Division of Special Education/Early Intervention Services

Parent Surrogate Appointment and Process

This document will guide and assist local early intervention/school system personnel in training and appointing individuals to act as parent surrogates, i.e. educational advocates for children. This guidance will also guide parent surrogates by explaining their responsibility to a child with a disability within the early intervention/special education decision making process.

1. What is a parent surrogate?

A parent surrogate is a person appointed by the local school system superintendent, the State Superintendent, or an official designee to act in place of a parent for a child in the early intervention/educational decision making process. People who take on the parent surrogate role accept a serious responsibility. A parent surrogate must actively collaborate and advocate in the planning of the child's educational/learning needs.

The parent surrogate will represent the child in all matters relating to the identification and evaluation of the child’s disability, the child’s educational program/early intervention service(s), the child’s placement, and/or the child’s receiving of a free appropriate public education (FAPE). As an educational advocate for the child, a parent surrogate should seek clarification and assistance whenever he or she believes that the needs and rights of the child are not being addressed appropriately.

Parent surrogates may find the other members of the Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP) team to be a helpful source of information.

[34 C.F.R. §300.519; Md. Code Ann., Educ. §8-412; COMAR 13A.05.01.03B(52); COMAR 13A.13.01.11A (7)(a – g)]
2. **What are a parent surrogate’s responsibilities?**

A parent surrogate acts as an advocate on behalf of the child to ensure the child receives a FAPE in the least restrictive environment (LRE). The parent surrogate must:

1. Get to know the child, the child's developmental or educational history, and any other information contained in the child's record relating to that child's developmental or educational needs.

2. Learn about federal and State laws concerning the education of children with disabilities, including the contents of the State procedural safeguards document entitled, *Parental Rights – Maryland Procedural Safeguards Notice*. Additionally, individuals may wish to review:
   - *The Parent Information Series* including
     - The IFSP Process
     - Companion to Parental Rights, and
     - Overview of the Early Intervention System and Services; or
   - *Understanding the Evaluation, Eligibility, and IEP Processes in Maryland.*

3. Understand child's current early intervention or education program and possible other appropriate alternatives.

4. Participate in the planning, development, and approval or disapproval of the child’s IFSP or IEP.

5. Check on the child's educational development by attending the child’s IFSP or IEP team meetings in person or, in limited circumstances, via phone.

6. Advocate for the child. This advocacy may include requests for educational services, making complaints about services, or seeking review of the child’s IFSP or IEP.

7. Request mediation, or initiate a State complaint and/or a due process complaint, or seek qualified legal assistance, if the parent surrogate and the IFSP or IEP team cannot agree upon the identification, evaluation, educational placement, or the provision of FAPE.

[34 C.F.R. §300.519; Md. Code Ann., Educ. §8-412; COMAR 13A.05.01.03B(52)]
3. **When does a public agency assign a child a parent surrogate?**

   Public agencies must request that the local school system superintendent, State Superintendent or official designee appoint a parent surrogate whenever it is suspected that the child may be disabled and:

   1. The child is under the age of 21;
   2. The child’s special education rights have not been transferred to the child;
   3. The child’s parents are unavailable or unknown;
   4. The child is an unaccompanied homeless youth;
   5. The child is a ward of the State, i.e., is under the guardianship of a state or county agency or official, or committed by a court of competent jurisdiction to the legal custody of a state or county agency or official, and such agency has been expressly authorized to make educational decisions for the child.

   In Maryland, "parent" includes a child's natural parent, a guardian, a person acting as a parent (such as a relative or stepparent with whom the child lives including relatives or stepparents who are foster parents), or any other individual who is legally responsible for a child's welfare. The term "parent" does not include a worker with the Department of Social Services. The term “parent” may include a foster parent if the court has granted limited guardianship for educational decision-making purposes to the foster parent.

   A public agency may deem a parent "unavailable" or "unknown" and request the appointment of a parent surrogate when, after reasonable documented efforts:

   1. The public agency cannot discover the physical whereabouts of a child's parent(s); or
   2. The public agency cannot identify a child's parent(s).

   [34 C.F.R. §300.519; Md. Code Ann., Educ. §8-412; COMAR 13A.05.01.11G]

4. **What are the duties of the public agency in the parent surrogate appointment process?**

   The duties of a public agency include identifying a qualified adult to act as a parent surrogate for a child. The public agency must have policies and procedures:

   1. To determine whether a child needs a parent surrogate; and
   2. To assign a parent surrogate to the child.
5. **How does a public agency determine whether a child requires a parent surrogate?**

Public agencies must support their request for a parent surrogate with sufficient documentation establishing the need for a parent surrogate. When the child’s parent is unknown, or the parent’s whereabouts are unknown, the public agency must document the efforts made to identify or locate the parent. Such efforts must include contacting the agency legally responsible for the child’s care, known relatives of the child, and other persons interested in the child. A social worker or a pupil personnel worker report of efforts made to contact the parents may be used under these circumstances.

Please note that parent surrogates are **NOT** appointed for foster children whose parents are known and actively involved with the child. In addition, if a child has a guardian, whether a relative or non-relative, that guardian is the "parent" for purposes of early intervention/special education decision-making. Also, a parent surrogate is **NOT** needed when a child is living in the home of a relative or stepparent, if that person is acting as a parent of the child.

If a child is found to be a ward of the State, the public agency must contact the Department of Social Services (DSS) responsible for the child to ensure that the public agency has copies of the court order(s) that describes the guardianship or limited guardianship of the child. In the case of a child who is a ward of the State, the parent surrogate may be appointed by the judge overseeing the child's case. This surrogate may not be an employee of the Maryland State Department of Education (MSDE), the public agency, or any other public agency involved in the education or care of the child. Please note that a person paid by a public agency solely to be a parent surrogate is not an employee of the public agency.

6. **What are the qualifications of a parent surrogate?**

A parent surrogate must have knowledge and skills that ensure adequate representation of the child. The parent surrogate may not have an interest that conflicts with the interest of the child. The public agency requesting the appointment of a parent surrogate shall ensure that the person proposed has the requisite skills and does not have a conflict of interest with the child.

7. **If additional training is required, how will the proposed parent surrogate get this training?**

If needed, training in the knowledge and skills necessary to ensure adequate representation shall be provided to the proposed parent surrogate by the public agency making the proposal.
8. What is the process or procedure which a public agency must follow to appoint a parent surrogate?

For children birth to age 3 and children age 3 to kindergarten receiving services through an IFSP:

The local lead agency shall submit a written request to the Maryland State Department of Education (MSDE)/Maryland Infants and Toddlers Program (MITP) to appoint a parent surrogate when the need for a parent surrogate has been identified.

The written request in shall:

1. Be submitted on forms provided by the MITP; and

2. Include the name or names of the individual(s) appropriately qualified to fulfill the role of parent surrogate.

3. The State Superintendent of Schools, or the State Superintendent’s Designee, shall appoint a recommended individual to fulfill the role of parent surrogate, or shall make an alternate appointment within ten (10) days of the receipt of the written request by the local lead agency.

For children age 3 – 21 receiving services through an IEP:

The request for the appointment of a parent surrogate must be initiated by the public agency responsible for providing special education and related services. The request submitted to the local school superintendent for the appointment of a parent surrogate shall include the following:

1. The date the public agency determined the child needs a parent surrogate.

2. The name, date of birth, sex, legal domicile, and present residence of the child.

3. A statement that the child is eligible for the appointment of a parent surrogate and the basis of that decision.

4. Documentation, as applicable, of the efforts made to identify the parent, to locate the parent, or of the court order granting guardianship or custody.

5. The name and qualifications of the proposed parent surrogate whom the public agency considers to be qualified to represent the child in the educational decision-making process.
When a public agency files a request for the appointment of a parent surrogate, the local school superintendent shall appoint a parent surrogate within 30 days of receiving the request, including appropriate eligibility documentation, if the superintendent finds:

1. The child is eligible for the appointment of a parent surrogate; and

2. The proposed parent surrogate is qualified to represent the child in the educational decision making process.

Once the appointment is approved by the local school superintendent, the parent surrogate shall represented the child in the educational decision making process until the child is no longer in need of special education, educational rights have transferred to the child, or the parent of the child resumes responsibility for representing the child in the educational decision making process.

The local school superintendent must notify the State Superintendent of Schools within 30 days of the appointment of a parent surrogate. The notification must include:

1. Child’s name and date of birth;

2. Name of the parent surrogate; and

3. Date of the appointment of the parent surrogate.

[34 C.F.R. §300.519; Md. Code Ann., Educ. §8-412.]

9. What if a child is found not eligible for a parent surrogate?

If the State or local school superintendent finds that the child is not eligible for the appointment of a parent surrogate, the State or local school superintendent shall notify the requesting public agency official of this finding and specify the reasons in writing.

10. What if the State or local school superintendent finds that the person proposed to be the parent surrogate is not qualified?

When the State or local school superintendent finds that the proposed parent surrogate is not qualified to represent the child in the educational decision making process, the State or local school superintendent must:

1. Request the public agency propose another person to be the parent surrogate; or

2. Select and appoint a parent surrogate who is qualified.

[34 C.F.R. §300.519; Md. Code Ann., Educ. §8-412.]
11. **Under what circumstances may a public agency terminate the appointment of a parent surrogate?**

A public agency may request that the State or local school superintendent terminate the appointment of a previously assigned parent surrogate if the public agency determines:

1. The parent surrogate is not properly performing his/her duties parent surrogate;
2. The parent surrogate has an interest that conflicts with the interest of the child; or
3. The child no longer requires the services of a parent surrogate.

A request to terminate the appointment of a parent surrogate shall include the reasons for the action. For children that still require the services of a parent surrogate, the request to terminate must include the submission of the name and qualifications of another individual to be assigned as the new parent surrogate. Notification of the termination or change of a parent surrogate must be made within 30 days of the action, including terminations due to children exiting early intervention or special education services.

When giving notification to the State Superintendent of the appointment of a parent surrogate because of the termination of a previously appointed parent surrogate for the child, the notification must also include the:

1. Name of the previously appointed parent surrogate; and
2. Reason for the termination.

[34 C.F.R. §300.519; Md. Code Ann., Educ. §8-412.]

12. **What if a parent surrogate wishes to terminate his/her position?**

A parent surrogate may terminate his or her responsibility at any time and should give the public agency sufficient notice so that a new parent surrogate may be appointed.
13. **What part does the parent surrogate play in the early intervention/special education process for a child with a disability?**

Parent surrogates and special educators share the common goal and responsibility of ensuring that children with disabilities receive early intervention/education that is appropriate to their unique needs. Parent surrogates may work to ensure that a child receiving early intervention/special education services always receive those services in the natural or least restrictive environment. If a child's educational needs are to be met in a setting different from that of general education children; i.e. a more restrictive setting, the parent surrogate must obtain and evaluate the early intervention provider’s or school system’s reasons for selecting that setting or program.

In Maryland, every local school system and public agency holds a meeting for the IFSP or IEP team to make early intervention/educational decisions about children with disabilities. Many decisions must be made in identifying and providing appropriate early intervention/special education services to children with disabilities. Parent surrogates should actively participate in the early intervention/special education decision-making process.

Important steps in the early intervention/special education decision-making process include:

1. Identification of the child’s disabilities;
2. Evaluation and reevaluation of the child’s needs;
3. IFSP or IEP development, review, and/or revision; and
4. Placement
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