



# PARENT SURROGATE MANUAL



**Maryland State Department of Education  
Division of Special Education/Early Intervention Services  
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## Purpose

The Parent Surrogate Manual is designed to provide guidance for early intervention and local school system personnel regarding their responsibility to train and appoint a parent surrogate. This document also explains the role of a parent surrogate in carrying out his or her responsibility to advocate for a child with a disability in the early intervention/special education decision making process.

Major considerations for early intervention and local school systems and other public agencies involved in the Parent Surrogate Process include:

- Identifying when a child requires a parent surrogate
- The Parent Surrogate Appointment Process
- The rights, responsibilities, and requirements of parent surrogates

The Appendices provides information that may serve as a common reference for early intervention and local school systems, social services agencies, and parent surrogates, including:

- Terminology Related to the Parent Surrogate Process.
- A chart to assist the early intervention personnel, local school systems, and public agencies in determining whether there is a need for a parent surrogate for a child covered under both Part C and Part B of the Individuals with Disabilities Education Act (IDEA) or a child who may be eligible for the protections outlined in IDEA.
- A list of relevant publications produced by the Maryland State Department of Education (MSDE) and the Department of Human Resources (DHR).

### Parent Surrogate's Purpose

IDEA requires parent involvement for decisions regarding a child's early intervention/special education needs. If a parent is not available as defined by federal and State law, a parent surrogate **MUST** be appointed to represent the child and protect the child's rights in matters relating to the identification, evaluation, placement, and the provision of a free appropriate public education (FAPE).

A parent surrogate is an individual appointed by MSDE or the local school superintendent to act in place of a parent of a child in the early intervention/special education decision making process. The parent surrogate should be as concerned with the child's development and educational progress as a parent would. As the authorized individual with the right to make early intervention/special education decisions, the parent surrogate is responsible for representing the child in all early intervention/special education matters.

## Overview of the Parent Surrogate Mandate

### Maryland and Federal Law

The IDEA requires the protection of a child's early intervention/special education rights in four situations when a parent is unavailable and the child has not had his/her educational rights transfer to him/her. These situations exist when:

1. Parents, as defined by federal and Maryland law are unavailable or unidentified;
2. The public agency, after reasonable efforts, cannot locate a parent;
3. The child is a ward of the State under Maryland law; or
4. The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11434a; COMAR 13A.05.09.02B(9)].

[34 CFR §300.519(a); 34 CFR §303.406(a); Md. Code Ann., Educ. §8-412(b); COMAR 13A.05.01.11G; COMAR 13A.13.01.11A(7)(a)]

### Parent Surrogate Qualifications

After the lead or public agency<sup>1</sup> determines a parent surrogate is necessary, the public agency must appoint a qualified parent surrogate.

The potential parent surrogate must meet the following qualifications:

1. The individual cannot have an interest that conflicts with the interests of the child;
2. The individual must have knowledge and skills that ensure adequate representation of the child; and
3. The individual may not be an employee of MSDE, the local school system, or any other agency that is involved in the education and care of the child, and under Part C, the person may not be an employee of any service provider involved in the provision of early intervention or other services to the child or the child's family.

[34 CFR §300.519(d)(2); 34 CFR §303.406(c) and (d); Md. Code Ann., Educ. §8-412(b); COMAR 13A.05.01.11G; COMAR 13A.13.01.11A(7)(b) - (c)]

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<sup>1</sup> The term public agency includes the local lead agency and any other political subdivision of the State that is responsible for providing early intervention or special education services to eligible children and their families. [34 CFR §303.21; 34 CFR §300.28; COMAR 13A.05.01.03B(59)].

## Parent Surrogate Required

Parent surrogates are required after a public agency identifies there is a need for a parent surrogate. For children receiving services:

- Under Part C of the IDEA, MSDE shall ensure the qualifications for the parent surrogate are met; and
- Under Part B of the IDEA, the local school superintendent shall ensure that the qualifications for the parent surrogate are met.

At any point during the early intervention/special education decision making process when a public agency suspects a child has a developmental delay or disability and other criteria are met, the public agency shall request the appointment of a parent surrogate. The early intervention/special education decision making process includes all procedures relating to the identification, evaluation, educational placement of a child, or provision of FAPE.

### Part C

If the public agency believes a child receiving services under Part C requires a parent surrogate, the local lead agency shall submit a written request to MSDE for the appointment of a parent surrogate. The written request must:

1. be submitted on forms provided by the Local Infants and Toddlers Program; and
2. include the name of the potential parent surrogate.

The MSDE will appoint the potential parent surrogate or make an alternative appointment within 10 days after receipt of a written request.

[34 CFR §303.406(b)-(c); COMAR 13A.13.01.11A(7)(e)-(f)]

### Part B

After the public agency makes a request for the appointment of a parent surrogate, a local school superintendent shall appoint a parent surrogate not more than 30 *calendar* days after determining the need for a parent surrogate. The local school superintendent will appoint a parent surrogate if:

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.

[34 CFR §300.519(h); Md. Code Ann., Educ. §8-412(e)(1); COMAR 13A.05.01.11G]

## Transfer of Special Education Rights to Student at the Age of Majority

The transfer of rights at the age of majority applies **only** to a limited number of students who have a disability under the IDEA. These students with disabilities are those that are:

- Eighteen years of age, or older, that have not been ruled incompetent under State law; and
- Qualify for consideration in accordance within one of the limited circumstances described in Education Article §8-412.1, Annotated Code of Maryland.

When a child with a disability reaches the age of 18 years, all rights accorded to parents under IDEA shall transfer to the child if the child has not been adjudged incompetent under state law and if there is documentation that:

- (1) The parents are unavailable or unknown as defined in §8-412 of this subtitle, the child would be eligible for a parent surrogate, and the child requests that the parental rights be transferred to the child;
- (2) The parents have not participated in the special education decision making process for the child after repeated attempts by the local school system to involve the parents over the previous year as described in COMAR 13A.05.01.07C(7);
- (3) The parents have affirmatively rejected participation in the special education decision making process;
- (4) The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;
- (5) The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond the control of the parents and the parents have consented to the transfer of rights to the child; or
- (6) The child is living outside of the parents' home and is not in the care or custody of another public agency as defined in § 8-412 of this subtitle."

[Md. Code Ann., Educ. §8-412.1(a)]

## Students Represented by Parent Surrogates

When a student represented by a parent surrogate reaches age 18, any notice regarding special education shall be provided to the student and the parent surrogate. If the student has not been judged incompetent at the age of 18 and the student requests that the rights transfer to the student, then all rights provided to the parent surrogate will transfer to the student.

[Md. Code Ann., Educ. §8-412.1(c)]



Each of the following elements must be present before a transfer of rights from the parent surrogate to the student may be considered. The public agency must document that:

1. The student is over the age of eighteen;
2. The student is represented by a parent surrogate;
3. The student has not been adjudged incompetent under State law;
4. The student requests that the parental rights be transferred; and
5. The student and the parent surrogate received notice of the transfer.

[34 CFR §300.520; Md. Code Ann., Educ. § 8-412.1(c)]

Resource: Transfer of Rights at the Age of Majority, Maryland State Department of Education, Division of Special Education/Early Intervention Services (August 2002).

## **Duties of the Public Agency in the Appointment of Parent Surrogates**

The duties of a public agency include the assignment of an individual to act as a parent surrogate for a child with either a suspected or confirmed developmental delay or disability and who may require early intervention/special education services.

This section highlights the following:

- Basic criteria for appointing a parent surrogate,
- Special concerns for wards and dependants of the State, and
- Unaccompanied Homeless Youth.

### Basic Criteria for Appointing a Parent Surrogate

At any point in the early intervention/special education decision making process, if it is suspected a child has a developmental delay or disability and other criteria are met, the public agency shall request the appointment of a parent surrogate. A public agency includes agencies responsible for providing early intervention/special education to a child with a disability. Under Part C of IDEA, the public agency includes the lead agency and any other State agency responsible for providing early intervention services to children with disabilities and their families. Under Part B of IDEA, the public agency includes agencies responsible for providing education to a child with a disability.

The public agencies with the duty to request a parent surrogate include:

- Maryland State Department of Education (MSDE);
- Local Infants and Toddlers Program;
- Local school systems; and
- Other agencies responsible for providing early intervention/special education to a child with a disability.

Public agencies who may be assigned the duty of requesting a parent surrogate include:

- Department of Health and Mental Hygiene (DHMH);
- Department of Juvenile Services (DJS);
- Maryland School for the Blind (MSB); and
- Maryland School for the Deaf (MSD).

[34 CFR §300.519(b); 34 CFR §300.33; 34 CFR §303.406(b); 34 CFR §303.21; Md. Code Ann., Educ. §8-412(a)(7); Md.Code Ann., Educ. §8-412(b); COMAR 13A.05.01.11G; COMAR 13A.13.01.11A(7)(e)]

Public agencies must support their request for the appointment of a parent surrogate with sufficient documentation establishing the need for a parent surrogate. To qualify for a parent surrogate the child must first be either IDEA eligible or thought to be IDEA eligible. The child must also be (1) a ward of the state, (2) an unaccompanied homeless youth, or (3) have parents whose whereabouts or identities are unknown. Finally, the child's special education rights cannot have transferred to the child.

[Md. Code Ann., Educ. §8-412(b)]

### Wards of the State

A public agency shall request the appointment of a parent surrogate to represent the child at any point during the early intervention/special education decision making process, where the child is a ward of the State and has or is suspected of having a developmental delay or disability. A child is a "ward of the State" where (1) a State or county agency or official has been appointed legal guardian or (2) the child committed is by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make early intervention/special education decisions for the child.

[34 CFR §300.519(a)(3); 34 CFR §303.406(a)(3); Md. Code Ann., §8-412(a)(11)]

The "ward of the State" definition does not include certain foster children. If the child lives with a foster parent who has limited guardianship for early intervention/special educational decision-making purposes granted by the court that has placed the child in foster care, then the child does not need a parent surrogate.

[34 CFR § 300.519(a)(3); 34 CFR § 303.406(a)(3); Md. Code Ann., Educ. §8-412(a)(5)(i)5; COMAR 13A.05.01.03B(52)(a)(iv); COMAR 13A.05.01.03B(85)(b)].

When a Court “commits” a child to a local department of social services or juvenile services, it transfers custody of the child to that agency [Md. Code Ann., Cts. & Jud. Proc. §§ 3-01(h) and 3-8A-01(g)]. “Custody” is defined as both a right and an obligation to provide ordinary care for a child and to determine a residential placement for the child. The purpose of a commitment to the local department of social services or juvenile services is to, among other things, secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child’s parents should have given [Md. Code Ann., Cts. & Jud. Proc. § 3-802(a)(6)]. Therefore, when a child is committed to the custody of a local department of social services or juvenile services, that agency has the responsibility to ensure that the child is enrolled in school, just as the child’s parents would be responsible for doing if the child remained in the parents’ custody.

Resource: Access to Education for Children in State-Supervised Care

### Unaccompanied Homeless Youth

A public agency shall request the appointment of a parent surrogate to represent the child at any point during the early intervention/special education decision making process, where the child is considered an unaccompanied homeless youth. A child is considered an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, known as the McKinney-Vento Act [42 U.S.C. 11434a(6)].

[34 CFR §300.519(a)(4); Md. Code Ann., Educ. §8-412(a)(8)]

The McKinney-Vento Act provides all homeless children and youths with the same educational rights and protections provided to other students. The McKinney-Vento Act requires that each child of a homeless individual and each homeless youth has equal access to the same free appropriate public education, including public preschool education, as provided to other children and youths. Homeless children and youths must have access to the education and other services that allow them the opportunity to meet the same challenging State student academic achievement standards to which all students are held.

Homeless children and youths are defined in McKinney-Vento as individuals who lack a fixed, regular, and adequate nighttime residence. This can include individuals:

- (1) 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;
- (2) Having 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;
- (3) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

- (4) Any migratory children living in circumstances described in clauses (1) through (3) above.

“Unaccompanied youth” are children who are not in the physical custody of a parent or guardian. [McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a]

#### When Parents are Unknown or Unavailable

A public agency shall request the appointment of a parent surrogate to represent a child with a disability where the parents are unknown or unavailable and the child’s rights have not been transferred. Public agencies must support their request for the appointment of a parent surrogate with sufficient documentation establishing the need for a parent surrogate. In those cases where a parent is unknown or his/her whereabouts are unknown, the public agency must document the reasonable efforts made to identify or locate the parent. Such efforts must include contacting the agency with responsibility to care for the child, known relatives of the child, and other persons interested in the child. A social worker’s or a pupil personnel worker’s report of efforts made to contact the parents may be used under these circumstances.

[34 CFR §300.519(a); 34 CFR §303.406(a); Md. Code Ann., Educ. §8-412 (b)(3); §8-412 (c)(3)]

#### When Parents are Unknown or Unavailable for Children 18 Years or Older

Once a public agency determines the parents of an 18 year old student are unknown or unavailable, a public agency must determine whether the rights have been transferred as outlined in Md. Code Ann., Educ. § 8-412.1.

### **Parent Surrogate Appointment Process**

This section outlines the basic process for appointing parent surrogates for children that may be eligible under Part C or Part B of IDEA. While the appointment process is similar for Part B and Part C, there are some differences. The subtitles below indicate the section applicable to Part C followed by the section applicable to Part B. Where the process for Part B and Part C are the same, the steps are merged.

A brief overview and side-by-side comparison of the Parent Surrogate Appointment Process is located in Appendix II of this Manual. The comparison chart is a companion to the manual; the details of the Parent Surrogate Appointment Process are listed below.

## Step 1: Eligibility

The Parent Surrogate Appointment Process applies to infants, toddlers, children, and youth suspected of or having a developmental delay or disability that may require the provision of early intervention/special education services in accordance with IDEA. The first step is to determine whether the child is suspected of having or has a developmental delay or disability according to IDEA. If the child is suspected of having or has a developmental delay or disability, then appointing a parent surrogate may be appropriate.

Next, the public agency must determine whether any person has legal authority to make early intervention/special education decisions on the child's behalf. A public agency must ensure that the rights of the child are protected when:

- (1) The child is a ward of the State;
- (2) The child is an unaccompanied homeless youth; and
- (3) No parent is identified or located

If the child is a ward of the State or an unaccompanied homeless youth, a parent surrogate may be appropriate. Move to Step 2 if the child is either a ward of the State or an Unaccompanied Homeless Youth.

If the child is not a ward of the State or an unaccompanied homeless youth, try to identify and locate a parent with the authority to make early intervention/education decisions. "Parent" includes one of the following individuals with the authority to make early intervention/special education decisions on the child's behalf:

- (1) The child's natural parents;
- (2) The child's adoptive parents;
- (3) A guardian;
- (4) A person acting as a parent of a child, such as a relative or a stepparent with whom the child lives;
- (5) A foster parent with whom the child lives if the foster parent has sole limited guardianship for early intervention/special education decision making purposes; or
- (6) A parent surrogate appointed according to Maryland and federal law.

[34 CFR §303.19(a); 34 CFR § 303.406(a)(1-3); 34 CFR §300.30; Md. Code Ann., Educ. §8-412(a)(5)(i); COMAR 13A.05.01.03B(52); 13A.13.01.11A(7)(a)]

If the public agency is unable to identify one of the parents as defined above, then it must demonstrate that the agency is unable to locate a parent. After reasonable efforts, a public agency may deem a parent "unavailable" or "unknown" and request the appointment of a parent surrogate whenever either (1) it cannot discover the physical whereabouts of the a child's parent(s); or (2) it cannot identify a child's parent(s).

[34 CFR §300.519(a)(2); Md. Code Ann., Educ. §8-412(a)(9-10)]

If an individual with the authority to make educational decisions is not identified, then the child may require a parent surrogate.

[34 CFR §300.519(a) and (b); 34 CFR §303.406(a) and (b); Md. Code Ann., Educ. §8-412(b); COMAR 13A.05.01.11G; COMAR 13A.13.01.11A(7)(a)]

## **Step 2: Request Appointment of a Parent Surrogate**

This section outlines how to request a parent surrogate for Part C and Part B. While the process for requesting a parent surrogate is similar for Part C and Part B, there are some differences. The process for Part C and Part B are outlined below.

### Part C Request

The lead agency must decide whether:

- The child is a child with a developmental delay, disability, or suspected disability and needs a parent surrogate; and
- The potential parent surrogate meets additional criteria.

The public agency must also determine whether the potential parent surrogate meets the following criteria:

- Does not have any interests that interferes with adequate representation of the child,
- Is not an employee of the State or involved in the provision of services, and
- Has the knowledge and skills to adequately represent the child.

If the criteria outlined above are met, then the lead agency should submit a request to MSDE for a parent surrogate appointment as outlined below.

- Any request for a parent surrogate for a student receiving services under Part C, must be submitted to the Maryland State Department of Education. The public agency shall submit a written request to the Maryland Infants and Toddlers Program [COMAR 13A.13.01.11A(7)(e)].
  - The request should be completed on MSDE forms; and
  - The request should include the names of an individual or individuals appropriately qualified to fulfill the role of surrogate parent, consistent with the qualifications outlined in steps above.

## Part B Request

The public agency must confirm the student has a disability or suspected disability and needs a parent surrogate. The public agency must determine the potential parent surrogate meets the following requirements:

- The potential parent surrogate does not have any interests that interferes with adequate representation of the child;
- The potential parent surrogate is not an employee of MSDE, the local school system or public agency, or any other agency involved with the care and education of the child; and
- The potential parent surrogate has the knowledge and skills to adequately represent the child.

If the public agency determines the request for an appointment is appropriate, then the public agency should submit a request to the local school superintendent for a parent surrogate as outlined below.

Any request for a parent surrogate for a student receiving services under Part B should be submitted to the local school superintendent.

The request to the local school superintendent must include:

- The name, date of birth, sex, legal domicile, and present residence of the child;
- A statement that the child is eligible for the appointment of a parent surrogate in accordance with the requirements for deciding whether a child needs a parent surrogate;
- Documentation, as applicable, of the efforts made to identify the parent if unknown or to locate the parent if unavailable; and
- The name and qualifications of the proposed parent surrogate whom the public agency considers to be qualified to represent the child in the special education decision making process.

[34 CFR §300.519(b); 34 CFR §303.406(b); Md. Code Ann., Educ. §8-412(c); COMAR 13A.05.01.11G; COMAR 13A.13.01.11A7(e)-(f)]

### **Step 3: Qualifications**

The local school superintendent or MSDE must ensure the proposed parent surrogate meets the following criteria:

- (1) The proposed parent surrogate does not have an interest that conflicts with the interest of the child;
- (2) The proposed parent has the knowledge and skills to ensure the child is adequately represented; and
- (3) Is not an employee of MSDE, the local school system, or any other agency that is involved in the education or care for the child.

[34 CFR §300.519(d)(2); 34 CFR § 303.406(c); Md. Code Ann., Educ. §8-412(d)]

#### Part C Qualifications

- The potential parent surrogate does not have an interest that conflicts with the interests of the child he or she represents; and
- Has knowledge and skills that ensure adequate representation of the child.

[34 CFR §303.406(c)(2); COMAR 13A.13.01.11A7(b)]

- The potential parent surrogate may not be an employee of a State agency; or
- A person or employee of a person providing early intervention services to the child or to any family member of the child.

[34 CFR §303.406(d); COMAR 13A.13.01.11A7(c)]

#### Part B Qualifications

The potential parent surrogate may not be:

- An employee of MSDE, the local school system, or any other agency that is involved in the education or care of the child;
- Have a personal or professional interest that conflicts with the interest of the child the parent surrogate will represent; and
- Has knowledge and skills that ensure adequate representation of the child.

[34 CFR §300.519(d)(2); Md. Code Ann., Educ. §8-412(d),]

Note: A local school system employee may not serve as a parent surrogate in the local school system where they are employed. School personnel and employees may serve as parent surrogates for local schools systems where they are not employed. If retired teacher works for the local school system as a substitute, then the retiree is an employee of the school system.



## Exception for Unaccompanied Homeless Youth

If a child is an unaccompanied homeless youth, appropriate staff or emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as **TEMPORARY** parent surrogates. A **TEMPORARY** parent surrogate may be appointed even if the parent surrogate is an employee of MSDE, the local school system, or any other agency that is involved in the education or care of the child. A parent surrogate that meets all legal requirements should be identified and appointed as soon as possible.

This exception may apply in cases where a local school system is unable to locate and qualify a parent surrogate within 30 days from determining the need for a parent surrogate.

[34 CFR §300.519(f)]

### **Step 4: Appointment**

#### Part C Procedures

The MSDE will make a decision to appoint or make an alternate appointment of a parent surrogate within 10 days<sup>2</sup> after receipt of a written request from the local lead agency.

The MSDE will confirm that the child requires a parent surrogate and the potential parent surrogate meets all requirements to serve as a parent surrogate. If all of the requirements are met, MSDE will make the appointment within 10 days after receipt of a written request.

If MSDE is unable to confirm the potential parent surrogate meets the requirements for parent surrogates, MSDE will make an alternative appointment within 10 days after receipt of a written request.

[COMAR 13A.13.01.11A(7)(g)]

#### Part B Procedures

The MSDE must make reasonable efforts to ensure the assignment of a parent surrogate not more than 30 days after a public agency determines that the child needs a surrogate parent [34 CFR §300.519(h)].

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<sup>2</sup> Day means a calendar day unless otherwise indicated as business day or school day. 34 CFR §300.11(a)

The local school superintendent must appoint a parent surrogate within 30 days after a determination or need, if the local school superintendent finds:

1. The child is eligible for the appointment of the parent surrogate; and
2. The proposed parent surrogate is qualified to represent the child in the special education decision making process.

If the appointing official, the local school superintendent for Part B, finds the child is not eligible for a parent surrogate appointment, then the appointing official must provide notice of the finding. The appointing official must notify the requesting individual that the child is not eligible for a parent surrogate. This notice should be followed by a written notice specifying the reasons the child is not eligible.

If the appointing official finds the proposed parent surrogate is not qualified, the appointing official may: (1) request public agency personnel propose another parent surrogate or (2) select and appoint a qualified parent surrogate.

[34 CFR §300.519(d)(1); Md. Code Ann., Educ. §8-412(e)]

#### **Step 5: Additional Part B Procedures**

If a student is served under Part B and a parent surrogate is appointed, the local school superintendent shall send written notice to the State Superintendent of the appointment. The written notice must:

- (1) Occur within 30 days after the day when the appointment was made; and
- (2) Include the child's name, the name of the parent surrogate, and any other information deemed applicable.

[34 CFR §300.519; Md. Code Ann., Educ. §8-412(e)(4)]

#### **Step 6: Termination of Appointment**

A parent surrogate may be terminated for good cause. Once the previously appointed parent surrogate is terminated, the appointing official shall state the reasons for the termination and send written notice to the State Superintendent. If the child continues to require a parent surrogate, then the appointing official shall submit the name and qualifications of another individual who is assigned.

[34 CFR §300.519; Md. Code Ann., Educ. §8-412(g)]

## **Rights and Responsibilities of Parent Surrogates**

This section defines the responsibilities and role of the parent surrogate to ensure the child receives a FAPE and provides guidance for parent surrogates, as they navigate the early intervention/special education process.

### The Parent Surrogate's Role

A parent surrogate is vested with the same rights as the child's natural parent. The appointment of an individual as a parent surrogate for a child indicates that the individual accepts the responsibility as a parent surrogate to actively contribute to the planning and advocacy for the child's early intervention/special education needs. It does not imply that the parent surrogate will assume responsibility for the day to day care of the child or the financial costs associated with the care of the child.

### Authority of the Parent Surrogate

The parent surrogate acts as an advocate on behalf of the child to assure that the child receives a FAPE within the natural least restrictive environment.

The Part C parent surrogate may represent the child in all matters relating to the early intervention decision making process. The matters relating to the early intervention process include the:

- (1) Evaluation and assessment of the child;
- (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews; and
- (3) Provision of early intervention services to the child; and (4) any other rights established under Part C.

[34 CFR §303.406(e)]

The Part B parent surrogate may represent the child in all matters relating to the special education decision making process including the:

- (1) Identification, evaluation, and educational placement of the child; and
- (2) Provision of FAPE.

[34 CFR §300.519(g)]

The role of the parent surrogate is essential to the child's education development, helping to ensure smooth transitions and progress. A parent surrogate needs to be familiar with the following:

- The child's need for early intervention/special education;
- The early intervention/special education decision making process;
- Their responsibility as an important part of the early intervention/special education process; and
- The relevant resources and early intervention/special education program alternatives that are available for consideration.

The parent surrogate should demonstrate a level of concern and care regarding the early intervention/special education decision making process of a child comparable to what a natural parent would demonstrate. The parent surrogate is responsible for representing the child in all matters relating to the identification and evaluation of the child's disability and the child's early intervention/special education program, placement, and the provision of a FAPE.

As the education 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. The members of the Individualized Family Service Plan (IFSP)/Individualized Education Program (IEP) team may be a helpful source of information in answering any questions that can arise. The parent surrogate should request assistance from other members of the IFSP/IEP team to fully understand and appreciate the implications of specific decisions regarding early intervention/special education.

A person who takes on the parent surrogate role for a child accepts the responsibility to actively contribute to the planning and implementation of the child's early intervention and special education needs.

This responsibility includes:

1. Becoming thoroughly acquainted with the child, the child's early intervention/special education history, and any other information contained in the child's record relating to that child's educational needs.
2. Learning about State and federal regulations concerning the early intervention/special education process for children with disabilities, including the contents of the local school system's procedural safeguards document.
3. Participating in trainings for parent surrogates regarding understanding the early intervention/special education process, trainings on the procedural safeguards, trainings on discipline, and other relevant trainings.

4. Understanding the child's current early intervention/special education program and appropriate alternatives.
5. Participating in the planning, development, and approval or disapproval of the child's IFSP or IEP.
6. Monitoring the child's early intervention/special education needs by attending parent-school planning, evaluation, and IFSP or IEP team meetings in person or in limited circumstances via telecommunication systems.
7. Acting as the child's parent/advocate by requesting early intervention/ special education services or making complaints about services, or the lack of services, if necessary.
8. Asserting the child's rights in any due process proceeding, including a request for mediation, initiation of a State complaint and/or a due process complaint, and seeking qualified legal assistance when such assistance is in the best interest of the child.

If during the early intervention/special education decision making process the parent surrogate and the IFSP or IEP team **cannot** agree upon the identification, evaluation, education placement, or the provision of a FAPE, the parent surrogate has the right to request mediation or initiate a due process complaint.

#### Review and Copies of Early Intervention/Special Education Records

The parent surrogate should be familiar with the child's education records. Prior to any meeting, where a specific assessment, report, data chart, early intervention services, IFSP, draft IEP, or other document will be discussed, the surrogate parent must be provided with a copy of the documents.

Maryland now requires school personnel to provide parents with an accessible copy of each assessment, report, data chart, draft IEP, or other document the IEP team or other multidisciplinary education team plans to discuss at the meeting.

Specifically, Maryland requires that:

- At least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting, the parents are to receive an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting.
- An assessment, report, data chart, or other document either prepared by a school psychologist or other medical professional the team plans to discuss at the meeting may be provided to parents orally and in writing prior to the meeting [Md. Code Ann., Educ. §8-405(c)(2)(i)].

- If school personnel are unable to provide an accessible copy of the materials at least business days before the scheduled meeting because of an extenuating circumstance, school personnel must document and communicate to parents the nature of the extenuating circumstance that prevented school personnel from providing accessible copies of the material(s) [Md. Code Ann., Educ. §8-405(c)(2)(ii)].
- Not later than five business days after a scheduled IEP or other multidisciplinary education team meeting, school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, school personnel shall provide the parents with the draft copy of the IEP [Md. Code Ann., §8-405(d)].

### Early Intervention Services

Children ages birth through age 3 are eligible for early intervention are served under an IFSP. A child covered under IDEA between the ages of 3 through 5 may also be served by an IFSP if the parent chooses the extended option. Parent Surrogates appointed for a child who is or may be eligible for early intervention should learn more about the process by accessing the Maryland State Department of Education’s web-site.

Go to The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS). Click the link for “Early Childhood Intervention and Education” Branch:

<http://www.msde.maryland.gov/MSDE/divisions/earlyinterv/?WBCMODE=presentatio%25%25%25%3e%25%3e>

Printed copies of publications may also be obtained by calling the MSDE or the local school system. The telephone number for MSDE is 410-767-0600.

### The Special Education Process

*Understanding the Evaluation, Eligibility, and Individualized Education Program (IEP) Process in Maryland*

Parent Surrogates are appointed and entrusted to protect a child’s rights during the early intervention / special education decision making process. Parent Surrogates must have the basic skills and knowledge to protect the child during the early intervention/special education process. *Understanding the Evaluation, Eligibility, and Individualized Education Program (IEP) Process in Maryland* provides an overview of the process in Maryland.

Go to The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), Resources, Publications and Information. Click the link for Understanding the Special Education the Evaluation, Eligibility, and Individualized Education Program (IEP):

<http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22211/UnderstandingtheIEP.pdf>

A printed copy of this publication may also be obtained by calling the MSDE or the local school system. The telephone number for MSDE is 410-767-0600.

### Procedural Safeguards

Parent Surrogates should be familiar with “Parental Rights”. Parent Surrogates may find an explanation of the Parent Rights in the *Parental Rights: Maryland Procedural Safeguards Notice, Infants and Toddlers/Preschool Special Education and Special Education* publication.

Go to the Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), Resources, Publications and Information. Click the link for Maryland Procedural Safeguards Notice Updated January 2010:

[http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/23317/MarylandProceduralSafeguardsNotice\\_updatedjanuary2.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/23317/MarylandProceduralSafeguardsNotice_updatedjanuary2.pdf)

A printed copy of this publication may also be obtained by calling the MSDE or the local school system. The telephone number for MSDE is 410-767-0600.

### Suspension and Expulsion

Parent Surrogates should become familiar with the special procedures required for discipline. The local school system must follow specific procedures for discipline if a child is suspected to have a disability covered under IDEA or the child is already identified as a student with a disability under IDEA. MSDE has published *Discipline of Students with Disabilities: Resources and Information on Effective Practices and Requirements Under the Individuals with Disabilities Education Act* to educate parents, educators, and advocates

Go to the Maryland State Department of Education (MDSE), Division of Special Education/Early Intervention Services (DSE/EIS), Resources, Publications and Information. Click the links for Discipline of Students with Disabilities:

[http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/Special\\_Ed\\_Info](http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/Special_Ed_Info)

A printed copy of this publication may also be obtained by calling the MSDE or the local school system. The telephone number for MSDE is 410-767-0600.

### Transitioning Youth

Parent Surrogates for children who are age 14 or older should be aware of transition planning. Transition planning is essential for moving a child from school to the appropriate postsecondary placement or the next steps in life.

Parent Surrogates appointed for a child age 14 or older should learn more about the transition process. MSDE has published a document entitled *Transition Planning Guide: Preparing Children with Disabilities to Move From School to Appropriate Postsecondary Outcomes*. This document may be accessed from the Maryland State Department of Education's web-site.

Go to the Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), Resources, Publications and Information. Click the link for Transition Planning:

[http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/23109/TransitionPlanningGuide\\_updatedJan2010.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/23109/TransitionPlanningGuide_updatedJan2010.pdf)

A printed copy of this publication may also be obtained by calling the MSDE or the local school system. The telephone number for MSDE is 410-767-0600.



# **Appendix I**

## **Terminology Related to the Parent Surrogate Process**

## **Appendix I: Terminology Related to the Parent Surrogate Process**

This Appendix includes a limited number of definitions related to the Parent Surrogate Process. If you require additional explanation or assistance, visit the MSDE web-site, or contact your local school system or MSDE.

**Assessment:** is the process of collecting data to be used by the IFSP/IEP team to determine a child's need for early intervention/special education and related services.

**Child:** this manual uses “child” to describe children ages birth to 5 years old who are eligible to receive early intervention or special education services under the Individuals with Disabilities Education Act (IDEA) and applicable Maryland laws and regulations.

**Consent:** means a parent: (i) has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; (ii) understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and (iii) understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Consent" includes consent given to an action before a parent revokes consent, so that:

(i) if a parent revokes consent, that revocation is not retroactive and does not negate an action that occurred after the consent was given and before the consent was revoked; and

(ii) if the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

**Early Intervention Services (EIS):** are services that are designed to meet the developmental needs of the eligible child and the needs of the family related to enhancing the child's development;

(a) selected in collaboration with the parents; and

(b) the services are provided: (i) under public supervision (that is, federal, State, or local funds are used in connection with provision of services. This includes children receiving services through a program funded by public monies as well as children receiving services from a private provider, but whose services are supervised or paid for by a public agency), (ii) by qualified personnel as defined, (iii) according to the Individualized Family Service Plan (IFSP), and (iv) at no cost unless, federal or State law provides for a system of payments by families, including sliding fees; and

- (c) Consistent with the standards of the State, including the requirement of qualified personnel; and
- (d) To the maximum extent appropriate to the needs of the child, provided in natural environments, including the home and community settings in which children without disabilities participate.

**Education Decision-Making Process:** includes all procedures relating to the identification, evaluation, or educational placement of a child and the provision of a free appropriate public education, including any appeal process.

**Evaluation:** the process of reviewing: (i) information from parents; (ii) existing data; and (iii) results of assessment procedures used to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs.

**Free Appropriate Public Education (FAPE):** special education and related services that: (a) are provided at public expense, under public supervision and direction; (b) meet the standards of the MSDE, the requirements of federal, and Maryland laws; (c) include preschool, elementary, or secondary education; and (d) are provided according to an IEP. .

**Homeless Students:** children and youth as defined by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11434a and COMAR 13A.05.09.

**Individualized Family Service Plan (IFSP):** is a written plan for providing early intervention and other services to an eligible child and the child's family. The IFSP is: (a) developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services; (b) based on the multidisciplinary evaluation and assessment of the child, and the assessment of the child's family, and (c) includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

**Individualized Education Program (IEP):** is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with federal and Maryland law.

**Infants and Toddlers with Disabilities:** children from birth through 2 years old who are eligible for early intervention services, as documented by qualified personnel. The documentation explains the reason the child is eligible for early intervention. The reasons may include:

The child experiences at least a 25 percent delay in one of more of the following developmental areas:

- Cognitive development,
- Physical development, including vision and hearing,
- Communication development,
- Social or emotional development,
- Adaptive development; or

- The child manifests atypical behavior demonstrated by abnormal quality of performance and function in one of the more of the five areas listed above that interferes with current development and is likely to result in additional delays; or
- The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. The examples of the conditions include: chromosomal abnormalities, genetic or congenital disorders, severe sensory impairments, inborn errors or metabolism, disorders reflecting disturbance or the development of the nervous system, congenital infections, disorders secondary to exposure to toxic substances, including fetal alcohol syndrome, and severe attachment disorders.

**Local School System (LSS):** any of the 24 public school systems in the State responsible for providing a free appropriate public education to children with disabilities.

**Local School Superintendent:** school system superintendent or the administrative head in charge of a public agency that provides educational services to children.

**Native language:** is the language normally used by an individual who is limited English proficient, or the language normally used by the parent of the child. Native language includes the language normally used by the child in: (i) all direct contact; (ii) assessment and evaluation; (iii) the child's home; and (iv) the child's learning environment. Native language includes the mode of communication that is normally used by an individual: (i) Who is blind; (ii) Who is deaf; or (iii) With no written language.

**Parent :** (i) A biological or adoptive parent; (ii) A guardian; (iii) A person acting as a parent of a child, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; (iv) A foster parent with whom the child lives, if the foster parent has been granted limited guardianship for educational decision-making purposes by the court that has placed the child in foster care; or (v) A surrogate parent who has been appointed in accordance with 34 CFR §300.519 and Md. Code Ann., Educ. § 8-412.

"Parent" does not include: (i) An employee of a public agency responsible for the education or care of the child; or (ii) The State, if the child is a ward of the State.

**Parent Surrogate:** a person appointed by the MSDE or the local school superintendent to act in place of a parent on behalf of a child with a disability in the early intervention and special education decision making process.

**Public Agency:** a State or local government or quasi-government entity responsible for the provision of a free appropriate public education to children with disabilities. "Public agency" means: local school systems, the Department, the Department of Health and Mental Hygiene, the Developmental Disabilities Administration, the Department of Juvenile Services, the Maryland School for the Blind, and the Maryland School for the Deaf.

**Special Education:** is specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. It includes speech-language pathology services, travel training, career and technology education, and instruction in physical education if the service consists of specially designed instruction.

**Student with a Disability:** means a student, 3 years old through the end of the school year in which the student turns 21 years old:

(a) Evaluated as having: (i) Autism, (ii) Deaf-blindness, (iii) Developmental delay; (iv) Emotional disability, (v) Hearing impairment, including deafness, (vi) Intellectual disability; (vii) Multiple disability, (viii) Orthopedic impairment, (ix) Other health impairment, (x) Specific learning disability, (xi) Speech or language impairment, (xii) Traumatic brain injury, or (xiii) Visual impairment, including blindness; and

(b) Who, because of the impairment, needs special education and related services.

**Unaccompanied Homeless Youth:** is a homeless youth, as defined by the McKinney-Vento Homeless Assistance Act, who is not in the physical custody of a parent or guardian.

**Unavailable:** after reasonable efforts, the public agency cannot discover the physical whereabouts of a child's parent.

**Unknown:** after reasonable efforts, the public agency cannot identify the child's parent.

**Ward of the State:** means a child for whom a State or county agency or official has been appointed legal guardian, or who has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make early intervention/education decisions for the child. "Ward of the State" does not include a foster child who has a foster parent who meets the definition of a foster parent with whom the child lives, if the foster parent has been granted limited guardianship for education decision-making purposes by the court that has placed the child in foster care.

# **Appendix II:**

## **Parent Surrogate Process Chart**

## Appendix II: Parent Surrogate Process Chart

The side-by-side comparison is a limited overview of the Parent Surrogate Appointment Process. The Chart should be used as a companion to the steps articulated in the manual. The Parent Surrogate Process has strict timelines that must be followed, to ensure each eligible child receives a FAPE.

<b>Parent Surrogate Process Chart</b>	
<b>Maryland Parent Surrogate Appointment Process Part C of the IDEA</b>	<b>Maryland Parent Surrogate Appointment Process Part B of the IDEA</b>
<p><b>Step 1: Eligibility</b></p> <p>The child has or is suspected of having a developmental delay or disability classified under IDEA Part C.</p> <p>The child does not have parents, as defined by state and federal law, with authority to make early intervention decisions.</p>	<p><b>Step 1: Eligibility</b></p> <p>The student has or is suspected of having a disability classified under IDEA.</p> <p>The student does not have parents, as defined by State and federal law, with authority to make educational decisions.</p>
<p><b>Step 2: Request</b></p> <p>The lead agency identifies a “qualified” parent surrogate and submits a request to MSDE.</p>	<p><b>Step 2: Request</b></p> <p>The public agency identifies a “qualified” parent surrogate and submits a request to the local school superintendent.</p>
<p><b>Step 3: Qualification</b></p> <p>The MSDE ensures the appointment is appropriate and the parent surrogate meets the qualifications.</p>	<p><b>Step 3: Qualification</b></p> <p>The local school superintendent ensures the appointment is appropriate and the parent surrogate meets the qualifications.</p>
<p><b>Step 4: Appointment</b></p> <p>The MSDE makes a decision to appoint the parent surrogate or make an alternative appointment within 10 days after receipt of the written request submitted in step 2.</p>	<p><b>Step 4: Appointment</b></p> <p>The local school superintendent confirms the child is eligible for a parent surrogate and the parent surrogate is qualified to serve.</p>
	<p><b>Step 5: Additional Procedures</b></p> <p>The local school superintendent shall send written notice to MSDE of the appointment within 30 days after the appointment is made.</p>

# **Appendix III:**

## **MSDE and DHR Publications**



## **Appendix III: MSDE and DHR Publications**

This appendix lists various publications from the Maryland State Department of Education and the Department of Human Resources. The publications provide an in-depth explanation of various topics and may be useful to parent surrogates.

### **Discipline of Students with Disabilities: Resources and Information on Effective Practices and Requirements Under the Individuals with Disabilities Education Act (IDEA)**

This document provides administrators, educators, parents, and community members with a better understanding of the behavioral assessment and intervention process. The concept of addressing inappropriate behaviors with the use of positive supports and strategies is incorporated within the behavioral assessment process.

Whenever a child demonstrates a behavior that interferes with his/her learning or the learning of others, the child's Individualized Education Program (IEP) team should convene to plan for a functional assessment of the child's behavior. The purpose of a functional behavioral assessment (FBA) is to increase understanding of the child's behavior and its function for the child, and is used to develop a behavioral intervention plan (BIP).

#### **Discipline Document:**

- Part 1: [http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22802/DisciplineofStudentswithDisabilities\\_September2009.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22802/DisciplineofStudentswithDisabilities_September2009.pdf)
- Part 2: [http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22798/DisciplineofStudentswithDisabilities\\_September2009.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22798/DisciplineofStudentswithDisabilities_September2009.pdf)
- Part 3: [http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22801/DisciplineofStudentswithDisabilities\\_September2009.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22801/DisciplineofStudentswithDisabilities_September2009.pdf)
- Part 4: [http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22803/DisciplineofStudentswithDisabilities\\_September2009.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22803/DisciplineofStudentswithDisabilities_September2009.pdf)

### **Parents Rights: Maryland Procedural Safeguards Notice: Infants and Toddlers/Preschool Special Education and Special Education**

The procedural safeguards notice includes a full explanation of parent's rights in an easily understandable manner and is available in the parent's native language. This procedural safeguards notice applies to children and families receiving services through an Individualized Family Service Plan (IFSP) and also to children/students receiving services through an Individualized Education Program (IEP).

The protections included in this document are established by the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), 20 U.S.C. §1400 *et seq.*, and the following chapters of COMAR: COMAR 13A.05.01, COMAR 13A.08.03, and COMAR 13A.13.01. Each public agency shall establish, maintain, and implement procedural safeguards that meet the requirements of IDEA 2004. A public agency is the agency responsible for providing IFSP or IEP services to the child.

## **IEP Process**

### **Understanding the Evaluation, Eligibility, and Individualized Education Program (IEP) Process in Maryland**

This guide to understanding the evaluation, eligibility, and IEP processes in Maryland was developed by the MSDE to help parents better understand a child's rights, parental rights and responsibilities, and the school's responsibilities to meet the special needs of the child. This guide includes a description of the Child Find, evaluation, eligibility determination, and IEP processes.

<http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/22211/UnderstandingtheIEP.pdf>

### **Access to Education for Children in State Supervised Care**

Educational stability is essential to educational achievement for foster children. Children in foster care are among the most vulnerable children in the nation. The State Department of Human Resources and Maryland Department of Education have designed the Access to Education for Children in State-Supervised Care handbook for professionals working in Maryland child welfare and educational systems. The handbook will help child welfare workers and school staff to minimize common barriers to success in school for foster children.

[http://www.family.umaryland.edu/ryc\\_education\\_and\\_training/ast\\_cwa\\_files/Access%20to%20Education%20Handbook.pdf](http://www.family.umaryland.edu/ryc_education_and_training/ast_cwa_files/Access%20to%20Education%20Handbook.pdf)