

Child Find

PARENT

July 7, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2020 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.

CONTENTS

PARENT 1

 WHAT IS REQUIRED..... 1

 REQUIREMENTS FOR FOSTER PARENT TO ACT AS PARENT 1

 APPOINTMENT OF A SURROGATE PARENT 2

 STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE 3

 TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS 3

 ADDITIONAL PROCEDURES 4

 APPOINTMENT OF A SURROGATE PARENT 4

 TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS 5

 EVIDENCE OF IMPLEMENTATION..... 6

 RESOURCES 6

CITATIONS 7

PARENT

What is Required

The parent plays an active role in making educational decisions related to the student's special education program and must be ensured the opportunity for meaningful participation.

For the purpose of special education decision-making, a parent includes a biological or adoptive parent of the student as well as:

- A foster parent of the student who meets the requirements for a foster parent to act as a parent;
- A guardian, but not the state itself, if the student is a ward of the state;
- An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the student lives, or another individual who is legally responsible for the student's welfare; or
- An individual assigned to be a surrogate parent.

The Department of Family and Protective Services ("DFPS") itself is not considered the parent.

Requirements for Foster Parent to Act as Parent

A foster parent may act as a parent if DFPS is appointed as the temporary or permanent managing conservator of the student, as long as there is no court order limiting the rights and duties of DFPS to make educational decisions on behalf of the student. The foster parent must agree to be the educational decision maker for the student. Furthermore, the foster parent must complete the required training program for foster and surrogate parents before the next scheduled ARD meeting for the student but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions. See [TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS]. District or Campus Special Education Administration must ensure that the foster parent has received the training and, although the District may offer additional training, the District may not require that a foster parent take additional training in order to serve as the parent for the student.

Not later than the 5th day after the date a student with a disability is enrolled in a school, the DFPS must inform the District or Campus Special Education Administration if the student's foster parent is unwilling or unable to serve as the student's parent.

In addition, the District or Campus Special Education Personnel may deny a foster parent the right to serve as a parent, but written notice of such refusal must be provided to the

foster parent within 7 calendar days after the decision is made and must specifically explain why the foster parent is being denied the right to serve as the student's parent and informs the foster parent of the right to file a complaint with TEA.

Appointment of a Surrogate Parent

A surrogate parent is a person who is legally entitled to take the place of a parent under certain circumstances to make educational decisions for a student with a disability. The appointment of a surrogate parent applies to students with disabilities for whom the DFPS is appointed as the temporary or permanent managing conservator of the student and the rights and duties of the DFPS to make educational decisions for the student have not been limited by court order. In some situations, a judge will appoint a surrogate parent. However, the District Special Education Administration must make reasonable efforts to appoint a surrogate parent not more than 30 days after the District Special Education Administration determines that the student needs a surrogate parent if the judge has not appointed a surrogate. The District Special Education Administration must assign a surrogate parent for students when:

- A parent for the student cannot be identified;
- A parent for the student cannot be located, after reasonable efforts;
- The foster parent of the student is unwilling or unable to serve as a parent;
- The student does not reside in a foster home setting;
- The student is a ward of the state; or
- The student is an unaccompanied homeless youth.

The District Special Education Administration may not appoint the following individuals as a surrogate parent of a student:

- An employee of the state;
- An employee of TEA;
- An employee of the District;
- An employee of any other agency that is involved in the education or care of the student; or
- A person with any interest that conflicts with the interest of the student the surrogate parent represents.

District Special Education Administration must screen the potential surrogate parent to determine whether he/she has an interest that conflicts with the interests of the student. This does not include issues concerning quality of care of the student, although concerns regarding quality of care must be communicated to DFPS. District Special Education Administration are required to consult with DFPS regarding the possibility of appointing another individual to serve as the surrogate parent if District Special Education Personnel determine that a court-appointed surrogate parent is not properly fulfilling this role. District Special Education Administration may appoint a person who has been appointed to serve

as the student's guardian ad litem or as a court-certified volunteer advocate as the student's surrogate parent.

District Special Education Administration is responsible for ensuring that any District-appointed surrogate parent is willing and able to serve in that capacity and exercises independent judgment in pursuing the student's interests. District Special Education Administration must appoint a surrogate parent that will not violate the student's due process rights under applicable state and federal laws. Furthermore, District Special Education Administration must ensure that the surrogate parent visits the student and the student's school, reviews the student's educational records, attends ARD meetings, and consults with individuals involved in the student's education, including, but not limited to teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caregivers.

Finally, District Special Education Administration must ensure that an appointed surrogate parent completes a training program for foster and surrogate parents before the student's next scheduled ARD meeting but no later than 90 days after the date of initial appointment as the student's surrogate parent. See [TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS]. While District Special Education Administration may choose to offer additional trainings for the surrogate parent, they cannot require the surrogate parent to take additional training before serving as a surrogate parent of a student with disabilities.

Students Who Are Homeless or in Substitute Care

For students who are homeless or in substitute care, District or Campus Special Education Personnel must provide notice to the student's educational decision-maker and caseworker related to any ARD meetings, manifestation determination reviews, and the appointment of a surrogate parent.

Training Program for Foster and Surrogate Parents

All individuals seeking to become a foster or surrogate parent must participate in a mandatory training that outlines federal and state laws, rules, and regulations related to special education before the foster parent can act as the parent or District Special Education Administration can appoint the individual to be a surrogate parent for the purpose of making educational decisions on behalf of the student. Specifically, this training must explain:

- The identification of the student with a disability – see [CHILD FIND];
- The evaluation and reevaluation process – see [EVALUATION];
- The ARD process – see [ADMISSION, REVIEW, AND DISMISSAL COMMITTEE];
- The process for developing and implementing an IEP, as well as transition services for a student ages 16 or older – see [TRANSITION SERVICES];
- The determination of Least Restrictive Environment – see [LEAST RESTRICTIVE

ENVIRONMENT];

- The *Notice of Procedural Safeguards*;
- Resources for the surrogate parent to seek assistance in understanding the provisions of federal and state laws, rules, and regulations related to special education; and
- The duties and responsibilities of surrogate parents under state law.

The training must be provided in the potential surrogate or foster parent's native language, or other mode of communication used by the individual, where practicable. The training may be conducted or provided by the DFPS, District Personnel, an education service center, or any other entity receiving federal funding to provide special education training to parents.

Additional Procedures

District and Campus Special Education Personnel will ensure that the parents of students with disabilities are provided meaningful opportunity to participate at every stage of the special education process. District or Campus Special Education Administration will seek to obtain documentation verifying that the parent, or the individual representing themselves as the parent, has legal authority to make educational decisions for the student. District or Campus Personnel should presume that a student's birth or adoptive parent is the parent for the purposes of special education decision-making unless the District or Campus is aware that the parent does not have legal authority to make such decisions. However, it will not be presumed that the individual with whom the student lives is automatically a parent with the legal authority to make educational decisions for the student, even if that person is a relative.

District and Campus Special Education Personnel will ensure that an individual representing themselves as the parent has legal rights to make education decisions for the student before obtaining consent for an evaluation or conducting an ARD. Furthermore, should a concern regarding the legal rights of an individual assumed to be the parent or educational decision-maker arise after consent has been obtained for an evaluation or after an ARD has commenced, District or Campus Special Education Personnel must immediately stop the evaluation or ARD process and determine if a surrogate is needed.

Appointment of a Surrogate Parent

District Special Education Administration will make and document efforts to identify or locate the parent or an individual who can be considered a parent. This may include, but is not limited to, telephone calls, emails, mailings, home visits, and contact with caseworkers.

District Special Education Administration will ensure that an individual appointed to be a

surrogate parent is not employed by any of the prohibited agencies. Additionally, District Special Education Administration will create and implement a process for determining whether a potential surrogate parent has interests that conflict with the interests of the student.

District Special Education Administration will ensure that the surrogate has received the required training and provide a Designation of Surrogate Parent form to the surrogate parent once the training has been completed and it has been determined that the individual meets all of the requirements to serve as a surrogate parent for the student with disabilities.

Campus Administration will maintain a surrogate parent visitation log for each student on the campus with a District-appointed surrogate parent. Furthermore, Campus Special Education Personnel will maintain a surrogate parent communication log which documents all involvement by the surrogate parent in the student's special education program, including, but not limited to: phone calls with Campus Special Education Personnel, reviewing educational records, attending the student's ARD meetings, reviewing and receiving progress reports, etc.

Training Program for Foster and Surrogate Parents

District Special Education Administration will determine whether District Special Education Personnel, the DFPS, an education service center, or another entity receiving federal funding for special education will conduct the training for foster and surrogate parents.

Regardless of the entity providing the training, District Special Education Administration will ensure that the training program is provided in the individual's native language or other mode of communication and addresses the required areas. Where appropriate, District Special Education Administration will offer optional ongoing or supplemental training so long as it is not mandatory for surrogate parents of students with disabilities. For a training program conducted outside of the District, the District will require the potential surrogate parent to have the agency providing the training program to verify completion of the program. District Special Education Administration will maintain documentation of the parents who have completed the required training program for foster and surrogate parents and provide certificates of completion to those who have done so.

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System (PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Documentation of a Parent's Legal Authority to Make Educational Decisions for the Student
- Communication Between the District and a Student in Foster Care's Caseworker or Foster Care Agency
- Documentation Related to the Training Program Provided
- Certification of Completion of Training for Each Foster Parent or Surrogate Parent
- Determination of Conflict of Interest Form
- Designation of Surrogate Parent Form
- Surrogate Visitor Logs
- Surrogate Parent Documentation Logs
- ARD/IEP
- Prior Written Notice
- Notice of Procedural Safeguards
- Documentation for the state in TSDS, PEIMS, and SPP
- **[DISTRICT FORMS]**

Resources

[The Legal Framework for the Child-Centered Special Education Process: Parent - Region 18](#)

[Foster Care & Student Success - Texas Education Agency](#)

[Parent And Family Resources - Texas Education Agency](#)

[Parent Resources for Students in Special Education - Texas Education Agency](#)

[OSERS Letter to Cox \(Aug. 21, 2009\) - U.S. Department of Education](#)

[Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations \(Sept. 2011\) - U.S. Department of Education](#)

[OSERS Letter to Ward \(Aug. 31, 2010\) - U.S. Department of Education](#)

[OSERS Letter to Serwecki \(Feb. 28, 2005\) - U.S. Department of Education](#)

[Surrogate Parent Information - Region 20](#)

[Surrogate Parent Training - TEXASCASA](#)

[Education For Children Resource Guide - Texas Department of Family and Protective Services](#)

[Notice of Procedural Safeguards - Texas Education Agency](#)

[Guide to the ARD Process - Texas Education Agency](#)

[Surrogate Parent Training - SPEDEX](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy EHBAB; Board Policy EHBAR; 20 U.S.C. 1401, 1415, 1143(a); 42 U.S.C. 11434a(6); 34 CFR 99.3, 300.30(a), 300.519; Texas Education Code 25.007(b), 29.001(10), 29.015, 29.0151; Texas Family Code 107.031(c), 263.0025; 19 TAC 89.1047