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In Depth Policy Analysis

Surrogate Parents
and
Children with Disabilities:
State-level Approaches

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INTRODUCTION

Since its passage in 1975, the federal law now called the Individuals with Disabilities Education Act (IDEA) has required every participating state to have a system in place that ensures that every child with a disability eligible for services under the Act has a “parent” who can make education decisions on that child’s behalf [20 U.S.C. §1415(b)(2)]. This requirement is essential if children—and especially children in child welfare custody living apart from their parents—are to obtain the special help they need to learn.¹

Under IDEA, it is the parent who consents to the initial evaluation of the child and for services to begin. The parent is a mandatory member of the team that develops the individualized education program (IEP) for the child and decides what special education and related services the child should receive in the least restrictive environment. If the parent disagrees with the IEP team’s determination, he or she can request mediation, file a state complaint or request a due process hearing.

Usually the biological or adoptive parent is the parent for IDEA purposes, but not always. Recognizing that some children do not have biological or adoptive parents who can be located and that parental rights are sometimes terminated, parent under the IDEA includes several other categories of individuals who can be IDEA parents, and the IDEA and its implementing regulations set out how and when such a person must be assigned by a public agency² or a court.

Every child who is eligible or might be eligible for services under the IDEA must have an IDEA parent. Each of the following individuals, under certain circumstances, could be considered parents under IDEA:

- a biological or adoptive parent;
- a foster parent (unless state law or regulations, or the foster parent’s contract, prevents the foster parent from serving as the special education decision maker);
- a guardian who has authority to act as the child’s parent or who has authority to serve as the child’s special education decision maker (but not the state if the child is a ward of the state);
- a family member who is caring for the child, such as a grandparent, stepparent or someone else legally responsible for the child’s welfare; or
- a *surrogate parent* [34 C.F.R. §300.30(a)].

The law states that, unless a court has decided otherwise, when a birth or adoptive parent is acting as the parent, that parent must be treated as the IDEA parent by the “public agency.”

¹ Information for this section of the document was drawn from the following publication: Stotland, Stocco, Darr, & McNaught, (2007). Special Education Decisions for Children in Foster Care: Everyone Has a Role. *Child Law Practice: Helping Lawyers Help Kids*, 26(2).

² According to IDEA, “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 C.F.R. §300.3].

A public agency must assign a surrogate parent for a child when no other IDEA parent can be identified or another IDEA parent cannot be located after reasonable efforts have been made, the child is a “ward of the State”³ or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

A surrogate parent is one type of IDEA parent i.e., an individual appointed by a judge overseeing the child’s case or a public agency to make special education decisions for a child who is or might be eligible for IDEA services. If the public agency has methods for determining when a child needs a surrogate parent, anyone (including a caseworker or probation officer) who believes that a child with a disability needs a surrogate parent can request that one be appointed. When identifying a possible surrogate parent, the following individuals may be considered:

- adult relatives;
- court-appointed special advocates (CASA);
- the child’s attorney or guardian *ad litem*; or
- another adult who possesses the knowledge and skills to advocate on the child’s behalf.

However, in order to ensure that there is no conflict of interest, IDEA stipulates the following regarding the selection of the child’s surrogate parent: “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” [34 C.F.R. §300.519(d)(2)].

According to IDEA, “The surrogate parent may represent the child in all matters related to— (1) The identification, evaluation, and educational placement of the child; and (2) the provision of FAPE to the child” [34 C.F.R §300.519(g)].

Based on a survey of states, this document summarizes state-level approaches to using surrogate parents in order to meet the needs of children with disabilities. Project Forum at the National Association of State Directors of Special Education (NASDSE) completed this document as part of its cooperative agreement with the U.S. Department of Education’s Office of Special Education Programs (OSEP).

DATA COLLECTION

Project Forum at NASDSE, in collaboration with the Center for Foster Care and Education, developed a survey on state-level approaches to surrogate parents and children with disabilities in collaboration with the Legal Center for Foster Care and Education, a project of the American Bar Association (ABA) Center on Children and the Law.⁴ During the months of July and August 2009, the survey was conducted using Zarca Interactive[®] (an online survey management program). Project Forum received survey responses from 41 states and non-state jurisdictions. Data were analyzed using Zarca and survey findings are reported in the following sections of this document.

³ “Ward of the State” for IDEA purposes is defined at 34 C.F.R §300.45.

⁴ For further information on the Legal Center for Foster Care and Education, go to www.abanet.org/child/education.

SURVEY FINDINGS

State Policy and Formal Guidance

Thirty-four states have issued policies or formal guidance (e.g., handbooks or manuals) regarding IDEA surrogate parent requirements or other relevant state law requirements. For example:

- *Massachusetts*' SEA issued a memorandum on assignment of surrogate parents in relation to the state's Department of Children and Families.
- *Kansas*' Special Education Process Handbook addresses the procedures for appointing surrogate parents and for determining who is a parent for the purposes of IDEA Part B special education decisions.
- *Maryland* and *Tennessee* have both issued surrogate parent handbooks.

Rights of Biological or Adoptive Parents

Respondents from 38 states described steps taken by their state to ensure that biological and adoptive parents' rights as educational decision makers are protected. Many respondents noted that LEAs are trained in the conditions under which they must provide a child with a surrogate parent, so that they first make attempts to identify a biological or adoptive parent and determine that individual's parental rights status, including the right to participate in educational decision making. If biological or adoptive parental rights have been terminated or limited by court order or agency determination, then documentation reflecting that status must be kept at the LEA for verification.

In terms of specific strategies, states most commonly mentioned training and technical assistance for LEAs and parent groups. For example:

- *Oklahoma* provides training to LEAs regarding parent participation and financially supports the Oklahoma Family Network and Oklahoma Parent Center in providing training to parents.
- *Delaware*'s SEA provides trainings and workshops on parents' rights in collaboration with the Parent Training and Information Center (PTIC) and posts user-friendly materials on its website.

Other safeguards for parents' rights include the following:

- *Idaho* requires contact with the biological or adoptive parent prior to determining the need for a surrogate.
- *Nebraska*'s SEA addresses the assignment of surrogate parents as part of its monitoring process.

Collaborative Interagency Partnerships

Respondents from 19 states reported having a formal or informal state-level collaboration (e.g., a memorandum of agreement [MOU] between their education and child welfare agencies or other agencies relating to surrogate parents). For example:

- *Ohio*'s SEA advises child welfare agencies via memos and other written information related to surrogate parents, provides professional development opportunities to child welfare agencies regarding the requirements related to surrogate parents and

collaborates on committees and taskforces to address the requirements related to surrogate parents and the needs of children with disabilities.

- *Illinois'* SEA and the Illinois Department of Children and Family Services have a standing agreement stating their responsibility to train foster parents regarding special education services and the expectation that foster parents will serve as surrogate parents.
- *Nebraska's* SEA developed forms used by child welfare workers to inform LEAs of ward status and whether biological or adoptive parental rights remain intact.
- *Kansas'* SEA has a formal contractual agreement with the parent training and information center (PTIC) to administer the statewide surrogate parent program, which ensures collaboration among Kansas SEA, child welfare agencies and the PTIC.

Statewide Programs

Twelve of the 40 responding states operate a statewide program pertaining to surrogate parents. Five of these identified IDEA reauthorization as an impetus for developing a statewide surrogate program; two identified complaints or litigation as an impetus; and two identified implementation of state statutes and/or regulations. Five states noted that their statewide programs are long-standing and were originally implemented in order to ensure consistent, efficient and effective appointment of surrogate parents for children with disabilities.

Who is served?

Respondents from 11 of the 12 states reported that their program serves all children in need of surrogate parents (including children in foster care, children in residential placements for whom the LEA does not appoint a surrogate parent, children who are mobile and children ages birth through two years) and the respondent from the one remaining state reported that the program serves only a subset of children in need of surrogate parents (all of the above with the exception of children in foster care).

Numbers of children served annually by statewide surrogate parent programs varied considerably. For example:

- *Arizona* serves 180.
- *Maine* serves approximately 600.
- *Massachusetts* serves approximately 1,100.
- *Illinois* serves 1,985.

Referrals

Of the 12 states with statewide surrogate programs, all permit LEAs to refer children to the program, 10 also permit caseworkers to refer children to the program and 10 also permit the courts to refer children to the program. The respondent from *Rhode Island* noted that courts cannot actually refer children to the surrogate parent program but they can request a referral by contacting caseworkers. The respondent from *New Hampshire* noted that while LEAs, caseworkers and courts may refer children to the surrogate program, the LEA is ultimately responsible for completing the application process regardless of who originally referred the child.

Recruitment

All 12 statewide programs address the recruitment of surrogate parents. Recruitment strategies include developing brochures, mailing informational and training flyers to potentially interested parties, including information in newsletters and listservs, giving presentations and encouraging current surrogate parents to “spread the word.” Examples of creative recruitment strategies also include the following:

- *Ohio* posts advertisements in the public service information section of area newspapers and community newsletters.
- *Missouri* contacted a large urban newspaper and got a reporter to write a human interest story that resulted in a large number of new volunteers.

Outreach activities target a variety of agencies and individuals, including child welfare agencies, private foster and adoption agencies, parent organizations, family services and community organizations, special education directors, retired teachers and administrators, special education graduate students, foster parents and former parent mentors.

Training

All 12 statewide surrogate programs require training for surrogate parents. Eleven provide surrogate parents with an introduction to special education issues, eight provide an introduction to child welfare issues, two provide an introduction to legal issues (e.g., IDEA) and one provides information on resources available to surrogate parents. Nine require that surrogate parents complete a minimum number of training hours. For example:

- *New Hampshire* requires a minimum of nine training hours, with additional, individualized training available on an as-needed basis.
- *Kansas* requires that surrogates complete a five hour workshop that covers rights and responsibilities of educational advocates, special education law and discipline provisions of IDEA.

Several respondents also noted that their states had developed training materials pertaining to the topic of surrogate parents.⁵ For example, *Ohio* provides a PowerPoint presentation; professional development for state support teams and a CD as well as a model test to be utilized by state support teams when providing professional development pursuant to surrogate parent requirements under IDEA and the *Operating Standards for Ohio's Educational Agencies Serving Children with Disabilities*.

Assignment

Respondents from all 12 states with statewide surrogate programs reported that surrogate parents are assigned to individual students. However, two states also assign surrogate parents to residential facilities, meaning that one surrogate parent is responsible for all residents of a given facility in need of a surrogate parent. *Kansas* noted that geographic proximity is considered when assigning a surrogate to a child in need.

⁵ Although California state law stipulates that the training and appointment of surrogate parents is a local rather than state-level responsibility, and therefore does not have a statewide surrogate parent program, the California SEA is nonetheless required to provide a training manual and module. For more information, go to www.cde.ca.gov/sp/se/sr/surrogateparents.asp.

Retention

Eleven respondents described efforts to retain surrogate parents. Nine use recognition. For example, *Connecticut* noted that surrogate parents' contributions were recognized both publicly (e.g., at meetings) as well as individually (e.g., via telephone calls and e-mails). Three states use contracts. For example, *New Hampshire* contracts with five master regional surrogate parents who provide support to volunteers within their region, in addition to 352 volunteers. Two states provide salaries to at least some of their surrogate parents and three states provide reimbursement for expenses. For example, *Illinois* offers a \$50 fixed stipend twice per year in order to offset expenses related to surrogacy. Three states described providing support and technical assistance to surrogate parents. For example, *Kansas* helps surrogates stay connected via phone, workshops and newsletters. *Kansas* also conducts annual surveys in order to assist in improving the quality of the surrogate program and retention of surrogate parents.

Funding

Respondents from all 12 states provided information on how funding for their statewide surrogate program was handled. Sources of program funding included IDEA—both discretionary and Part B monies (10 states), state monies, including set-aside dollars (2 states) and grants (1 state). Information on program costs was provided by nine states and ranged from \$6,000 per year in *Missouri*, to \$119,000 in *Vermont*, to \$700,000 in *Massachusetts*, to \$1.5 million in *Connecticut*.

Staffing

Numbers of paid staff required to maintain state's surrogate parent programs varied considerably. For example, total numbers of paid staff ranged from fewer than 1.0 full-time equivalent (FTE) to 8 FTE. Total number of paid part-time staff ranged from one to 70. In terms of volunteers, total numbers ranged from zero to 835, with most respondents indicating that their statewide program utilized between 100 and 500 volunteers.

Barriers to Implementation

Respondents identified a number of barriers to the implementation of a successful statewide surrogate parent program. Most commonly cited were the cost of maintaining a program, the challenge of recruiting and retaining qualified and committed volunteers, high levels of mobility among children in need of surrogate parents and difficulties related to the collection and tracking of information from multiple agencies and individuals.

Key Factors for Success

Respondents also identified key factors for the success of a statewide surrogate parent program, including the following:

- strong collaboration among organizations and agencies, including clearly defined roles and responsibilities, regular meetings, and communications and joint development of key program documents;
- effective dissemination of information related to the requirements of the federal and state laws;
- adequate fiscal resources;
- availability of legal staff for consultation;

- development of tracking and information management tools;
- effective system for recruitment and training of surrogate parents;
- adequate compensation of surrogate parents in order to retain high quality educational advocates;
- availability of a program coordinator and department of special education staff to provide ongoing support to surrogate parents; and
- availability of protections for children with disabilities through accountability measures such as monitoring, complaints and dispute resolution.

SUMMARY

Most respondents noted that their states had issued policy or formal guidance pertaining to surrogate parents and children with disabilities, and most also described efforts to ensure that the educational decision making rights of biological and adoptive parents were preserved whenever possible. Although only just more than a quarter of respondents described having a statewide surrogate parent program that addresses recruitment, training and retention of surrogates, all 12 of these states emphasized the value of a statewide system for ensuring that children with disabilities receive appropriate services.

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