a parent can be identified, but is unable to attend meetings regarding an eligible child's education.
- If, despite efforts to engage the parent, he/she is not "attempting to act as the parent" in the special education process, first check whether the child has a foster parent. If so, and if that foster parent is willing to serve in this role, treat the foster parent as the child's parent for special education matters.
- Collaborate with other parties, such as Office of Child Welfare caseworkers, about the court appointing an EDM. Check whether the court has already appointed an EDM for the child. If a judicial decree or order identifies a person or persons to act as the parent of a child or to make educational decisions on behalf of that child, then that person must be treated by the LEA as the child's parent for all matters related to special education.
- Actively request that the court appoint an EDM or surrogate parent for the child.
- If the child is an "unaccompanied homeless youth," shelter staff can be temporarily appointed to and may serve as the surrogate parent only until a fully qualified surrogate parent can be appointed for the child.
- Investigate the student's residential placement to determine whether there is an individual acting in the place of the biological or adoptive parent with whom the child resides and who is willing to act as the educational decision maker/parent.

### What are the Requirements for an Educational Surrogate Parent?

An educational surrogate parent is an individual who represents the student determined eligible for special education services under IDEA, or suspected-to-be eligible student, in matters relating to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE).

Federal regulations define a surrogate parent and delineate the requirements that must be met when a public agency selects and assigns a surrogate parent for a child. Specifically, federal law requires school districts to establish and maintain reasonable procedures for assigning a surrogate parent to any child whenever no parent can be identified, after reasonable efforts no biological or adoptive parent can be located, the child is an unaccompanied homeless youth, or the child is a ward of the state under the laws of that state.

The surrogate parent must not be an employee of any public agency involved in the education or care of the child.

A surrogate parent is an individual who meets specific qualifications and volunteers to perform the duties of a parent or legal custodian in the special education process.

Surrogate parents can be appointed by a judge or a public agency, which in Louisiana means a school district, public charter school or an intermediate unit, to make decisions related to the special education process.

A surrogate parent must:

- Not be an employee of a public or private agency involved in the education or care of the child. This includes an employee of LDE, the LEA, or any other agency that is involved in the education or care of the child, and includes public and private child welfare caseworkers, group home parents, and staff of residential placements;
- Not have a personal or professional interest that conflicts with the interest of the child whom he or she represents; and,
- Have the knowledge and skills that ensure adequate representation of the child.

Notably, a person otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

In the case of a child who is an unaccompanied homeless youth, staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents (even if that person is an employee of an agency involved in the care of education of the youth) until a surrogate parent can be appointed that meets all of the requirements described above.

The surrogate parent assigned to a child may represent that child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

While not directive, some additional qualifications for a surrogate parent should include being a resident of Louisiana or residing in close enough proximity to the LEA to assure that he or she will be available to make educational decisions for the child or being at least 18 years old. In addition, because a surrogate parent must have knowledge and skills to ensure adequate representation of a child, the LEA must provide training to surrogate parents.

### Who Can Appoint an Educational Surrogate Parent to Fulfill the IDEA Requirement?

An IDEA-eligible or suspected-to-be-eligible child's school district of residence or the public charter school is responsible for providing FAPE, and, in most cases, for appointing a surrogate parent when needed. When a nonresident child is in a noneducational placement in a residential facility such as a group home or a residential treatment facility, the school district where the facility is located is responsible for FAPE and for appointing surrogate parents to children, when necessary.

For IDEA-eligible or suspected-to-be-eligible children in the dependency system who are considered wards of the state under the IDEA (i.e., a child in the custody of a public child welfare agency who does not have a foster parent); can have a surrogate parent appointed by the judge overseeing the child's case. As more fully described under the heading "How are Wards of the State Assigned Surrogate Parents?," when a Court makes the appointment of a surrogate parent for a ward of the state, it does not need to comply with all the same criteria for selection of a surrogate as an LEA would for appointing a surrogate parent. However, even a judge cannot appoint a person who is employed by an agency involved in the education or care of the child to serve as a surrogate parent under the IDEA. Thus, a judge cannot appoint a child's caseworker to serve as the child's IDEA surrogate parent.

The only exception to this restriction to a court's power to appoint a surrogate parent is when the child is not living with a parent or a foster parent, and the parents' rights to make education decisions have been suspended by a judge. Then the judge can appoint any individual, including a person employed by an agency that is involved in the care or education of the child, to consent to the initial special education evaluation only. If a child is deemed eligible for special education services following the evaluation, the caseworker or other person appointed by the court cannot authorize the provision of special education and related services. Rather, a surrogate parent appointed by an LEA or a judge must consent in writing to provision of special education and related services, and make any other decisions relating to the child's special education needs.

### Can the Foster Parent Act as a Parent?

Yes. The definition of parent includes foster parents (34 CFR §300.30). In instances where there is no biological or adoptive parent who is "attempting to act as the parent," and the foster parent is willing to serve in the capacity, the LEA should treat the foster parent as the child's IDEA parent, and there is no need to appoint a surrogate parent.

### Can a Guardian Make Educational Decisions?

In Louisiana, generally the only time someone is officially designated as a guardian is after a child has been adjudicated as a Child in Need of Care (CINC) when neither reunification with the parents nor adoption is in the best interest of the child. It is intended to be a permanent placement. A guardian with a limited appointment that does not authorize the individual to act as the child's parent or as the EDM of the child, is not considered to be an IDEA parent. In some cases, the role of the guardian is limited to representing the interests of the child in court proceedings and acting as an advisor to the court on the child's behalf. The extent of a guardian's authority to act as an EDM is limited by the terms of his or her appointment order.

## What are the Rights of a Parent Once an Educational Surrogate Parent is Selected?

There is nothing in IDEA that terminates the rights of the student's natural or adoptive parents from participating in the educational process of their child after an educational surrogate parent is appointed, unless there is a court order terminating or limiting the parent's educational rights. Where there is a biological or adoptive parent attempting to make educational decisions, he or she must be considered the parent for purposes of the IDEA, unless there is a court order terminating educational rights.

## Who Cannot Serve as an Educational Surrogate Parent?

Federal regulations prohibit employees of the LDE, the LEAs, or any other agency involved in the education or care of the child from serving as a surrogate parent. In addition, any individual who has personal or professional interests that conflict with the interest of the child cannot serve as a surrogate parent. For example, public and private agency caseworkers, and group home "parents" cannot make special education decisions for children with disabilities. Neither public nor private agency caseworkers can be appointed as a surrogate parent for children in the care of the agency.

While caseworkers may have relevant information related to the student, the caseworker may not participate as a parent in the special education process. Similarly, probation officers cannot be appointed as surrogate parents for those children they supervise. Also, staff at residential facilities that are involved in the care of the child may not serve as surrogate parents for those children. The reason for this is the IDEA prohibition and the potential conflict between the interest of the child and the interest of the agency because some educational decisions might have an impact on the LDE or other state agencies.

However, there are two important exceptions to this rule. These exceptions were created to ensure that children who are suspected-to-be-eligible for services and who are not living with their parent or a foster parent are promptly evaluated and that provision of special education and related services are not delayed due to the absence of an IDEA parent. These limited exceptions to the general prohibition are as follows:

- **Certain children in child welfare custody:** If a child is not living with a parent or a foster parent, the LEA can conduct an initial evaluation without the parent's consent if: (1) despite reasonable efforts the LEA cannot locate the child's parents or, (2) the parent's rights have been terminated under State law, or (3) the parents' rights to make educational decisions have been suspended by a judge and an individual has been appointed by the judge who can provide consent to the initial evaluation. NOTE: A person who is appointed in the third situation can be someone who is employed by an agency involved in the education or care of the child. However, once a child is found to be eligible for special education services, a school cannot provide any such services without the written permission of the child's IDEA parent, which may be a surrogate parent appointed by the LEA or a surrogate or EDM appointed by a judge.
- **Unaccompanied Homeless Youth:** In the case of a child who is an "unaccompanied homeless youth," the staff of an emergency shelter, transitional shelter, independent living program or street outreach program may be appointed as a "temporary surrogate parent" (even if that person is an employee of an agency involved in the care or education of the youth) until such time as a surrogate parent can be appointed.

## How Long Can an Individual Serve as a Surrogate Parent?

Federal regulations do not address the length of time that a surrogate parent may serve. To ensure minimum disruption to the child, however, the LEA should take steps to ensure that the individual appointed as a surrogate parent can serve in that capacity over the period of time that the child needs a surrogate parent and, whenever possible, continue to serve as the child's surrogate parent if the child moves to another school district, at least until a new surrogate parent is appointed.

## When Must an Educational Surrogate Parent be Appointed?

The LEA must make a reasonable effort to discover the whereabouts of an IDEA parent (as defined in 34 CFR §300.30) before assigning a surrogate parent. If the LEA cannot locate a biological, adoptive parent, or a foster parent, a surrogate

parent must be appointed. The LEA must make efforts to ensure that a surrogate parent is assigned not more than 30 calendar days after the public agency determines that the child needs a surrogate parent.

Reasonable efforts to locate a parent include, but are not limited to, the following:

- Documented telephone calls;
- Letters;
- Certified letters with return receipts;
- Documented visits to the parents' last known address; and,
- Request the court order that terminated parental educational rights and/or appointed the EDM

Students eligible for special education in state correctional facilities do not have an automatic right to a surrogate parent solely by reason of their confinement at a correctional facility. Public agencies must make a case-by-case determination in accordance with 34 CFR §300.519 to determine whether the student has a parent to act as an educational decision maker under IDEA. When a student confined in a state correctional facility is considered to be a ward of the state pursuant to the IDEA, that child's rights must be protected by appointing a surrogate parent.

However, all rights accorded to parents under the IDEA transfer to students with disabilities who reach the age of majority, who are incarcerated in an adult, state juvenile, or local correctional institution, and who have not been found to be incompetent. (34 CFR §300.520(a)(2))

If there is some doubt about who should act as a surrogate parent or whether a student requires a surrogate parent, the LEA or public agency should consult with its solicitor regarding the unique facts related to the individual student's status.

The surrogate parent directive applies to IDEA-eligible or suspected-to-be-eligible students. LEAs should not assume that a student in general education will never require the appointment of a surrogate parent. If a child has no parent, as defined by the IDEA, a surrogate parent should be appointed for children who are suspected-to-be-eligible and who may require an evaluation to determine whether they have a disability and require specially designed instruction (SDI). However, if all reasonable efforts to locate a biological, adoptive, or foster parent have been exhausted, the school district has two options: it can appoint a surrogate parent to provide written consent for the initial evaluation, or it can work with the child welfare agency to secure a court order authorizing another person to consent to the initial evaluation pending the assignment of a surrogate parent to the child. Following an initial evaluation, however, a surrogate parent must be appointed to provide consent for the initial provision of special education and related services, and that person assumes the responsibilities of a parent under 34 CFR §300.519.

### Who Can Request or Challenge the Appointment of a Surrogate Parent?

Anyone who believes that a child with a disability or suspected-to-be-eligible child is in need of a surrogate parent can request that one be appointed, including caseworkers or probation officers. It is up to the LEA to determine whether a surrogate parent is needed. If the LEA refuses to appoint a surrogate parent, anyone can notify the Louisiana Department of Education, Special Education.

Under Bulletin 1706, the public charter school or school district where the parent(s) or student resides is required to provide FAPE, e.g., developing and revising the IEP, sending prior written notice, and obtaining parental consent for evaluations/special education services, and, if necessary, appointing a surrogate parent. However, if the child is in a noneducational placement in a residential setting, the school district where the facility is located has all of these responsibilities, including appointing a surrogate parent when one is needed.

Remember: An LEA's failure to appoint a surrogate parent may result in denying a student FAPE and may entitle a child to compensatory education.

### Do LEAs have the Responsibility to Identify Children and Youth Experiencing Homelessness?

Yes. Every LEA must designate a liaison for children and youth experiencing homelessness who is able to carry out their duties under the law. The McKinney-Vento Act requires liaisons to ensure that “homeless children and youths are identified by school personnel through outreach and coordination with other entities and agencies” [42 U.S.C. §11432(g)(6)(A)(i)]. The purpose of identification is to provide support and offer appropriate services to the family, child and/or youth. Coordination with schools, local social services agencies, and other agencies or entities providing services to homeless children and youth and their families is an essential identification strategy, as are professional development, awareness and training activities within school buildings, LEAs, and the community.

### Is There Any Guidance on What “Fixed, Regular, And Adequate Nighttime Residence” Means?

The McKinney-Vento Act states that children and youth who lack “a fixed, regular, and adequate nighttime residence” will be considered homeless [42 U.S.C. §11434A(2)(A)]. The Act does not define those terms. However, using definitions from a reputable, established dictionary may help decision-makers and provide useful guidance: (1) Fixed means “securely placed” and “not subject to change or fluctuation”. (A fixed residence is one that is stationary, permanent, and not subject to change. (2) Regular means “recurring, attending, or functioning at fixed, uniform, or normal intervals” (A regular residence is one used on a recurring, consistent basis.) (3) Adequate means “sufficient for a specific requirement” and “lawfully and reasonably sufficient”. An adequate residence is one that sufficiently meets the physical and mental health needs typically found in home environments. (Definitions from *Merriam-Webster’s On-line Dictionary*, <https://www.merriam-webster.com/>, 2020)

### Are Children and Youth Who Move in with Relatives, Friends, or Other People Covered By McKinney-Vento?

Children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason are covered by the McKinney-Vento Act. This can include unaccompanied youth who are running away from home, even if their parents state a desire for the youth to return home. It could also include families who move in with others as a result of an emergency related to a job loss, reduction in work hours or pay, unexpected medical bills, natural disaster, or domestic violence. Families who share adequate housing on a long-term basis due to preference or convenience would not be covered by the Act.

### Are Transitional Housing Programs Considered a Homeless Situation?

Yes. The McKinney-Vento Act specifically applies to children and youth living in transitional shelters [42 U.S.C. §11434A(2)(B)(i)]. This term includes transitional housing programs and transitional living programs. State Coordinators are also required to “coordinate and collaborate with... operators of transitional housing facilities, and providers of transitional living programs for homeless youths” [42 U.S.C. §11432(f)(4)(C)]. A federal court affirmed that transitional housing programs are covered by the McKinney-Vento Act.

### Are Students Displaced by a Disaster Covered by McKinney-Vento?

Yes, if they meet the eligibility requirements under the law. Students who lack a fixed, regular and adequate nighttime residence due to a disaster (earthquake, hurricane, tornado, flood, chemical explosion, terrorist attack, etc.) may be considered homeless under the McKinney-Vento Act. They are entitled to the same legal protections and services as other students experiencing homelessness.

### What is the Age of Majority for Consent Requirements in Louisiana?

The age of majority is eighteen in Louisiana. (La. C.C. art. 29) Generally, the right to make educational decisions transfers to the student when that student turns 18, subject to the limitations contained in 34 CFR §300.520 and Bulletin 1706 §520.

## APPENDIX A – GUIDE TO THE LAWS AND REGULATIONS

### 20 U.S.C. § 1401 Definitions

Except as otherwise provided, in this chapter:

#### (23) **Parent**

The term “parent” means—

- (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- (B) a guardian (but not the State if the child is a ward of the State);
- (C) an individual acting in the place of a natural 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
- (D) except as used in sections 1415 (b)(2) and 1439 (a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

### 34 CFR § 300.30 Parent

#### (a) **Parent means—**

- (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 § 300.519 or section 639(a) (5) of the Act.

#### (b)

- (1) Except as provided in paragraph (b) (2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

### 20 USC § 1415 Procedural safeguards

#### (b) **Types of procedures**

The procedures required by this section shall include the following:

(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 ... 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.

### 34 CFR § 300.519 Surrogate parents

#### (a) **General. Each public agency must ensure that the rights of a child are protected when—**

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

- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

b) **Duties of public agency.** The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

(c) **Wards of the State.** In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) **Criteria for selection of surrogate parents.**

- (1) The public agency may select a surrogate parent in any way permitted under State law.
- (2) Public agencies must ensure that a person selected as a surrogate parent—
  - i. Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
  - ii. Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
  - iii. Has knowledge and skills that ensure adequate representation of the child.

(e) **Non-employee requirement;** compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) **Unaccompanied homeless youth.** In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d) (2) (i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) **Surrogate parent responsibilities.** The surrogate parent may represent the child in all matters relating to—

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

(h) **SEA responsibility.** The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

### **34 CFR § 300.33 Public agency**

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

### **34 CFR § 300.45 Ward of the State**

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is—

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 300.30.

### **34 CFR § 300.111 Child find**

(a) General. (1) The State must have in effect policies and procedures to ensure that—

- (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and
- (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(c) Other children in child find. Child find also must include—

- (1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and
- (2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

## **20 USC § 1412 State eligibility**

### **(a) In general**

A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions—

### **(3) Child find**

#### **(A) In general**

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

### **(11) State educational agency responsible for general supervision**

#### **(A) In general**

The State educational agency is responsible for ensuring that—

- (i) the requirements of this part are met;
- (ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—
  - (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and
  - (II) meet the educational standards of the State educational agency; and
  - (III) (III ) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

#### **(B) Limitation**

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

## **42 USC § 11434A McKinney-Vento Homeless Assistance Act, Education for Homeless Children and Youths – Definitions**

### **(2) The term “homeless children and youths”—**

- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); 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 11302 (a)(2)(C) of this title);
    - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, sub-standard housing, bus or train stations, or similar settings; and,
    - (iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).
- (6) The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.

## **20 U.S. Code § 1232g. Family Educational and Privacy Rights (FERPA)—The Uninterrupted Scholars Act**

(L) an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 5304 of title 25), who has the right to access a student’s case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student’s education needs and authorized by such agency or organization to receive such disclosure and such



disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

**La. R.S. 17:1942. Definitions**

A. For purposes of this Chapter, the definitions in the Individuals with Disabilities Education Improvement Act of 2004 are hereby adopted unless otherwise provided by this Chapter or duly adopted regulations or policies.

B. A "student with an exceptionality", including a student with a disability, is any student who is evaluated according to state and federal regulation or policy and is deemed to have a mental disability, hearing loss (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, autism, or is deemed to be gifted or talented, and as a result requires special education and related services. A student with an exceptionality may include, as determined by the local education agency, a student experiencing developmental delay ages three through eight.

E. "**Resident**" as it applies to a student with an exceptionality for purposes of this Chapter shall mean any one of the following:

- (1) The **student is a resident within the geographical boundaries of the local education agency in which the student's parent or parents have their legal residence**, unless the parent or parents have relinquished custody of the student. In such case, the student is a resident within the **geographical boundaries of the local education agency in which the student's legal custodian or custodians have their legal residence**.
- (2) If a student's parents are divorced, the student is a resident of the local education agency in which the student's domiciliary or custodial parent or parents have their legal residence.
- (3) **If a student is in foster care**, the student is a resident of the local education agency in which the parent or parents with whom the student lived immediately prior to being placed into foster care have their legal residence.

**La. R.S. 17:1946 Procedural Safeguards**

A. The Department of Education and the local education agencies shall establish and maintain regulations and

procedures in accordance with this Section and the Individuals with Disabilities Education Improvement Act of 2004 to ensure that students with exceptionalities and their parents are provided procedural safeguards with respect to the provision of free appropriate public education by such agencies.

B. (1) The right of a parent or public agency to initiate a request for a special education due process hearing shall prescribe within one year of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request.

C. (1) No person, who is an employee of a public school system, or his employer, who in good faith renders school health services and medical services to students with exceptionalities which are required by state or federal law, shall be liable for any civil damages as a result of any act or omission in rendering the care or services required.

(2) No individual appointed according to state or federal law to serve as a surrogate parent who in good faith performs the functions of such appointment which functions are required by state or federal law shall be liable for any civil damages as a result of any act or omission in rendering services in accordance with the functions of said appointment.

(3) The provisions of this Section shall not exempt from liability those individuals who intentionally or by grossly negligent acts or omissions cause damages to a student with an exceptionality or other individual participating in a special education program for individuals with exceptionalities.

**La. R.S. 17:3914 Student information; privacy; legislative intent; definitions; prohibitions; parental access; penalties**

A. The legislature hereby declares that **all personally identifiable information is protected as a right to privacy** under the Constitution of Louisiana and the Constitution of the United States.

B.(1) For purposes of this Section, "personally identifiable information" is defined as information about an individual that can be used on its own or with other information to identify, contact, or locate a single individual, including but not limited to the following:

(a) Any information that can be used to distinguish or trace an individual's identity such as full name, social security number, date and place of birth, mother's maiden name, or biometric records.

- (b) Any other information that is linked or linkable to an individual such as medical, educational, financial, and employment information.
- (c) Two or more pieces of information that separately or when linked together can be used to reasonably ascertain the identity of the person.

G. Except as provided in Paragraph (F)(5) of this Section, a person who violates any provision of this Section shall be punished by imprisonment for not more than six months or by a fine of not more than ten thousand dollars.

**La. R.S. 46:56.F. Applications and client case records; definitions; confidentiality; waiver; penalty**

A. Applications for assistance and information contained in case records of clients of the Louisiana Department of Health, the Department of Children and Family Services, or the office of elderly affairs, for the purpose of adult protective services, shall be confidential and, except as otherwise provided, it shall be unlawful for any person to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of applications or client case records or the information contained therein for any purpose not directly connected with the administration of the programs of the department.

F. The following information shall not be subject to waiver and shall not be released to applicants, recipients, or outside sources, **except those outside sources engaged in the administration of the programs of the department or when specifically authorized by law:**

- (1) Records pertaining to foster care of children, investigations of abuse and neglect of children, and other child welfare services.
- (2) Information furnished to the department by persons, governmental agencies, or other legal entities when such furnisher of information is subject to a confidentiality statute or regulation which prohibits release of such information to an outside source, and
- (3) Information contained in applications for assistance and case records that is furnished to law enforcement agencies or courts to aid in the prosecution of criminal offenses related to any program.
- (4)(a) For the purpose of this Subsection, **those outside sources engaged in the administration of the programs of the department pertaining to child welfare services shall be local child service agencies, including but not limited to hospitals, clinics, schools, and counterpart agencies in other states engaged in delivering family and children's services . . .** The requesting agency shall

request the information in writing and state the purpose for which the information is being requested.

(b) In addition, the department **may release information to other agencies of state government that are engaged in rendering services or treatment to a department recipient or former recipient.** The agency receiving the information from the department under this Paragraph shall be bound by the same confidentiality standard as prescribed in this Section with regard to release of this information to the recipient, the client's legal representative, or an outside source.

**LAC 28:XLIII.519 Surrogate Parents**

A. General. Each public agency shall ensure that the rights of a student are protected when:

- 1. no parent (as defined in §905) can be identified;
- 2. the public agency, after reasonable efforts, cannot locate a parent;
- 3. the student is a ward of the state (including a ward of the court or of a State agency); or
- 4. the student 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.1. Procedures for determining whether a student needs a surrogate parent are contained in the Surrogate Parent Handbook and as follows:

2. procedures for assigning a surrogate parent shall be developed and implemented by each LEA.

C. Duties of Public Agency. The duties of a public agency under Subsection A of this Section include the assignment of an individual to act as a surrogate for the parents. This shall include a method:

- 1. for determining whether a student needs a surrogate parent; and
- 2. for assigning a surrogate parent to the student.

D. Wards of the State. 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 that the surrogate meets the requirements in Subparagraph E.2.a and Subsection F of this Section.

E. 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 shall ensure that a person selected as a surrogate parent:
  - a. is not an employee of the LDE, the LEA, or any other agency that is involved in the education or care of the student;
  - b. has no personal or professional interest that conflicts with the interest of the

student the surrogate parent represents; and

- c. has knowledge and skills that ensure adequate representation of the student.

F. Non-Employee Requirement; Compensation. A person otherwise qualified to be a surrogate parent under Subsection E 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.

G. Unaccompanied Homeless Youth. In the case of a student 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 Subparagraph E.2.a of this Section, until a surrogate parent can be appointed who meets all of the requirements of Subsection E of this Section.

H. Surrogate Parent Responsibilities. The surrogate parent may represent the student in all matters relating to:

1. the identification, evaluation, and educational placement of the student; and
2. the provision of FAPE to the student.

I. LDE Responsibility. The LDE shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent.

J. Any person appointed as a surrogate parent shall be protected by the "limited liability" provisions set forth in L.R.S. 17:1958.

*[Some states use "ward of the state" synonymously with "ward of the court", when referring to a foster child in the custody of a public child welfare agency like the Office of Child Welfare.]*

*Generally in Louisiana, a court must find that the child meets the legal requirements necessary to be declared a Child in Need of Care (CINC) before the court will appoint a legal guardian for that child. Then the Department of Children and Family Services (DCFS), the parent, or the attorney for the child may make a request to the court asking it to appoint a guardian for the child. Usually the child must have lived with the proposed guardian for at least 6 months.]*

#### **La. C.C. art. 358 Authority, privileges, and duties of tutor and undertutor; termination of tutorship**

The granting of the decree shall confer upon the tutor and undertutor the same authority, privileges, and responsibilities as in other tutorships, including the same

authority to give consent for any medical treatment or procedure, to give consent for any educational plan or procedure, and to obtain medical, educational, or other records, but the responsibility of the tutor for the offenses or quasi-offenses of the person with an intellectual disability shall be the same as that of a curator for those of the interdicted person and the tutorship shall not terminate until the decree is set aside by the court of the domicile, or the court of last domicile if the domicile of the person with an intellectual disability is removed from the State of Louisiana.

*[Tutorship is when a person has been appointed by a court to be the child's tutor and is legally responsible for caring for a minor child. Guardianship is the term used in every other state for tutorship. You may even see it used in some Louisiana laws.]*

#### **La. C.C. art. 392 Curators**

The court shall appoint a curator to represent the interdict in juridical acts and to care for the person or affairs of the interdict, or any aspect of either. The duties and powers of a curator commence upon his qualification. In discharging his duties, a curator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict.

The court shall confer upon a curator of a limited interdict only those powers required to protect the interests of the interdict.

*[If an adult becomes incapable of making responsible decisions due to a mental disability, the court will appoint a substitute decision maker, often called a curator in Louisiana but in some states called a "guardian," "conservator" or other term. Guardianship is a legal relationship between a competent adult (the "guardian") and a person who because of incapacity is no longer able to take care of his or her own affairs (the "ward").]*

## Educational Surrogate Parent Program Agreement

(Date)

(Surrogate Parent Name)  
(Surrogate Parent Address)  
(City, State, Zip Code)

Dear (Surrogate Parent's Name):

I am happy to invite you to serve as an educational surrogate parent!

As a surrogate parent, you will be expected to participate in training; request and participate in all applicable meetings relating to the special education services and educational placement of the child, including IEP meetings, evaluation reviews, manifestation determination reviews, etc.; the child receives a free appropriate public education in the least restrictive environment; respond promptly to school requests for information and consent; consistently communicate with the school and student; and, assert the student's rights to due process when appropriate.

(Coordinator's Name), the School Surrogate Parent Coordinator, is available to assist you in understanding your responsibilities and can be reached at (Coordinator Phone Number & Email). Please return this Agreement form, the Educational Surrogate Parent Application, and the Personal Assurance Statement to the School Principal or Surrogate Parent Coordinator within 10 school days.

Sincerely,

(Coordinator Name)  
LEA Surrogate Parent Supervisor

-----  
**Response**

Please initial below, sign, and then return this to the Surrogate Parent Program Coordinator

\_\_\_\_\_ If approved, I agree and accept the appointment to serve as an educational surrogate parent.

\_\_\_\_\_ I respectfully decline the appointment to serve as an educational surrogate parent at this time.

*I have received information relative to the procedural safeguards guaranteed under the Individuals with Disabilities Education Act (IDEA) and Louisiana's Children with Exceptionalities Law. I agree to act in the role of an educational surrogate parent for (student's name) in all matters relating to identification, evaluation, educational placement, and the provision of a free and appropriate public education.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# Educational Surrogate Parent Program Application

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

\_\_\_\_\_  
Last Name First Name Middle Initial

\_\_\_\_\_  
Street City State Zip Code

\_\_\_\_\_  
Date of Birth Telephone Number Email Address

Occupation: \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Employment Address: \_\_\_\_\_

Employment Telephone: \_\_\_\_\_ Employment Email: \_\_\_\_\_

Education (highest level attained) and School Attended: \_\_\_\_\_

Children, if any, and ages: \_\_\_\_\_

Do you have a child with a disability in your family?  Yes  No

Have you ever had any direct, prolonged involvement with a child with a disability who was not your biological or adopted child or the child of a relative?  Yes  No

If yes, please explain: \_\_\_\_\_

\_\_\_\_\_

List and/or explain any activities or experiences that you have had that you feel would enhance your ability to serve as a surrogate parent. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Why do you want to be a surrogate parent? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Are you applying to be a surrogate parent only for a particular child?  Yes  No

If yes, please state the child's name and your relationship to the child. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you are appointed as an educational surrogate parent are you willing to commit to serving for at least one year?

Yes  No

**Educational Surrogate Parent Application (continued)**

Answer the following questions by checking **Yes** or **No**:

- |                                     |                                    |    |  |
|-------------------------------------|------------------------------------|----|--|
| <input type="checkbox"/> <b>Yes</b> | <input type="checkbox"/> <b>No</b> | 1. | Does your employment involve the education of students? If YES, please describe. |
| <input type="checkbox"/> <b>Yes</b> | <input type="checkbox"/> <b>No</b> | 2. | Does your employment involve the care of students? If YES, please describe.      |

**(Description for 1 and 2)** \_\_\_\_\_  
\_\_\_\_\_

List at least two references, including one who is not a relative, who have first-hand knowledge of your character, special education knowledge, personality, interests, personal history, and professional background, etc.

\_\_\_\_\_  
Name Relationship or Occupation / Email Address

\_\_\_\_\_  
Address Phone Number

\_\_\_\_\_  
Name Relationship or Occupation / Email Address

\_\_\_\_\_  
Address Phone Number

\_\_\_\_\_  
Name Relationship or Occupation / Email Address

\_\_\_\_\_  
Address Phone Number

***I certify and attest that all of the information on this Application is true. I also expressly give the school district permission to conduct a background check and to contact my employer and references to confirm my fitness to be appointed as an educational surrogate for children with disabilities.***

\_\_\_\_\_  
Applicant's Name (Printed)

\_\_\_\_\_  
Applicant's Signature

## Surrogate Parent Personal Pledge and Affirmation

I hereby affirm that:

- I am a person of good character;
- I am at least 18 years old;
- I capacity and ability to make reasonable decisions regarding a student's educational needs;
- I understand that student information is confidential and protected by federal and state privacy laws;
- I am committed to learn about my assigned student's educational needs and the student's rights under the Individuals with Disabilities Education Act, the Children with Exceptionalities Laws, and the Department's regulations;
- I have no personal interest or legal encumbrance that would conflict with the interests of the student;
- I am not an employee of any agency responsible for the education or care of the child;
- I live within geographic proximity to the student and will be able to fulfill my obligations as an educational surrogate parent; and
- I am committed to advocating for a free appropriate public education for the child in the least restrictive environment and agree to fulfill the responsibilities listed below.

(Initial each statement below to confirm you understand the following are components of your role as a surrogate parent)

### **RESPONSIBILITIES OF AN EDUCATIONAL SURROGATE PARENT**

\_\_\_\_\_ **(Int)** Participate in the surrogate training session(s)

\_\_\_\_\_ **(Int)** Assert and advocate for the student's rights to due process and compliance with the IEP, as appropriate

\_\_\_\_\_ **(Int)** Request and participate in all applicable meetings concerning the special education services and educational placement of the child (including IEP meetings, evaluation meetings, parent-teacher conferences, suspension hearings, manifestation determination reviews, etc.)

\_\_\_\_\_ **(Int)** Approve, disapprove, or express concerns about the student's IEP

\_\_\_\_\_ **(Int)** Contact the school surrogate parent coordinator by telephone and email if I need assistance or if I want to terminate my assignment as an education surrogate parent for a student

\_\_\_\_\_ **(Int)** Communicate regularly, both verbally and in writing, with the student, the student's teacher(s), the student's school surrogate parent coordinator, and agency caseworker

\_\_\_\_\_ **(Int)** Advocate for and assert the child's right to receive a free appropriate public education in the least restrictive environment

---

Educational Surrogate Parent's Signature

Return completed form to (Coordinator's Name), School Surrogate Parent Program Coordinator.

## Surrogate Parent Program Determination Form

Student Name (Last, First, M.I.) \_\_\_\_\_

Date of Birth / Age \_\_\_\_\_

Parish of Residence \_\_\_\_\_

Current School \_\_\_\_\_

Last School Attended \_\_\_\_\_

Principal \_\_\_\_\_

Grade \_\_\_\_\_

Disability Category \_\_\_\_\_

If any one of the following conditions results in a “YES,” appointing an educational surrogate parent is appropriate.

YES	NO	CONDITION
		The child’s parents or legal custodians are unknown or unidentified. (Attach written documentation)
		A parent, legal custodian, current foster parent, or relative caregiver (relative acting in place of the parents with whom the child lives) cannot be located. (Attach documentation of efforts to locate including incarceration information)
		The child is a ward of the state or the parent(s)’ right to make educational decisions for the child have been terminated by the court, and a legal custodian, guardian, current foster parent, or relative caregiver (relative with whom the child lives) cannot be located and the child does not have a court-appointed education decision maker or guardian. (Need letter from agency or court order)
		The child is an unaccompanied homeless youth. (a youth without a fixed residence and not under the supervision of a parent or legal custodian).

Surrogate Parent Determination Form was completed by: \_\_\_\_\_ (Print) Date: \_\_\_\_\_

Based on these conditions and after reviewing the Surrogate Parent Request, an educational surrogate parent: <input type="checkbox"/> Must be appointed. <input type="checkbox"/> Does not need to be appointed.	
<u><i>School District Representative Must Review and Approve a Request to Assign Educational Surrogate Parent within 30 days</i></u>	
Authorized School District Representative Name	Work Address
Authorized Signature/Title (designee)	Email
Telephone Number	Date



# Surrogate Parent Request Form

<b>STUDENT NAME (Last, First, M.I.)</b>			<b>CAREGIVER NAME</b>	
<b>DATE OF BIRTH</b>	<b>PARISH OF RESIDENCE</b>	<b>CAREGIVER PHONE</b>		<b>EMAIL</b>
<b>STREET ADDRESS</b>			<b>CURRENT SCHOOL</b>	
<b>CITY</b>	<b>STATE</b>	<b>ZIP CODE</b>		<b>GRADE</b>
<b>TELEPHONE</b>		<b>EMAIL</b>		<b>DISABILITY CLASSIFICATION/CATEGORY</b>

Referred By (Print) \_\_\_\_\_ Title \_\_\_\_\_

**Current Special Education Placement**

- Full-Time**
- Resource/Push-in**
- Self-contained**
- Homebound**
- Residential/Facility Placement**
- Other:** \_\_\_\_\_

**Current Caretaker Type**

- Legal Custodian**
- Foster Parent**
- Legal Guardian**
- State Agency**
- Other** \_\_\_\_\_

**State/Local Social Service Agencies (if more than two attach list and check here )**

\_\_\_\_\_  
**Agency Name**

\_\_\_\_\_  
**Agency Contact Name**

\_\_\_\_\_  
**Contact Supervisor Name**

\_\_\_\_\_  
**Contact Phone**

\_\_\_\_\_  
**Contact Email**

\_\_\_\_\_  
**Agency Name**

\_\_\_\_\_  
**Agency Contact Name**

\_\_\_\_\_  
**Contact Supervisor Name**

\_\_\_\_\_  
**Contact Phone**

\_\_\_\_\_  
**Contact Email**

**Recommendation(s) for possible surrogate parent:**

\_\_\_\_\_  
 Name Relationship Phone Number

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Name Relationship Phone Number

\_\_\_\_\_  
 Address

**Surrogate Parent Request Form (continued)**

There are no existing conflicts of interest, professional (e.g., employed by the LEA, a state/local agency, the placing agency, etc.) or personal (e.g., background, familial, civil, criminal), and you are recommending the applicant to be appointed as this student’s surrogate parent?

Circle: **Yes** or **No**

**A surrogate parent cannot be appointed by the LEA when:**

There is a parent, legal custodian, guardian, foster parent, or relative caregiver (relative with whom the child lives) who can be located and whose right to make educational decisions has not been restricted or terminated by a court, or if a court has appointed an education decision maker or legal guardian for that child.

**Reasons for Application (Check appropriate box)**

- The student’s parents or legal guardians are not known. Attach written documentation.
- The student’s parents or legal guardians have not been located after reasonable efforts on the part of the school district. Attach documentation of attempts to contact parents/guardians.
- The student is a ward of the state and parental rights have been terminated.
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.
- Other (specify)

\_\_\_\_\_  
Name of Local/School Building Surrogate Parent Coordinator

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Signature –Surrogate Program Coordinator

**Return Form to:**

LEA Name  
LEA Address  
City, State Zip

Attn: LEA Surrogate Parent Supervisor-Designee

School District Representative Must Review and Approve a Request to Assign Educational Surrogate Parent within 30 days <input type="checkbox"/> School District Representative Reviewed the Surrogate Parent Request Form. DATE RECEIVED: _____ <input type="checkbox"/> School District Representative Reviewed the Educational Surrogate Parent Application.	
<input type="checkbox"/> Appointment Approved.	<input type="checkbox"/> Appointment Denied.
<i>Authorized School District Representative Name</i>	<i>Work Address</i>
<i>Authorized Signature/Title (designee)</i>	<i>Email</i>
<i>Telephone Number</i>	<i>Decision Date</i>

# Surrogate Parent Assignment Notification Letter

(Date)

(Surrogate Parent Name)  
(Surrogate Parent Address)  
(City, State, Zip Code)

Dear (Surrogate Parent's Name):

You have been assigned to serve as an educational surrogate parent for (Student Name). This assignment will be reviewed annually. Please keep a copy of this letter to verify your assignment as surrogate parent for (Student Name).

School's Surrogate Parent Coordinator, (Coordinator Name), is always available to discuss your assignment. Call or email (Coordinator Name, Phone Number & Email) with any questions or concerns about your new role that helps protect the education rights of students with disabilities.

We are very grateful for and appreciate your willingness to assist us as we work to meet the special education needs of the students in our community.

Sincerely,

---

(Coordinator Name)  
School Surrogate Parent Program Coordinator

cc: LEA Surrogate Parent Program Supervisor  
Special Education Director/Supervisor

# Termination of Surrogate Parent Assignment Request Form

DATE: \_\_\_\_\_

<b>Student Name (Last, First, M.I.)</b>	<b>Surrogate Parent Name</b>
<b>Date of Birth</b> <b>Parish of Residence</b>	<b>Assignment Date</b>
<b>Current School</b>	<b>School Surrogate Parent Program Coordinator</b>
<b>Grade</b>	<b>State Agency</b>
<b>Disability Classification/Category</b>	

I, \_\_\_\_\_, request that the appointment of an education surrogate for the student identified on this form be terminated for the following reason(s). (Check all that apply)

- The assigned student is now 18 years old and is legally entitled to exercise his/her own rights, responsibilities, and make education related decisions.
- The child is no longer in the custody of \_\_\_\_\_ (former legal custodian). The child is now in the custody of \_\_\_\_\_ (new legal custodian), whose relationship is \_\_\_\_\_ (relationship to child) as of \_\_\_\_\_ (date).
- This child has been placed outside of the LEA's jurisdiction by \_\_\_\_\_ (agency/court) and is now living in \_\_\_\_\_ (new parish) at \_\_\_\_\_ (address) and needs a new surrogate assigned.
- Assigned Educational Surrogate needs to be replace because of potential conflict. (Please explain)  
\_\_\_\_\_  
\_\_\_\_\_
- Other reasons. (Please explain)  
\_\_\_\_\_  
\_\_\_\_\_

Retain this surrogate parent until a new one is assigned or as a special education advisor?       Yes     No

Based on these findings the educational surrogate parent's appointment: <input type="checkbox"/> Must be terminated. <input type="checkbox"/> Does not need to be terminated.	
<b><u>School District Representative Must Review and Approve a Request to Terminate Educational Surrogate Parent</u></b>	
<i>Authorized School District Representative Name</i>	<i>Work Address</i>
<i>Authorized Signature/Title (designee)</i>	<i>Email</i>
<i>Telephone Number</i>	<i>Date</i>

## APPENDIX C – EDUCATIONAL SURROGATE PARENT TRAINING GUIDE

The IDEA and LDE's regulations place the responsibility on public school districts and charter schools (the Special School District when appropriate) for designing surrogate parent program procedures that assign an educational surrogate parent to an eligible student within 30 days, as well as providing all special educational services for exceptional children within their jurisdiction.

### LEA & School Building Level Organizational Components

- ❖ **An LEA's Surrogate Parent Program (SPP)** should, at a minimum, include the following components:
  - A process where the LEA determines whether an identified child, or a child suspected of being exceptional, needs an educational surrogate parent
  - The criteria for determining need and eligibility
  - Methods to deliver certain program services for the LEA, for example:
    - Recruitment and screening of volunteers and foster parents
    - Training volunteers and foster parents on the special education process and exceptional children's rights
    - Matching eligible children with trained volunteers or foster parents
    - Monitoring and technical guidance to surrogate parents
    - Case management of appointed surrogates and matched children
    - School-level coordination and in-service training on surrogate parent requirements and appointment procedures
  - A description of the assignment procedure, for example:
    - The School SSP Coordinator, after confirming the child's eligibility, shall recommend appointing a surrogate parent
    - The School SSP Coordinator shall submit the name(s) of proposed educational surrogate parent(s) and the eligible child in a form/letter to the LEA's SPP Supervisor/Director along with any supporting documents
    - The LEA SPP Supervisor/Director shall review the student's eligibility determination information, surrogate parent request form, and if necessary, the surrogate parent application and supporting documents
    - The LEA SPP Supervisor/Director shall approve or reject the appointment of the candidate submitted
    - The LEA SPP Supervisor/Director should send the original approval/rejection letter to the School SSP Coordinator and keep a copy of the letter
    - After receiving the signed original, the School SSP Coordinator shall send copies to:
      - the school principal (or agency head where the child will receive educational services, if known)
      - the Office of Child Welfare foster care caseworker
      - the surrogate parent
      - other appropriate persons
  - The LEA SPP Supervisor/Director shall maintain a record of appointment letters, referrals, applications and all relevant material for each eligible child ·
  - The LEA SPP Supervisor/Director shall maintain a list of approved surrogate parent applicants
- ❖ **Recruitment.** Maintaining a pool of vetted, available volunteer surrogate parents is an ongoing and vital task for the LEA SPP Supervisor/Director. The LEAs recruitment efforts can be more successful if the SSP takes active steps to announce its need, describe the program, and efficiently train applicants. Print, radio, television, school district web sites, and social media platforms can be useful methods to recruit educational surrogate parents.
- ❖ **Screening.** The LEA's screening procedure should be guided by the idea that a surrogate parent is a representative for an exceptional child who will protect his/her special educational rights. To be eligible as a surrogate parent, a person must meet specific statutory criteria:

- Cannot be a present or former employee of the school board involved in the education or care of the child
  - Cannot be an employee of the public agency involved in the education or care of the child ("public agency" includes the LDE, LEAs, and any other political subdivisions of the state responsible for providing education to children with disabilities)
  - Must not have any interest that conflicts with the best interests of the child
  - Must have adequate knowledge, skills, and mental capacity to ensure the special education rights of the child are protected
- ❖ **Training—School Staff.** It is essential that all school-level personnel who are most likely to come in contact with eligible students understand the procedural safeguards required by the IDEA and LDE regulations. LEAs must relay to these employees that it is an LEA's responsibility to assign an educational surrogate parent to an eligible child before any special education-related activity that would normally require full and effective notice and informed parental consent.
- ❖ **Training—Surrogate Parents.** The educational surrogate parent can be truly effective only if she/he has the knowledge and skills to assure the child is represented adequately. LEA's should arrange and schedule surrogate parent training sessions at times convenient to the volunteers and should target initial training to three hours maximum. Training instructors can be developed from within the LEA SPP staff or found in community agencies and can also include appointed surrogate parents who have had experience in representing a child. SSP applicant training should cover the responsibilities of the surrogate parent:
- (1) to represent the disabled child in all aspects of the educational decision-making process concerning that child—this includes identification, individual evaluation, educational placement and the provision of a free appropriate public education.
  - (2) to become acquainted with the child's educational needs by
    - a. observing and speaking with the child
    - b. reviewing educational records
    - c. reviewing samples of the child's work
    - d. speaking with teachers, related service providers, principals, LEA staff, counselors, child care workers, caseworkers, etc.
  - (3) to comply with state and federal law concerning the confidentiality of all the child's records and information
  - (4) to use discretion and only share relevant information with appropriate people and only for the purpose of furthering the educational interests of the child
  - (5) to insure that evaluation reviews and IEP Team meetings are scheduled timely and attended by the required mandatory and appropriate discretionary IEP Team members
  - (6) to receive effective notice of individual screening and assessments, and become informed of the results (i.e., read the report, meet the teacher(s), etc.)
  - (7) to decide if a proposed assessment is appropriate
    - a. if so, to sign a consent for that assessment, and to assure the child receives an appropriate assessment
    - b. if not, provide reasons for refusing to give consent and ensure the LEA documents those reasons
  - (8) to be available for an interpretation of the results of the assessment and obtain a clear explanation of the findings and recommendations
  - (9) to proceed in the same manner as described in items No. 6, 7, and 8 for an individualized education evaluation and/or medical assessment

- (10) to represent the child at the IEP Team meeting and to participate in the IEP development by making contributions based upon the surrogate parent's investigation of the child's educational needs. For instance, to discuss the child's behavior, special habits, how the child gets along with siblings and other children, the child's likes and dislikes, how the child compares in size with other children his/her age, the child's motor development, and the child's self-help skills. The surrogate parent participates also by giving suggestions and recommendations in defining educational goals and objectives, and the desirable ultimate outcome for the child; and by giving other observations that may help in developing the child's individual education program.
- (11) to represent the child's interests in developing the educational components of the Individualized Educational Program (IEP), Individualized Service Plan (ISP), Individual Health Plan (IHP), Individual Accommodations Plan (IAP), etc.
- (12) to sign the first page of the IEP to confirm attendance at the meeting
- (13) to sign where indicated on the IEP form to give formal approval of the proposed placement or not give approval of placement if the surrogate parent does not approve of the placement
- (14) to request a new evaluation, reevaluation, independent evaluation, or IEP Team meeting whenever necessary
- (15) to receive progress monitoring reports on the child's short-term goals, including report cards, test scores, monitoring charts, weekly reports, copies of modified assignments, etc.
- (16) to participate in an annual review of the child's IEP
- (17) to negotiate with the LEA if there is disagreement or dispute about the student's special education and related services

❖ **Foster Parents.** If a child is referred by an OCW foster care caseworker, confirm with the whether the foster parent has been given education decision making authority or if that foster parent should be appointed to serve as the educational surrogate parent. Generally, foster parents are not legal guardians, and therefore may lack legal authority under the IDEA to represent a foster child's educational interests. When a child is removed and determined to be a CINC, DCFS and the OCW maintain legal custody of the child and authority to decide education matters. Although an OCW caseworker is a child advocate, the caseworker is an agent of a public placing agency and may be responsible for payment of special education and related services.

A foster parent on the other hand, is generally not considered a state employee and could be a strong advocate for the child's education. Automatically excluding the foster parent from acting officially on the education rights his/her foster child overlooks the nearest approximation of a parent that the child may have. LEAs are obligated to insure that the person appointed as a surrogate has the necessary knowledge and skills to adequately represent the child. LEAs can meet this requirement by offering to training to the foster parent. While LEAs may give foster parents primary consideration, they may not summarily or automatically assign them as surrogate parents. They must undergo the same screening and training procedures required for any other volunteers.

❖ **Monitoring.** The purpose of monitoring is to maintain quality control of SSP services to ensure educational surrogate parents are assigned within 30 days. An SPP should incorporate monitoring on two levels: program administration and program services.

➤ Program administration—

- One effective mechanism for monitoring program administration is by using a third-party evaluator
- A Special Education Advisory Committee is another effective mechanism for monitoring program administration. The Committee can assist with monitoring by periodically reviewing SPP objectives, making recommendations that facilitate reaching program objectives, and creating public awareness about its SPP services, and assisting the SPP in recruiting

- Program services—
  - Monitoring program services should be conducted directly by school and LEA SPP staff
  - Regularly contact appointed surrogate parents to ensure that the children are receiving the special education and services they need
  - Each surrogate parent should have an individual case record listing dates and activities related to the representation of a child.
  - If time and manpower permit, the LEA SSP staff could observe a newly appointed surrogate parent perform his/her duties and be available as a resource for the educational surrogate parent.
- ❖ **Agency and Contractor Program Agreements.** If an LEA chooses to use an independent agency or contractor to operate its SSP, the interagency agreement, or contract, delineating the tasks of the LEA and the agency/contractor must be approved by the local school board. The local school board designee, the LEA Superintendent, Special Education Director/Supervisor, and the Surrogate Parent Program Supervisor should review and sign the agreement or contract.