

# FLORIDA DEPARTMENT OF EDUCATION



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## Technical Assistance Paper

### Surrogate Parents for Exceptional Students

#### Summary:

This technical assistance paper (TAP) reflects the updated requirements of the Individuals with Disabilities Act of 2004 (IDEA 2004) with regard to surrogate parent eligibility and requirements and student rights. Exceptional students—students with disabilities as well as students who are gifted—without a parent or guardian who can act in their educational interests have the right to have a surrogate parent appointed to do so. This TAP outlines the eligibility requirements and duties of surrogate parents and describes the responsibilities of school districts to recruit, train, appoint, and terminate the appointment of surrogate parents.

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## **Background**

### **A-1. What rights do parents of exceptional students have?**

The parents of exceptional students have specific roles and rights throughout the exceptional student education (ESE) process. These rights are afforded by the Individuals with Disabilities Education Act of 2004 and other federal laws and by the statutes and rules of the state of Florida. Parental rights include the right to be notified of certain actions the district has taken or proposes to take; the right to give or withhold consent for certain actions the district proposes to take; the right to participate in educational meetings and decisions; and the right to review the educational records of their child. Parents also have procedural safeguards that allow them to request mediation, file a formal written complaint, or request a due process hearing.

### **A-2. What rights do exceptional students have to ensure their representation in the ESE process?**

The ESE process provides many opportunities for parent participation; in fact, there are certain times during the process when parent participation is required. A student who does not have a parent or guardian to represent his or her interests in the ESE process and make educational decisions for the student has the right to have a surrogate parent appointed to fulfill these responsibilities.

### **A-3. What responsibility does the school district have to ensure that exceptional students are represented in the ESE process?**

School districts have the responsibility to determine which students need a surrogate parent who would be able to adequately represent the students' interests throughout the ESE process. In addition, it is the responsibility of school districts to recruit, train, and appoint qualified surrogate parents to meet that need.

## **Definitions and Explanations**

### **B-1. How does Florida law define “parent”?**

Section 1000.21 (5), Florida Statutes (F.S.), defines “parent” as “either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.”

### **B-2. How does the Individuals with Disabilities Education Act of 2004 (IDEA 2004) define “parent”?**

Section 602 (23) of IDEA 2004 defines “parent” as “(A) a natural, adoptive or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); (B) a guardian (but not the State if the child is a ward of the State); (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or (D) except as used in sections 615 (b)(2) and 639 (a)(5), an individual assigned under either of those sections to be a surrogate parent.”

### **B-3. What is a surrogate parent?**

A surrogate parent is a person who has been appointed to represent the educational interests of an exceptional student who does not have a parent or guardian who can act in his or her interests.

### **B-4. Does the right to have a surrogate parent apply to students with disabilities *and* students who are gifted?**

Yes. The Individuals with Disabilities Education Act of 2004 gives students with disabilities the right to have a surrogate parent appointed. However, Florida’s State Board of Education rules extend this right to *exceptional students*, which in Florida includes students with disabilities *and* students who are gifted.

## **Surrogate Parent Qualifications**

### **C-1. What are the minimum qualifications of a surrogate parent?**

The following are the minimum qualifications of a surrogate parent:

- An individual over 18 years of age who is a citizen of the United States and a resident of the state of Florida
- A non-employee of the local school board or other public or private agency involved in the education or care of the child
- Knowledge, skills, and experience demonstrated by successful completion of training to ensure adequate representation of the child
- No interest that conflicts with the interest of the child whom the surrogate represents
- Appropriately trained using materials developed and/or approved by the Bureau of Exceptional Education and Student Services (Rule 6A-60333(1), Florida Administrative Code [FAC.]

### **C-2. What constitutes a conflict of interest?**

A qualified applicant for surrogate parent may not be an employee of either the local school board or a public or private agency involved in the education or care of the child. Beyond the non-employee qualification, an otherwise qualified surrogate parent should have no interest that conflicts with the interest of the child represented. An individual would have a conflict of interest if he or she holds a position that might restrict or bias the ability to advocate for all the services required to ensure a free appropriate public education for the child represented. Individuals could also have a conflict of interest in being appointed as surrogate for a child if they are also responsible for other children who may have competing interests with the same public agencies. (Rule 6A-6.0333 (1)(b), FAC.)

### **C-3. Can an individual appointed as a “guardian ad litem” serve as a surrogate parent?**

Yes. The purpose of the Florida Guardian ad Litem Program is to advocate for the best interests of children who have allegedly been abused, neglected, or abandoned and who are involved in court proceedings. Guardian ad litem appointees are volunteers, and if they meet the legal criteria listed in question B-1, they may serve as surrogate parents. (Section 615(b)(2) of IDEA 2004, and Rule 6A-6.0333, FAC.)

### **C-4. Are there any exceptions to the eligibility requirements for surrogate parents?**

Appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents for children who are unaccompanied homeless youth. Such appointments are temporary—until a surrogate parent who meets all of the requirements can be appointed.

## **Surrogate Parent Responsibilities and Rights**

### **D-1. What are the duties of a surrogate parent?**

A surrogate parent is expected to:

- Attend training sessions
- Become familiar with the district's procedures for providing services to exceptional students
- Meet the student
- Meet the student's teacher(s) and others who work with the student
- Observe the student's school day
- Become familiar with the student's background, abilities, and disabilities
- Participate in individual educational plan (IEP), educational plan (EP), academic improvement plan (AIP), individual family service plan (IFSP), and other educational meetings regarding the student
- Help to make decisions about the student's education
- Give or withhold consent for actions proposed by the district, as appropriate
- Ask the school to take actions related to the student's education
- Understand all procedural safeguards available and invoke them as appropriate

### **D-2. What duties are *not* part of a surrogate parent's responsibilities?**

The responsibilities of a surrogate parent are limited to matters relating to the provision of a free appropriate public education for a student. The following areas are specifically excluded from the purview of the surrogate parent: care, maintenance, custody, residential placement, and identification and evaluation activities not relating specifically to special education. (Rule 6A-6.0333(4), FAC.)

### **D-3. What is the extent of liability of a surrogate parent?**

A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child. (Rule 6A-6.0333(6), FAC.) Any specific questions regarding liability should be addressed to the school board attorney.

### **D-4. What are the rights of a surrogate parent in the exceptional student education (ESE) process?**

A surrogate parent of a student with disabilities has the same rights as any parent of a student with disabilities. This includes the rights to receive notice, to participate, and to give consent, as required under IDEA 2004 and the laws of the state of Florida. A surrogate parent of a student with disabilities has the same procedural safeguards given to the parent of a student with disabilities under IDEA 2004, including the rights to participate in mediation, file a formal written complaint, or request a due process hearing. The surrogate parent of a student who is gifted has the same rights and procedural safeguards as any parent of a gifted student under the laws of Florida.

### **D-5. What is the surrogate parent's right of access to educational records?**

The surrogate parent has the same right to review educational records as parents have. This includes all records regarding the student to which school administrators and teachers have access. Just like any parent, surrogate parents must protect the confidentiality of educational records.

**D-6. Can a surrogate parent sign for field trip permission, release of records, and photographic release for an exceptional student whom the surrogate parent represents?**

Yes. A surrogate parent acts in the place of a parent in all matters pertaining to the provision of a free appropriate public education to the student. The surrogate parent provides written permission when field trips, release of records, photographs, etc., are determined by the surrogate parent to be an appropriate part of the student's educational program.

**D-7. Does an exceptional student need a surrogate parent after turning 18 years of age?**

No. When the student reaches the age of majority as described in Section 615(m) of IDEA 2004, the student is no longer legally required to have surrogate parent representation in educational matters. In Florida, the age of majority is 18 years of age. At that time, parental rights in the ESE process transfer to the student. However, if a student with a disability has been determined to be incompetent under state law to make educational decisions, and parental rights have therefore not transferred to the student, the provision of a surrogate may be extended at the district's discretion.



## **Circumstances Requiring the Appointment of a Surrogate Parent**

### **E-1. Which students need surrogate parents?**

A student receiving services for exceptional student education (ESE)—or a student who is suspected of needing ESE services—needs a surrogate parent under the following circumstances: when the natural parent or guardian is unknown or the whereabouts of the natural parent or guardian cannot be determined; the child is a ward of the state or ward of the court under the laws of the state of Florida; or the child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

### **E-2. What procedures are used to determine the need for a surrogate parent?**

The district's efforts to determine a parent's identity or whereabouts should include inquiry with other agencies that may have had contact with the child, certified letters, and home visits and telephone calls. These efforts should be documented in writing. Once the district has exhausted all efforts to determine the identity or whereabouts of a parent or guardian, the district may appoint a surrogate parent.

All public schools require parents or guardians to register their children for school. The registration form typically requests information about the guardianship status of the child, persons who have legal parental rights over the child, and persons with whom the child resides. Therefore, this document is a good starting place for school staff as they seek to identify exceptional students who may need surrogate parents.

### **E-3. Must school districts and contracted agencies have in place methods for determining whether a child is in need of a surrogate parent?**

Yes. The district "Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students" document (SP & P) indicates that a method must be in place to assist with the identification of students in need of a surrogate parent. Since this requirement does not contradict IDEA 2004, it remains in effect at this time.

The methods may involve the training of school-based personnel to review new students' school registration forms for indications of potential need for a surrogate. For example, if a social service agency caseworker registers a student at a new school, or if the school registration form indicates that the student does not live with his or her legal parents, these facts may lead school personnel to investigate the child's need for a surrogate parent.

### **E-4. Do exceptional students who live with grandparents or other relatives need surrogate parents?**

No. Children who live with grandparents or other relatives may be represented in educational matters by these persons. Surrogate parents are not required in these cases.

**E-5. Do exceptional students who live with foster parents need surrogate parents?**

No. The foster parent meets the definition of “parent” in Section 1000.21(5), F.S., as a “person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent.” A foster parent is not considered an agency employee solely because he or she receives payment for a child cared for in the foster home. Foster parents serve as “parents” to students with disabilities in educational matters. If a child lives with a foster parent who is also an employee of the school district, the foster parent continues to represent the child’s educational interest as a parent; no surrogate parent is required.

However, if the foster parent does not have an “ongoing, long-term parental relationship” with the child, or is unwilling or unable to represent the child’s educational interests, the district or the Department of Education (DOE) contract designee may need to appoint a surrogate parent to do so.

The determination regarding the nature of the relationship between the child and the foster parent must be made using school personnel’s best professional judgment. For example, if the child has resided with the foster parent for a very short time, or if the district has knowledge that the foster parent has not demonstrated an interest in the child’s education, it may be in the best interest of the child that a surrogate parent be appointed. It is recommended that the information that school personnel relied upon to make this determination be documented in the appropriate file.

Note: If a foster child’s natural parent (or guardian) is available and a court has not prohibited the natural parent’s (or guardian’s) right to have contact with and make educational decisions for the child, the natural parent (or guardian) continues to represent the child in educational decisions.

See appendix A for details.

**E-6. Do exceptional students who live in residential facilities other than foster homes need surrogate parents?**

Yes, unless the student’s parent or guardian has retained the right to make educational decisions. Operators and staff of residential facilities—other than foster homes—may not serve as a surrogate parent due to the requirement that surrogate parents have no interest that conflicts with the interest of the child represented. This would include any persons who are considered employees of the facilities or community homes and who are paid a wage in exchange for the care they provide the children. (Rule 6A-6.0333(1)(d), FAC.)

See appendix A for details.

## **Appointment and Oversight of Surrogate Parents**

### **F-1. How soon must the district appoint a surrogate parent?**

IDEA 2004 requires that the state make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after there is a determination by the agency that the child needs a surrogate. (Section 615(b)(2)(B))

### **F-2. Who appoints surrogate parents for students receiving ESE services in local school districts?**

The district school superintendent appoints surrogate parents for students receiving ESE services in the local school district and for students in local school districts who are suspected of needing ESE services. The superintendent also appoints surrogate parents for students enrolled in private schools under contract with the district. (Rule 6A-6.0333(2), FAC.)

### **F-3. Who appoints surrogate parents for students receiving ESE services from agencies under contract with the DOE?**

Surrogate parents for students who are eligible for or who are suspected of being eligible for ESE services provided through a contract from the DOE shall be appointed by the individual specified in the contract. Each contract specifies the position of the individual who is responsible for the appointment of surrogate parents for students with disabilities who are enrolled in the contracted program. (Rule 6A-6.0333(2)(a), FAC.)

### **F-4. Must the superintendent or the DOE contract designee directly appoint a surrogate parent for each specific student?**

The superintendent or DOE contract designee may directly appoint a specific surrogate parent to each individual student who needs one. Alternatively, the superintendent or the DOE contract designee may approve the appointment of qualified individuals as surrogate parents and then allow ESE staff to assign each surrogate parent to a specific student at a later date as the need arises.

### **F-5. If a surrogate parent is appointed for a student in a Department of Children and Families contracted program or the Florida School for the Deaf and the Blind and the student transfers to a local school district program, can the surrogate parent continue to represent the student?**

Yes. As long as the superintendent determines that the surrogate parent adequately represents the student, the surrogate parent may continue in the appointment.

**F-6. May a school district pay surrogate parents for representing students?**

Yes. Compensation of surrogate parents is permissible. A surrogate parent is not considered an employee of the district solely because the surrogate is paid by the district to represent the child. (Rule 6A-6.0333(7), FAC.)

**F-7. How should a surrogate parent be matched to a student?**

To the extent possible, a surrogate parent should be matched so that he or she is able to understand and speak the language of the child and is familiar with the child’s cultural background.

**F-8. May a surrogate parent represent more than one student?**

Yes. The number of students represented by a surrogate parent is a decision made by the district based on the surrogate parent’s interest, ability, and availability.

**F-9. Who provides oversight for surrogate parents?**

Each district superintendent or DOE contract designee must provide oversight of surrogate parents to ensure that the surrogate parent adequately represents the child. (Rule 6A-6.0333(2)(b), FAC.)

**F-10. Are surrogate parent applications forms required?**

Developing procedures for recruiting and maintaining certain information about surrogate parents is the responsibility of the school district. An application form is not required; however, districts may develop such forms to collect basic demographic and interest information on potential surrogate parents. Sample forms are available from the Bureau of Exceptional Education and Student Services. It is required that the appointment of a surrogate parent be documented in writing. (Rule 6A-6.0333(2)(c), FAC.)

**F-11. What personal reference and background checks should be done on surrogate parent applicants?**

The Jessica Lunsford Act resulted in the amendment of Florida Statute 1012.465. It requires Level 2 screening for personnel “who are permitted access on school grounds when students are present or have direct contact with students or who have access to or control of school funds” and “who are school district employees or contractual personnel.” The Level 2 background screening is a process of the Florida Department of Law Enforcement (FDLE) and includes background and fingerprint checks against state and national databases. Level 2 screening is required for those surrogate parents who are compensated financially for their services.

Level 2 screening is not required for surrogate parents who are volunteers. To screen surrogate parents who are volunteers (as defined by Section 1012.01(5), F.S.), the district must conduct reference and background checks that conform to those procedures established for school volunteers who are assigned responsibilities pertaining to the welfare of pupils. Districts may also require additional background or reference checks.

**F-12. In addition to ensuring that eligible students have surrogate parents, what are a school district's responsibilities regarding surrogate parents?**

A school district is responsible for ensuring that:

- The surrogate parent's background has been properly checked.
- The surrogate parent has been properly trained.
- The surrogate parent is familiar with ESE procedures and requirements.
- The surrogate parent actively participates in the special education decision-making process.
- The surrogate parent is actively involved in the student's educational program.

## **Recruitment and Training**

### **G-1. Who is responsible for the recruitment and training of surrogate parents?**

The responsibility for the recruitment, training, and assignment of a surrogate parent rests with the school district. Recruitment may be done by anyone who has an understanding of the purpose of surrogate parents and the ability to establish contacts within the community. This may include public information officers, volunteer coordinators, school principals, and ESE administrative staff. These recruiters should be able to describe the need for surrogate parents and target interested persons. (Rule 6A-6.0333(2), FAC.)

Surrogate parents may be recruited and trained by Florida Diagnostic and Learning Resources System (FDLRS) staff, district ESE staff, or other persons designated by the district. The persons who conduct the training of surrogate parents must be familiar with the referral, evaluation, staffing, and program planning aspects of ESE programs, including the rights and responsibilities of surrogate parents.

### **G-2. What are typical sources of surrogate parent applicants?**

Civic organizations and service clubs, retired citizens' organizations, ministerial associations, churches, parent-teacher organizations, universities, community colleges, child care organizations, and members of advocacy or professional special education organizations may have members who are interested in serving as surrogate parents. Recruitment may also be accomplished through television and radio public service announcements and printed brochures. A parent or relative of an exceptional student who is enrolled in the district's program may be willing to serve as a surrogate for another student.

### **G-3. How often should surrogate parent training be made available?**

The district's need for surrogate parents determines how often the district should make training available. Students should not be left without assigned surrogate parents due to failure to recruit or train applicants.

### **G-4. What are recommended training topics for surrogate parents?**

Training topics should include the following:

- Introduction to the surrogate parent program
- Overview of exceptionalities
- Exceptional student education in Florida
- Exceptional student education evaluation, identification, and eligibility and the provision of a free appropriate public education
- Individual educational plan (IEP) process
- Procedural safeguards
- Confidentiality of student records (including the provisions of the Federal Educational Rights and Privacy Act)
- Information and assistance available to surrogate parents

## **Termination**

### **H-1. What is the duration of the surrogate parent appointment?**

Rule 6A-6.0333(2)(b), FAC., provides for a surrogate parent to continue in the appointed role until one of the following circumstances occurs:

- The child is determined to be no longer eligible for or in need of special education programs, except when termination of programs is being contested.
- The legal guardianship of the child is assigned to a person who is able to assume the role of the parent.
- The parent who was previously unknown becomes known, or the whereabouts of the parents that were previously undiscovered are discovered.
- The child reaches the age of majority as described in Section 615(m) of IDEA 2004 and is no longer in need of a surrogate parent to represent him or her in educational matters.

A different surrogate parent would be appointed in any of the following circumstances:

- The appointed surrogate parent no longer wishes to represent, or is unable to represent, the child.
- The superintendent or DOE contract designee determines that the appointed surrogate no longer adequately represents the child.
- The child moves to a geographic location that is no longer reasonably accessible to the appointed surrogate.

### **H-2. When is a surrogate parent no longer adequately representing a student?**

A surrogate parent who does not attend educational meetings or does not respond to correspondence from the district regarding the student would not represent the student adequately. District ESE staff must document the surrogate's involvement and keep the superintendent apprised of any non-involvement by the surrogate parent.

### **H-3. How is a surrogate parent appointment terminated?**

The termination of a surrogate parent appointment may occur as a result of any of the circumstances listed in the response to question H-1. A notice of termination must be issued in writing from the superintendent or Department of Education contract designee. The notice must include the reason(s) for the termination. If a surrogate requests termination, the request must also be in writing and list the reason(s) for the request. The superintendent, DOE contract designee, or surrogate parent may request a hearing under Chapter 120, F.S., regarding the termination.

## Appendix A

### Department of Juvenile Justice Commitment Programs

#### Low-risk Program Models

<i>Name of Residential Setting</i>	<i>Range or Number of Clients</i>	<i>Is a Surrogate Parent Required?</i>
Family Home	1–3 Youths	No. Foster parent serves as the parent.
Group Treatment Home	9–15 Youths	Yes
Short-term Wilderness Program	15–25 Youths	Yes

#### Moderate-risk Program Models

Dual Diagnosis Program	10–30 Youths	Yes
Short-term Outdoor Expedition Program	20–40 Youths	Yes
Halfway House	25–50 Youths	Yes
Long-term Therapeutic Wilderness Camp	30–50 Emotionally Disturbed Youths	Yes
Intensive Vocational Work Program	15–30 Youths	Yes
Wilderness Camp	30 Youths	Yes
Youth Academy	50 or More Youths	Yes

#### High-risk Program Models

Serious or Habitual Offender Program	No More Than 25 Youths	Yes
Intensive Residential Treatment for Offenders Younger Than 13 Years	25 Youths	Yes
Developmentally Disabled Offender Program	15–25 Youths	Yes
Sex Offender Program	30–60 Youths	Yes
Intensive Halfway House	20–40 Youths	Yes
Clinical Program	20–35 Youths	Yes
Training School/Youth Development Center	100 or More Youths	Yes
Maximum-risk Program	25 or More Youths	Yes



## Appendix A, continued

### Department of Children and Families

<i>Name of Residential Setting</i>	<i>Range or Number of Clients</i>	<i>Is a Surrogate Parent Required?</i>
Family Foster Home	1–5 Children, Including Family’s Own Children	No
• Therapeutic Foster Home	1–2 Children	No
• Individual Residential Treatment Family Home	1 Child	No
Foster Family Group Home	No More Than 5 Youths	No

### Department of Children and Families

<i>Name of Residential Setting</i>	<i>Range or Number of Clients</i>	<i>Is a Surrogate Parent Required?</i>
State Correctional Institution	Varies	No. All inmates are treated as adults regardless of age.

## **Appendix B**

### **Individuals with Disabilities Education Act of 2004 (IDEA 2004)**

#### **SEC. 615(b)(2)**

- (A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of--
- (i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and
  - (ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.
- (B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

## Appendix C

### IDEA 2004 Federal Regulations

§ 300.519 Surrogate parents.

- (a) General. Each public agency must ensure that the rights of a child are protected when—
  - (1) No parent (as defined in §300.30) can be identified;
  - (2) The public agency, after reasonable efforts, cannot locate a parent;
  - (3) The child is a ward of the State under the laws of that State; or
  - (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).
- (b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—
  - (1) For determining whether a child needs a surrogate parent; and
  - (2) For assigning a surrogate parent to the child.
- (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) Criteria for selection of surrogate parents.
  - (1) The public agency may select a surrogate parent in any way permitted under State law.
  - (2) Public agencies must ensure that a person selected as a surrogate parent—
    - (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
    - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
    - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) Surrogate parent responsibilities. The surrogate parent may represent the 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.
- (h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))

## **Appendix D**

### **Section 1000.21 Florida Statutes**

#### **Systemwide Definitions**

- (5) “Parent” is either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.

## Appendix E

### Florida State Board of Education Rule 6A-6.0333, Florida Administrative Code (FAC.)

#### Surrogate Parents.

This rule is adopted to implement the requirements of Section 1415(b)(1)(B), 20 USC and Regulation 300.514, CFR. A surrogate parent is an individual appointed to act in the place of a parent in safeguarding a child's rights in the special education decision-making process, when the child's parent, after diligent inquiry, remains unknown, or the child is a ward of the state or court, or the whereabouts of a parent cannot be discovered, and when the child is an exceptional student or is suspected of being an exceptional student. A "parent" shall mean any person meeting the definition described in Section 1000.21(5), Florida Statutes.

**(1) Minimum qualifications of a surrogate parent.** The person qualified as a surrogate parent shall at a minimum:

- (a) Be a citizen of the United States, a resident of the State of Florida and above the age of eighteen (18);
- (b) Be a non-employee of the local school board or other public or private agency involved in the education or care of the child;
- (c) Have knowledge, skills and experience through successfully completed training to ensure adequate representation of the child;
- (d) Have no interest which conflicts with the interest of the child whom the surrogate represents; and
- (e) Be appropriately trained utilizing training materials developed and approved by the Division of Public Schools.

**(2) Appointment of surrogate parent.**

- (a) Surrogate parents for students who are eligible for or who are suspected of being eligible for special programs made available through a local school board or agency under contract with the local school board shall be appointed by the district school superintendent. Surrogate parents for students who are eligible for or who are suspected of being eligible for special programs made available through a contract from the Department of Education shall be appointed by the individual specified in the contract.
- (b) The surrogate parent shall continue in the appointed role until one of the following circumstances occurs:
  1. The child is determined to no longer be eligible or in need of special programs, except when termination of special programs is being contested;
  2. The legal guardianship for the child is assigned to a person who is able to carry out the role of the parent;
  3. The parent, who was previously unknown becomes known; or the whereabouts of a parent which was previously undiscovered, is discovered;
  4. The appointed surrogate parent no longer wishes to represent or is unable to represent the child;
  5. The superintendent or Department of Education contract designee determines that the appointed surrogate parent no longer adequately represents the child; or
  6. The child moves to a geographic location which is not reasonably accessible to the appointed surrogate.

- (c) The appointments and termination of appointments of surrogate parents shall be in writing. Terminations initiated by the superintendent, or Department of Education contract designee, or request for termination initiated by the surrogate shall list the reasons for such request.
  - (d) Either party may request a hearing under Chapter 120, Florida Statutes, regarding the termination of a surrogate.
  - (e) Nothing in this rule shall prohibit the continuance of a surrogate parent appointment when the child's support for an educational placement moves among and between public and private agencies.
- (3) Responsibilities of a surrogate parent.** The person appointed as a surrogate parent shall:
- (a) Become acquainted with the child and be knowledgeable about his or her handicapping condition and educational needs;
  - (b) Represent the child in all matters relating to the identification, evaluation, and educational placement of the child;
  - (c) Represent the interests and safeguard the rights of the child in educational decisions which affect the child; and
  - (d) Represent the child in all matters relating to the provision of a free, appropriate public education for the child.
- (4) Limits to the surrogate parent's responsibilities.** The responsibilities of a person appointed as a surrogate parent shall not extend to:
- (a) The care, maintenance, custody, residential placement or any other area not specifically related to the education of the child, or
  - (b) The identification or evaluation of the child that does not relate specifically to special education.
- (5) Rights of the surrogate parent.** A person appointed as a surrogate parent shall enjoy all of the procedural safeguards afforded a parent with respect to the identification, evaluation and placement of an exceptional student or a child who is suspected of being exceptional as prescribed in Rule 6A-6.0331, F.A.C.
- (6) Liability of the surrogate parent.** A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.
- (7) Compensation of surrogate parent.** A school district may compensate persons appointed as surrogate parents. A person acting as a surrogate parent is not an employee of the district or Department of Education contracted program solely because he or she is paid by the district or Department of Education contracted program to serve as a surrogate parent.

*Specific Authority 1001.02, 1001.42(4)(l) FS. Law Implemented 1001.02(1), (2)(l), 1001.42(4)(l), 1003.01(3)(a), (b) FS. History—New 6-28-83, Formerly 6A-6.333.  
c.f. P.L. 94-142 (20 U.S.C. 1415(c)(1)(B)). Regulation 300.514, C.F.R.*

## **Appendix F**

### **The Jessica Lunsford Act**

Section 1012.465, Florida Statutes, as amended by the 2005 Florida Legislature:

(1) Noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in s. 1012.32. Contractual personnel shall include any vendor, individual, or entity under contract with the school board.

## Appendix G

### McKinney-Vento Homeless Assistance Act

Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (Title X, Part C, of the No Child Left Behind Act) defines “homeless” as follows:

- (2) The term homeless children and youths —
- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); 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 103(a)(2)(C));
    - (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 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

[Note: The full text can be found at [http://www.serve.org/nche/downloads/mv\\_full\\_text.pdf](http://www.serve.org/nche/downloads/mv_full_text.pdf)]