



Surrogate Parents Under the Individuals with Disabilities Education Act (IDEA): Key Concepts and Implementation Checklists

I. Key Concepts

Who is a “surrogate parent”? A “surrogate parent” is someone appointed by the Area Education Agency (AEA) whenever a child, who is or may be eligible for services under the IDEA, does not have parent to make important decisions about that child’s special education (Part B) or Early ACCESS (Part C) identification, eligibility, placement, or services.

When will the AEA consider appointing a surrogate parent? The AEA will consider appointing a surrogate parent in any of these circumstances:

1. No parent of the child can be identified.
2. No parent for the child can be located, with reasonable efforts.
3. The child is a “ward of the state” (e.g., in foster care, in the custody of the Department of Human Services).
4. The child is an “unaccompanied homeless youth” under the McKinney-Vento Homeless Assistance Act [Part B only].

What are some inappropriate reasons for considering appointment of a surrogate? If a parent can be identified or located, then no surrogate parent is necessary. The following are not allowable reasons for considering appointment of a surrogate parent, because the parent’s location is known in all of these circumstances:

- “The parent is in prison.”
- “The parent works during the day, and cannot make it to team meetings.”
- “The parent is on an overseas military deployment.”
 - For parents who are not able to be personally present at meetings (prison, work schedule, overseas deployment), public agencies are to be flexible and accommodating of parent circumstances, including offering meetings by telephone or video conferences.
- “The parent does not speak English.”
 - For parents who do not speak English, the law requires meetings to be in the parent’s native language unless clearly not feasible to do. The law forbids appointing a surrogate for this reason.

What does an AEA do when it decides that a child might need a surrogate parent? When it determines a child needs a surrogate parent, the AEA appoints a surrogate parent.

Note: For children in Early ACCESS (IDEA Part C) who are wards of the state (e.g., in foster care), the AEA must consult with the Department of Human Services (DHS) before appointing a surrogate parent.

A child who is suspected of needing a surrogate parent must need a surrogate parent before one is appointed. If there is no need, do not appoint a surrogate.

Example 1: The whereabouts of a child’s biological parents are unknown; however, the child lives with an aunt, who is acting in place of the child’s parents. The aunt is a parent under the IDEA. The child does not need a surrogate parent.

Example 2: The child is involved in foster care and is a “ward of the state.” The court placed the child with a grandmother. No surrogate parent is required.

Who is a parent under the IDEA? Under the IDEA, a “parent” is any of the following.

1. The child’s biological or adoptive parent.
2. The child’s foster parent [but see next question].

3. The child's guardian [but not DHS if the child is a "ward of the state"].
4. Another adult acting in the place of the child's biological or adoptive parent, such as a grandparent, stepparent, or other relative. [Note: No "formal" guardianship is required.]
5. The child's surrogate parent.

May foster parents act as parents under the IDEA? The IDEA includes foster parents in its definition of "parent" unless state law provides foster parents may not act as parents, which Iowa law does. In Iowa, foster parents are not parents under the IDEA; however, foster parents who meet another IDEA definition of parent can serve as a parent under the IDEA (such as a kinship foster care placement). Additionally, foster parents can be appointed as surrogate parents, if they otherwise qualify.

Who may be a "surrogate parent"? A surrogate parent ...

1. Must not be an employee of the Iowa Department of Education, an AEA, a school district, DHS, or any other public or private agency involved in the education or care of the child,
2. Must have no personal or professional interest that conflicts with the interests of the child, and
3. Must have knowledge and skill to adequately represent the child.

Special case: when may a court appoint a surrogate parent? If a child is a "ward of the state" (e.g., in foster care), and needs a surrogate parent, then the child's juvenile court judge may appoint a surrogate parent for the child.

Notes: (1) If the child already has a surrogate parent, the court cannot replace the surrogate parent. (2) The court cannot appoint a DHS worker as the child's surrogate parent (or anyone else who is an employee of the Department of Education, an AEA, a school district, or any other public or private agency that is involved in the child's care or education). (3) The second and third requirements for AEA-appointed surrogate parents (no conflict of interest; knowledge and skill) do not apply to court-appointed surrogate parents; however, the United States Department of Education expects that courts would appoint surrogate parents who met those two requirements.

Special rule: who may act as a surrogate parent for an "unaccompanied homeless youth"? For an "unaccompanied homeless youth," the law allows "appropriate staff" of emergency shelters, independent living centers, transitional shelters, and street outreach programs to act TEMPORARILY as surrogate parents until permanent surrogate parents are appointed. This applies to Part B only. Here is the legal definition of "unaccompanied homeless youth."

(2) The term "homeless children and youths"—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and

(B) includes—

(i) children and youths who are 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;

(ii) children and youths who have 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 (within the meaning of section 11302 (a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

(6) The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

42 U.S.C. § 11434a(2), (6).

May a court or AEA appoint a child's guardian ad litem as a surrogate parent? A guardian ad litem (GAL) is appointed by the court to represent the child's interests in a juvenile law or family law case. There is nothing that would prevent either an AEA or a juvenile court judge from appointing a child's GAL as the child's surrogate parent, assuming the GAL otherwise qualifies.

Note: Even if the GAL is not the child's surrogate parent under the IDEA, the GAL is considered a parent for FERPA purposes.

What is the role of a DHS worker in making special education decisions for a student? DHS workers cannot make special education decisions under the IDEA. Please inform the DHS worker and, if necessary, contact supervisory personnel at DHS or the Department of Education.

Note: Even if the DHS worker is not the child's IDEA decision-maker, the worker may still have access to the child's records under FERPA.

II. Qualifications and Duties

What are a surrogate parent's powers and duties? A surrogate parent is a child's parent under the IDEA. The surrogate parent may act on behalf of the child in all situations where the IDEA requires or permits a parent to act.

- identification
- evaluation
- placement
- provision of a free appropriate public education (FAPE) (Part B) or Early ACCESS services (Part C)

What are some examples of what a surrogate parent may do? The IDEA provides many rights and responsibilities to parents, all of which surrogate parents may exercise. The following is a non-exhaustive list of those rights and responsibilities.

- Request an initial evaluation or reevaluation;
- Grant, withhold, or revoke consent for an evaluation;
- Grant, withhold, or revoke consent for special education services;
- Participate in IEP or IFSP Team meetings, placement meetings, and manifestation determination meetings;
- Receive all documents required under the IDEA (procedural safeguards notices, meeting notices, evaluation reports, prior written notices, IEPs, IFSPs, etc.);
- Request an independent educational evaluation under Part B;
- Exercise all rights that parents have under FERPA and the IDEA regarding records (inspect-and-review, receive explanations of records, request corrections of records, grant or withhold consent to records releases);
- Request a mediation, file a state complaint, or file a due process complaint;
- Sign a legally binding agreement at a mediation session or a resolution session; and
- Challenge a due process complaint decision by filing a civil action in state or federal district court.

What does it mean to have “no personal or professional interest that conflicts with the interests of the child”? The surrogate parent must act in the child's interests, not in the interest of the surrogate parent. A surrogate parent's personal or professional beliefs, interests, or affiliations must yield to serving and representing the interest of the child.

Example 1: A surrogate parent for a child with autism is an officer of advocacy organization that advances a specific teaching methodology for children with autism, and is an employee of a clinic where that method is employed (although the child is not a client at that clinic). The surrogate parent insists that the IEP Team adopt that teaching method for the child and refuses to consider alternatives, even though the child's present performance levels would suggest other methods might be suitable (or superior) as well. This surrogate parent is putting her own interests first.

Example 2: A surrogate parent for a toddler who is deaf is a retired AEA school psychologist. Even though the surrogate parent has many friends who are still employed by the AEA, the surrogate parent painstakingly reviews data and thoroughly questions the AEA representative at IFSP Team meetings. This surrogate parent is acting properly by not subordinating the child's interests to the surrogate parent's personal and professional relationships.

What does it mean to have “knowledge and skill to adequately represent the child”? A surrogate parent must know about the child, the child's disability, how that disability affects the child's educational performance, what type of goals will challenge the child, and what type of instruction and services will allow the child to make educational progress. A surrogate parent must also know about special education and the rights and responsibilities provided to

parents under the IDEA, including the IDEA’s procedural safeguards. A surrogate parent acquires that skill by doing these activities:

- Becoming familiar with the IDEA and procedural safeguards, such as by
 - Reviewing the procedural safeguards manual;
 - Reviewing information from the Iowa Department of Education and United States Department of Education on specific topics (IEPs and IFSPs, discipline, parent rights), specific services, and specific types of need caused by a disability;
 - Reviewing AEA information on special education (discipline-specific or disability-specific information, Family Educator Partnership, etc.); and
 - Reviewing other resources to assist parents (e.g., ASK Resource Center, Disability Rights Iowa, etc.).
- Reviewing documents about the child, such as
 - AEA evaluation reports;
 - Other evaluation reports;
 - IEPs and IFSPs (past, current, and proposed);
 - Prior written notices;
 - Other school records (report cards, honors and awards, disciplinary records); and
 - Other records about the child (medical records, court records).
- Gathering information about the child, such as by
 - Speaking with the child;
 - Speaking with people important to the child (the child’s siblings, the child’s friends, etc.);
 - Speaking with other adults who serve the child (the child’s teachers, the child’s DHS worker, the child’s medical providers, the child’s foster parent, persons involved in any court case involving the child (attorney, court-appointed special advocate, GAL), etc.); and
 - Requesting additional information about the child (a reevaluation, an independent evaluation, a functional assessment of behavior, etc.) if the surrogate parent deems additional information necessary.

Seeking any means to improve the surrogate parent’s knowledge and skill, such as by joining a parent support group or speaking with other surrogate parents.

III. Sample Checklist: Qualifications and Training for Surrogate Parents

An AEA may consider using the following sample checklist to determine whether surrogate parents appointed by the AEA have required qualifications, training and experience.

Requirement	Met? Yes/No	<ul style="list-style-type: none"> • If yes: Evidence of Meeting Requirement • If no: Action Needed to Meet Requirement
Not an AEA, LEA, DE, or Other Agency Employee?		[E.g., check of payroll, evidence of separation from employment]
No Personal Conflict		[E.g., assurance, declaration of specific issues in which individual should not be assigned as surrogate parent]
No Professional Conflict		[E.g., assurance, declaration of specific issues in which individual should not be assigned as surrogate parent]
Knowledge to Adequately Represent Child		[E.g., knowledge of child’s educational performance, knowledge of the child’s disability]
Skill to Adequately Represent the Child		[E.g., professional development on special education procedures, available resources]

Iowa Department of Education guidance should be viewed as advisory unless it is specifically authorized by state statute, according to Iowa Code section 256.9A, as enacted by Senate File 475. This does not apply to administrative rules, declaratory orders, or materials required by federal law or courts.

IV. Sample Case Checklist for Surrogate Parents

The following sample checklist may be useful to surrogate parents in preparing to represent a child's interests.

Question	Answer/Action Plan
Name of the child	
Next meeting	
Have I spoken with the child and important people in the child's life?	
Have I reviewed documents related to the child?	
Am I missing any expected documents?	
Issues at next meeting	
Child's current educational performance, placement	
Desired outcome for the child	
Potential means to achieve the desired outcome	
What will I do if I disagree with the decision about the child's evaluation, placement, or provision of FAPE/Early ACCESS services or other decision?	
Additional sources of information	

V. References

- Individuals with Disabilities Education Act regulations (Part B), 34 C.F.R. §§ 300.19, 300.30, 300.45, 300.519 (2017)
- Individuals with Disabilities Education Act regulations (Part C), 34 C.F.R. §§ 300.17, 300.27, 300.422 (2017)
- Iowa Administrative Rules of Special Education (Part B), Iowa Administrative Code rr. 281—41.19, 281—41.30, 281—41.45, 281—41.519 (2017)
- Iowa Administrative Rules for Early ACCESS (Part C), Iowa Administrative Code rr. 281—120.17, 281—120.27, 281—120.422 (2017)
- United States Department of Education Guidance Document on the Uninterrupted Scholars Act, an amendment to FERPA allowing child welfare workers to have access to FERPA-covered student records (May 2014): <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>
- Joint Guidance Document from the Iowa Department of Education and the Iowa Department of Human Services on Decision-making for Children with Disabilities in Foster Care (August 2011): <https://www.educateiowa.gov/sites/files/ed/documents/Decision-Making%20for%20Children%20with%20Disabilities%20in%20Foster%20Care.pdf>
- Iowa Department of Education Early ACCESS web page: <https://educateiowa.gov/pk-12/early-childhood/early-access>
- Iowa Department of Education IEP web page: <https://www.educateiowa.gov/pk-12/special-education/iowas-guidance-quality-individualized-education-programs-ieps>
- Iowa Department of Education Special Education Dispute Resolution web page: <https://www.educateiowa.gov/pk-12/special-education/dispute-resolution>
- Iowa Department of Education Special Education Parent Information web page: <https://www.educateiowa.gov/pk-12/special-education/parent-information>
- Iowa Department of Education Special Education State Guidance web page: <https://www.educateiowa.gov/pk-12/special-education/special-education-state-guidance>
- In re Access to Student Records by Guardians ad Litem*, 26 D.o.E. App. Dec. 250 (2012), available at <https://www.educateiowa.gov/sites/files/ed/documents/book26dec250.pdf>