PARENT

Legal Framework: Parent
Category: Parent

Template update Oct 2016

PERSONS RESPONSIBLE: Director of Student Support & Behavior Specialist

Campus Diagnosticians & Speech-Language Pathologists

TIMELINES:

Parent Rights Timelines for Notices

Surrogate parent appointment when required not more than 30 days after there is a determination that the child needs a surrogate parent unless the judge overseeing the child's care appoints the surrogate parent.

Foster parents must complete training no more than 90 days after they become the parent for the purpose of making special education decisions.

MATERIALS: Student Information System (SIS) Eschool for enrollment

Surrogate Parent Website

Surrogate Parent List

Surrogate Parent Student Tracking Forms

PARENT

A natural or adoptive parent, a foster parent who meets State requirements for serving as parent, a legal guardian (but not the State if the child is ward of the State), an individual acting in the place of a natural or adoptive parent with whom the child lives, an individual who is legally responsible for the child's welfare, or an individual assigned to be a surrogate parent.

What steps does your LEA follow when more than one person is asserting himself or herself as "parent" and the two do not agree?

> The district informs parents that any relevant court documents must be submitted upon enrollment of a child who is the subject of such documents. The district will refer to court documents to determine individuals who have legal guardianship of a child. In the absence of court documents, the district will treat both parents listed on the birth certificate as legal guardians, but the parent who enrolls the student (and who has residency in the district) will be listed as the first parent to contact.

What steps does your LEA follow when two biological parents are asserting themselves as parent and they do not agree? In the absence of a custody order? When the parents report that they have joint custody? When the parents indicate there is a custody order?

> The district will refer to the most current court documents, such as divorce decrees and other court orders, to determine whether either parent has a superior right regarding educational decisions. The district asks for any such documents to be

submitted upon registering the child, and will ask for updated documents; however, it is the responsibility of the parent(s) to ensure the district has current court documentation. In the absence of any documentation directing otherwise, and if both parents are listed on the child's birth certificate, the district will generally defer to the parent who enrolled the student and inform the parents that they will need to consult their attorneys to work out their differences.

FOSTER PARENTS

A foster parent may act as a parent of a child with a disability if the following criteria are met:

The Department of Family and Protective Services (DFPS) is appointed as the temporary or permanent managing conservator of the child;

The rights and duties of the DFPS to make decisions regarding education provided to the child have not been limited by court order;

The foster parent agrees to participate in making special education decisions on the child's behalf;

The foster parent agrees to complete a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENT that complies with the requirements of this framework; and

The foster parent completes a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS before the next scheduled admission, review, and dismissal (ARD) committee meeting for the child 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.

Not later than the fifth day after the date the child with a disability is enrolled in a school, the DFPS must inform the appropriate LEA if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this framework. The LEA must ensure that the foster parent has received a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS that complies with the requirements of this framework. Once an individual has completed a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS, the individual must not be required by any LEA to complete additional training in order to serve as the parent for the child or other children with disabilities who are in foster care.

Diagnosticians or Speech Language Pathologists will document training dates on the surrogate parent list as well as upload any documentation in the students archive manager in Frontline eSped.

SURROGATE PARENTS

The individuals with Disabilities Education Act (IDEA) requires that state and local school systems involve parents in decisions regarding their child needs. In cases where the child has no parents, none can be located, or the child is a ward of the state, a parent surrogate

must be appointed to represent the child and Project the child's rights in matters relating to identification, evaluation, and placement in a special education program. A surrogate parent must also complete required training regarding Special Education laws, rules, procedures, and due process rights pertaining to a child with a disability and be willing to put in the time to adequately represent the best interests of the child.

To gather more information or complete the surrogate parent training, please visit the designated site below. If you complete the online module training, please email your certificate to keriwilliams@tomballisd.net or your campus diagnostician.

The updated surrogate parent training materials are now available on the SPEDTex website. Materials and online modules are available in English and Spanish. Tomball ISD uses the Surrogate Parent Decision Making Flowchart to determine if a surrogate parent is needed.

Tomball ISD recruits surrogate parents on a volunteer basis. Surrogate parents may not be employees under any agency of TEA (including the school district), have a conflict of interest or be the student's caregiver.

To become a surrogate parent in Tomball ISD your campus diagnostician or the Director of Student Support will request for you to take the following steps:

1. Complete the online module training at the SPEDTex website here: https://www.spedtex.org/index.cfm/educators-corner/surrogate-parent-training1/

2. Email the completed certificate to the campus diagnostician or the Director of Student Support. The date of the training will be recorded on the surrogate parent list by the diagnostician or the Director of Student Support.

3. Complete the Tomball ISD Volunteer background check found here: https://www.tomballisd.net/apps/pages/ht/volunteers-classroom-observation

4. Complete The following forms with the campus diagnostician for each student you are assigned: 1)Surrogate Parent Tracking Form 2) Determination of Conflict of Interest Form and 3) Surrogate Parent Documentation

5. Return the forms to the campus diagnostician to upload into students Frontline eSped archive

6. Maintain a copy of the Surrogate Parent Visitation Log for each student and turn this into the campus diagnostician at the end of each school year and at each annual ARD meeting to be uploaded into students archive manager.

"The phrase 'attempting to act as a parent' is generally meant to refer to situations in which an individual attempts to assume the responsibilities of a parent under the Act. An individual may 'attempt to act as a parent' under the Act in many situations; for example, if an individual provides consent for an evaluation or reevaluation, or attends an [individualized education program] IEP Team meeting as the child's parent. We do not believe it is necessary or possible to include in these regulations the numerous situations in which an individual may 'attempt to act as a parent.'" 71 Fed. Reg. 46567 (August 14, 2004).

"A private agency that contracts with a public agency for the education or care of the child, in essence, works for the public agency, and therefore, could not act as a parent under the Act." 71 Fed. Reg. 46568 (August 14, 2004).

"In determining who the [local educational agency] LEA must consider a parent, and who therefore has the parental right to revoke consent, 34 CFR § 300.30(b)(1) provides that the biological or adoptive parent, when attempting to act as the parent under Part B, and when more than one party is qualified under 34 CFR § 300.30(a) 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." *OSEP Letter to Cox* (August 21, 2009).

"May a foster parent provide consent for an initial evaluation even if the biological parent refuses to provide such consent? Answer: If the biological parent of the child refuses consent for an initial evaluation of the child, and the parental rights of the biological parent have not been terminated in accordance with State law, or a court has not designated a foster parent to make educational decisions for the child in accordance with State law, a foster parent may not provide consent for an initial evaluation. See 34 CFR § 300.30(b)(1)." *OSERS Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations* (September 2011).

"[A]s long as the parent has the legal authority to make educational decisions for the child, the LEA must accept either parent's revocation of consent for the purposes of 34 CFR § 300.300(b)(4). Upon revocation of consent for special education and related services, the LEA must provide the parent with prior written notice in accordance with 34 CFR § 300.503 before ceasing the provision of special education and related services. 34 CFR § 300.300(b)(4)(i)." *OSEP Letter to Cox* (August 21, 2009).

"Under Part B, any person who meets the definition of the term "parent" in 34 CFR § 300.30(a) with legal authority to make educational decisions on behalf of the child has the right to revoke consent in writing to the child's continued receipt of special education and related services any time subsequent to the initial provision of special education and related services. There is no requirement in Part B that the public agency obtain consent for the initial provision of special education and related services, or accept revocation of consent for the child's continued receipt of special education and related services, from both parents with legal authority to make educational decisions on behalf of the child. Further, Part B does not condition a public agency's ability to accept from a parent with legal authority to make educational decisions on behalf of that child a revocation of consent for that child's continued receipt of special education and related services on the agreement of the child's

other parent**,** who provided consent for the initial provision of special education and related services to the child." *OSEP Letter to Ward* (August 31, 2010).

"[Office of Special Education Programs] OSEP acknowledges that disputes between parents who share the right to make educational decisions for their child, and who disagree about the provision of special education and related services for their child, may place an LEA in a difficult situation . . . [T]he [Individuals with Disabilities Education Act] IDEA does not provide a mechanism for parents to resolve disputes with one another; such disputes must be settled privately or through whatever State law processes exist." *OSEP Letter to Cox (August 21, 2009)*.

"If a student has been assigned a surrogate parent, the due process rights that are available to parents are afforded to the surrogate parent, and the prior written notice and procedural safeguards notice must be provided to the surrogate parent (34 CFR 300.519(g)). Similarly, the surrogate parent may utilize mediation or exercise due process rights on behalf of the student or themselves." *OSERS Dear Colleague Letter* (December 5, 2014).

"The McKinney-Vento Act defines unaccompanied youth as youth who are not in the physical custody of a parent or guardian. 42 U.S.C. 11434(a)(6). If a child with a disability is an unaccompanied homeless youth under 34 CFR § 300.519(a)(4), the public agency must ensure that the youth's rights are protected through assignment of a surrogate parent, including a method for determining whether the child needs a surrogate parent and for assigning a surrogate parent to the child. 34 CFR § 300.519(a)(4) and (b). An individual appointed to act as a surrogate for the parent must meet all of the selection criteria in 34 CFR § 300.519(d). These criteria permit a surrogate to be appointed in any manner permitted under State law. 34 CFR § 300.519(d)(1). Under 34 CFR § 300.519(d)(2), the surrogate parent may not be an employee of the SEA, LEA, or any other agency that is involved in the education or care of the child, must have no personal or professional interest that conflicts with the interest of the child, and must have knowledge and skills that ensure adequate representation of the child. 34 CFR § 300.519(d)(2)(i). However, under 34 CFR § 300.519(f), in the case of a child with a disability who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs that are involved in the education or care of the child may be appointed as temporary surrogate parents without regard to the non-employee requirement in § 300.519(d)(2)(i) until a surrogate parent can be appointed who is not an employee of an agency that is involved in the education or care of the child. Individuals appointed as temporary surrogate parents still must have no personal or professional interest that conflicts with the interests of the child and must have knowledge and skills adequate to represent the child. 34 CFR § 300.519(d)(2)(ii)-(iii). Surrogate parents, including temporary surrogate parents, are considered the unaccompanied homeless youth's parent for special educational purposes. Under 34 CFR § 300.519(g), surrogate parents may represent a 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. Under 34 CFR § 300.519(h), the SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the public agency determines that the child needs a surrogate parent." *OSERS Questions and Answers on Special Education and Homelessness* (February 2008).

"Both parents retain rights under Part B of IDEA unless State law or a court order provides otherwise. *See* 34 CFR §§300.500-300.515; 300.530-300.536; and 300.340-300.350. This means that both parents have the right to attend their child's IEP meeting, unless State law or a court order provides otherwise. You have described a situation where a temporary protective order restricts the father's ability to have contact with the mother. It is not clear from your inquiry what effect the protective order may have on the father's continued ability to make educational decisions on his child's behalf or whether the protective order limits the ability of the father or his representatives to have contact with the mother in this context. . . . Part B does not govern the interpretation of the protective order . . ." *OSEP Letter to Serwecki* (February 28, 2005).

Through the implementation of the policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the ensures that parents are identified, appointed, and trained in conformance with the IDEA and its accompanying federal regulations, state statutes and regulations.