



# Special Education Surrogate Parents

---

PROTECTING THE STUDENT VOICE IN THE SPECIAL EDUCATION PROCESS

**PUBLIC SCHOOLS OF NORTH CAROLINA**

State Board of Education | Department of Public Instruction | Exceptional Children Division

# Table of Contents

---

|  |    |
|--|----|
| <b>Introduction</b> .....  | 3  |
| <b>The Legal Mandate of Special Education Surrogate Parents</b> .....                  | 4  |
| NC 1504-1.20 Surrogate Parents .....   | 4  |
| Criteria for Selection of Special Education Surrogate Parents .....                    | 5  |
| NC Definition of Parent .....  | 6  |
| Incarceration .....  | 9  |
| Wards of the State .....   | 8  |
| Conflict of Interest .....   | 9  |
| Guiding Practices .....  | 9  |
| Unaccompanied Homeless Youth .....   | 10 |
| Recommended Procedures.....  | 11 |
| The Transfer of Parental Rights at the Age of Majority.....                            | 12 |
| <b>The Role of a Special Education Surrogate Parent</b> .....                          | 14 |
| Rights.....  | 14 |
| Confidentiality.....   | 15 |
| <b>Appointment Process</b> .....   | 16 |
| Identification of Students in Need of a Special Education Surrogate Parent.....        | 16 |
| Process for Assigning and Tracking Special Education Surrogate Parent Volunteers ..... | 17 |
| When a Student No Longer Requires a Special Education Surrogate Parent.....            | 18 |
| When Do I Appoint a Special Education Surrogate Parent? (FLOW CHART).....              | 20 |
| <b>Handbook for Special Education Surrogate Parent Volunteers</b> .....                | 21 |
| Welcome to the Special Education Surrogate Parent Program! .....                       | 22 |
| What are my Rights as a Special Education Surrogate Parent?.....                       | 23 |
| What is my role as a Special Education Surrogate Parent? .....                         | 24 |
| What are my responsibilities as a Special Education Surrogate Parent? .....            | 25 |
| What responsibilities are NOT expected of the Special Education Surrogate Parent?..... | 25 |
| What do I do after I am appointed? .....   | 26 |

Special Education Surrogate Parent Guidelines Checklist ..... 26

What is an Educational Records Review? ..... 27

Special Education Acronyms ..... 28

How does the Individualized Education Program Process work? ..... 29

Individualized Education Program Forms..... 30

Parent Resources ..... 30

**References** ..... 31

**APPENDIX: Sample Forms** ..... 32

SAMPLE FORM 1: Request for Special Education Surrogate Parent ..... 33

SAMPLE FORM 2: Verification of Special Education Surrogate Parent Training..... 35

SAMPLE FORM 3: Special Education Surrogate Parent Appointment Letter..... 36

SAMPLE FORM 4: Special Education Surrogate Parent Agreement..... 37

SAMPLE FORM 5: Special Education Surrogate Parent Record Review Checklist ..... 39

SAMPLE FORM 6: Letter of Rescission..... 40

SAMPLE FORM 7: Public Service Announcement ..... 41

For questions or additional assistance, please contact:  
NC DPI: Exceptional Children Division at 919.807.3969

# Introduction

---

The Individuals with Disabilities Education Act (IDEA) requires states to have a system in place that ensures that every student with a disability has a “parent” who can make special education decisions on that student’s behalf.

Under the IDEA, the “parent” consents to the initial evaluation of the student and for the provision of special education services. The “parent” is a required member of the team that develops the Individualized Education Program (IEP) for the student. The team decides what special education and related services the eligible student receives as a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

Usually the biological parent or adoptive parent is the “parent” for IDEA purposes. In a few instances, the local education agency (LEA) must assign a special education surrogate parent for a student when under the IDEA no parent can be identified or located after reasonable efforts have been made.

This manual is designed to provide guidance to LEAs as they:

- Identify and verify a student’s need for a special education surrogate parent;
- Recruit and train individuals who are qualified to serve as special education surrogate parents;
- Assign special education surrogate parents to the student identified as needing a surrogate parent;
- Monitor and evaluate the services of the assigned special education surrogate parent; and
- Review and revise special education surrogate parent assignments, as appropriate.

# The Legal Mandate of Special Education Surrogate Parents

---

Federal law requires state, intermediate, and local educational agencies to establish and maintain procedures for assigning a special education surrogate parent to a student whenever the location of the biological parents or guardian of the student is not known, not able to be located, or the student is a ward of the state.

Federal regulations provide the legal definition of a “surrogate parent” and stipulate the requirements that must be met when an LEA selects and assigns a special education surrogate parent for a student with no identifiable parent or to a student who is a ward of the state. State law provides that “surrogate parent” shall be defined as outlined in the IDEA regulations. (34 C.F.R. § 300.519 (d))

## NC 1504-1.20 Surrogate Parents

**Each LEA must ensure that the rights of a student are protected when—**

- No parent (as defined in NC 1500-2.24) can be identified;
- The LEA, after reasonable efforts, cannot locate a parent;
- The student is a ward of the State under the laws of North Carolina and the parents’ rights have been terminated or their rights to make educational decisions have been terminated by the court; or
- The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a (6)).

**The duties of an LEA include the assignment of an individual to act as a surrogate for the parents. This must include a method—**

- For determining whether a student needs a special education surrogate parent;
- For assigning a special education surrogate parent to the student; and
- For training that ensures the special education surrogate parent has knowledge and skills that ensure adequate representation of the child.

## Criteria for Selection of Special Education Surrogate Parents

### LEAs must ensure that a person selected as a surrogate parent—

- Is not an employee of the State Education Agency (SEA), the LEA, or any other agency that is involved in the education or care of the student, such as the Department of Health and Human Services, a group home, or a therapeutic foster parent;
- Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and
- Has knowledge and skills that ensure adequate representation of the student.

### Other Factors to Consider:

A person otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is compensated by the LEA to serve as a special education surrogate parent.

- In the case of a student 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 special education surrogates until a surrogate can be appointed that meets all of the criteria for special education surrogate parents.
- **Special education surrogate parent volunteers should be willing to fully participate in the process of ensuring the student is provided FAPE, including using rights to dispute resolution if necessary.** It is the responsibility of the LEA to provide contact information to the special education surrogate parent of pro bono legal services, for example Legal Aide/Low Cost Attorneys.

### The special education surrogate parent may represent the student in all matters relating to—

- The identification, evaluation, and educational placement of the student; and
- The provision of FAPE to the student.

*Note: Surrogate parents only serve in the “parent” role in special educational decisions within the context of the IEP process. Special education surrogate parents CANNOT sign other school forms, such as permission forms for field trips or other activities.*

The SEA must ensure that the LEA makes reasonable efforts to ensure the assignment of a surrogate parent **not more than 30 days** after an LEA determines that the student needs a surrogate.

(Authority: 20 U.S.C. 1415(b)(2); 34 CFR 300.519)

## NC Definition of Parent

School administrators are encouraged to familiarize themselves with the definition of parent and to establish the most efficient way to determine if parents have educational decision-making rights.

### NC 1500-2.24 Parent

(a) Parent means—

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent (e.g. therapeutic foster parent);
- (3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological 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
- (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b)

- (1) **Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.**
- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

(Authority: 20 U.S.C. 1401(23); 34 CFR 300.30)

The biological or adoptive parent is always the first consideration unless his or her parental rights or rights to make educational decisions for the student have been terminated. This applies to EITHER biological or adoptive parents. If there is a question about parental rights, the LEA has the responsibility to seek clarification of parental status, and if necessary, request to review a copy of the court order.

**First step: Review the current court order. Verify the status of parental rights of BOTH parents and the court-ordered plan for the student.**

**Biological or Adoptive parents are assumed to have educational decision-making rights unless:**

- There is an Order of Termination of Parental Rights;
- The right of the biological or adoptive parents to make educational decisions is removed by a court order; or
- The right to make educational decisions is given to a specific person or persons through a court order.

Detailed documentation of all efforts to locate a student's parents is recommended when investigating the need for a special education surrogate parent.

- “Reasonable efforts” may include attempts to locate parents through phone calls, letters, certified mail with a receipt and a visit to the last known residence of the parents.
- In situations where the parent disagrees with an LEA’s initial evaluation or placement intentions, the LEA may not circumvent the parent's due process rights by appointing a special education surrogate parent.

**The LEA does NOT have the authority to appoint a special education surrogate parent where a student’s parent is available or can be identified and located after reasonable efforts, but refuses, or is unable, to attend a meeting or otherwise represent the student.**

## **NOTE: Incarceration does NOT terminate parental rights.**

- The same steps of verifying parental status and documentation of the LEA's efforts to verify location and availability of EITHER biological or adoptive parents apply to students whose parents are incarcerated.
- Correctional facilities may allow the parent to participate via telephone conference.
- After all documented efforts to involve the biological or adoptive parent have been exhausted, the LEA may decide to temporarily assign a special education surrogate parent.
- The LEA is responsible for monitoring the status of the parent's availability and the need for a special education surrogate parent.

## **Wards of the State**

### **NC 1500-2.39 Ward of the State**

- (a) **General.** Subject to paragraph (b) of this section, ward of the State means a student who, as determined by the State where the student resides, is--
- (1) A foster student;
  - (2) A ward of the State; or
  - (3) In the custody of a public student welfare agency.
- (b) **Exception.** Ward of the State does not include a foster student who has a foster parent who meets the definition of a parent in NC 1500-2.24.

(Authority: 20 U.S.C. 1401(36); 34 CFR 300.45)

When a student is removed from the home in North Carolina, the magistrate or judge does not always issue an order removing a parent's rights to make educational decisions or terminate the parents' legal rights. Therefore, the LEA should always request to review a copy of the current court order removing the parent's authority to make educational decisions if it is in question.

## **First Step: Review the current court order. Verify the status of parental rights of BOTH parents and the court-ordered plan for the student.**

**Biological or Adoptive parents are assumed to have educational decision-making rights unless:**

- There is an Order of Termination of Parental Rights;
- The right of the biological or adoptive parents to make educational decisions is removed by a court order; or
- The right to make educational decisions is given to a specific person or persons through a court order.

### **CONFLICT OF INTEREST**

- “Therapeutic Foster Care” means a foster home where the foster parent has received additional training and compensation for providing care to students with behavioral mental health or substance abuse problems. Therapeutic foster parents CANNOT serve as surrogate parents because there is a conflict of interest. Determining services that a student needs at school could impact the services the student needs at home, therefore potentially creating a benefit for the therapeutic foster parent.
- Employees of Group Homes have a similar conflict of interest as therapeutic foster parents; therefore, they CANNOT serve as surrogate parents.

### **Guiding Practices**

- **If there is a question about the legal status of an individual student or parent, the LEA should contact its attorney.**
- **Foster parents** that qualify under the definition of parent as stated in NC 1500-2.24 may serve as parent for a student **if** the student is a ward of the State under the laws of North Carolina **and** the parents’ rights have been terminated **or** their rights to make educational decisions have been terminated by the court.
- **Therapeutic foster parents or agents of North Carolina Department of Social Services cannot act as special education surrogate parents under any circumstances.** (N.C.G.S. 115C-116(c) and 20 U.S.C. 1415(b)(b) and 55 N.C.A.G. 94 (1986))

- A **guardian ad litem** may only serve as parent if he or she has been appointed by the court or meets the criteria and has been appointed as educational surrogate by the LEA.
- **Employees of group homes, Mental Health, or the LEA may not serve as the parent or be appointed as special education surrogate parents.** (NC 1504-1.20)
- In the case of a student who is a ward of the State, the special education surrogate parent alternatively may be appointed by the judge overseeing the student's case, if the surrogate meets the criteria for special education surrogate parents as stated in NC 1504-1.20.

## Unaccompanied Homeless Youth

Any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all children with disabilities in homeless situations in the state. (20 USC §1412(a)(11)(A)(iii)) LEAs must coordinate McKinney-Vento and special education services within the LEA, and with other involved LEAs.

More information about the McKinney-Vento Act is available at [www.naehcy.org](http://www.naehcy.org).

Every state has a McKinney-Vento State Coordinator. Contact information for every state is available at [http://center.serve.org/nche/states/state\\_resources.php](http://center.serve.org/nche/states/state_resources.php).

### WHO CAN CONSENT FOR SPECIAL EDUCATION EVALUATIONS AND SERVICES FOR UNACCOMPANIED HOMELESS YOUTH?

- Their natural or adoptive parent.
- An "individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives."
- A surrogate parent.

By definition, unaccompanied homeless youth are not in the physical custody of a parent or guardian. Sometimes an unaccompanied youth's natural or adoptive parent may be involved with the child's education. If parents maintain an active role in their child's education, they must be allowed to participate in the special education process as defined in IDEA and related regulations and state laws.

Some unaccompanied youth live with informal caregivers who provide the student with shelter. Some of these adults may be involved in the student's education *and* are willing to be considered as a "parent" under IDEA. These adults may consent for evaluations and services. In other cases, caregivers are not "acting in the place of" a parent and do not wish to participate in the youth's education. These adults do not meet IDEA's definition of "parent."

Most unaccompanied homeless youth have neither a natural/adoptive parent nor an individual acting in the place of a parent to consent for special education evaluations and services. IDEA requires a special education surrogate parent be assigned to these unaccompanied youth to make special education decisions.

## Recommended Procedures

1. **Attempt to contact an unaccompanied youth's natural or adoptive parent.** *The LEA homeless liaison is likely to know the level of involvement of an unaccompanied youth's parent. In general, if the LEA's documented attempts to contact a parent do not elicit a response within 30 days, the LEA should proceed to appointing a **temporary** special education surrogate parent, and later a regular special education surrogate parent.*
2. **Assess whether the youth has an "individual acting in the place of" a parent.** *Again, the LEA homeless liaison should have this information available. Speaking directly with the student about caregiver arrangements also is a best practice.*
3. **Appoint a "temporary surrogate" for unaccompanied youth.** *Temporary special education surrogate parents should be appointed much more quickly than the federally required 30 days.*
4. **Assign a special education surrogate parent to represent the student within 30 days.**
5. **Provide annual professional development** to administrators and teachers about the McKinney-Vento Act and how to serve unaccompanied homeless youth with disabilities. (National Association for the Education of Homeless Children and Youth (NAEHCY) and The National Association of State Directors of Special Education (NASDSE), 2016)

## The Transfer of Parental Rights at the Age of Majority

There are circumstances that will occur when a student with a disability reaches the age of majority. In accordance with the IDEA and North Carolina Policy, once the student reaches his or her eighteenth birthday, it is presumed that he or she is competent to make his or her own decisions. All rights that were afforded to the student's parents under the IDEA are transferred to the student. In these instances, individuals serving in the role of parent (biological or adoptive, surrogate, etc.) must be notified by the LEA regarding the transfer of parental rights.

However, there is a *Special Rule* in North Carolina policy for the student whose level of competence will not allow him or her the ability to exercise the transfer of parental rights. In the best interest of the student, the parent may retain all rights, privileges and responsibilities for the educational decisions even though the student has reached the age of majority.

### ***The LEA must provide notice to the student's parents that he or she is reaching the age of majority and ensure one of the following actions:***

- The student is declared incompetent and a representative is appointed to make decisions for the student by a court; or
- The student has designated another competent adult to represent him or her in writing by power of attorney or similar legal document.
- Alternately, if the student is determined unable to provide informed consent and does not have a representative appointed by a court, they may have an educational representative appointed by the LEA based on the following:
  - Two professionals (one from List 1 and one from List 2, as set forth in the following descriptions) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:
    - List 1 includes:
      1. a medical doctor licensed in the state where the doctor practices medicine;
      2. physician's assistant whose certification is countersigned by a supervising physician; or
      3. a certified nurse practitioner.

- List 2 includes:
  1. a medical doctor licensed in the state where the doctor practices medicine;
  2. a licensed clinical psychologist;
  3. a licensed clinical social worker;
  4. an attorney who is qualified to serve as a guardian ad litem for adults under NC law; or
  5. a court-appointed special advocate for the adult student.
- The individuals who provide the certification may not be employees of the LEA currently serving the adult student or related by blood or marriage to the adult student.
- If an adult student has been determined to be incompetent through any of the procedures described in this section, the parent shall be appointed to act as the educational representative for the adult student. If the parent is not available, an adult family member with whom the adult student resides may be appointed.
- If the adult student does not reside with an adult family member, a person trained as a surrogate parent shall be appointed to serve as the educational representative for the adult student.
- Other considerations:
  - Certification may be determined as early as 60 calendar days before the student's 18th birthday.
  - The certification shall include a plan for review of the student's ability to provide informed consent.
  - The student's ability to provide informed consent must be recertified at any time the current certification is challenged by the student or anyone with a legitimate interest and knowledge of the student. Employees of the LEA cannot challenge the certification.
  - Upon receipt of the written challenge, the LEA may not rely on the appointed educational representative until a new certification is obtained.  
(Authority: 20 U.S.C. 1415(m); 34 CFR 300.520; NC 1504-1.21)

# The Role of a Special Education Surrogate Parent

---

**A special education surrogate parent does not have any rights and responsibilities for the student outside of the special education process.**

A special education surrogate parent is only responsible for representing the student when decisions about his or her special education program are made concerning:

- Identification of the need for the student to receive special education services
- Evaluation to determine his or her individual needs
- Design of his or her IEP (Individualized Education Program), including placement
- Ongoing reviews of educational progress
- Disagreement with the school's educational proposals

In order to fulfill these responsibilities, the special education surrogate parent should learn about state and federal requirements for special education and about school district structure and procedures.

The special education surrogate parent should also have an understanding of the student's disability and needs and have an ability to effectively advocate for the student. Special education surrogate parents need to have access to information, training, and support so that they may develop the knowledge, skills, and confidence necessary to advocate effectively for students with disabilities.

## **A SPECIAL EDUCATION SURROGATE PARENT HAS THE RIGHT TO:**

- Receive a copy of NC Procedural Safeguards for parents.
- Review all educational records and reports relating to the student.
- Receive copies of IEPs and evaluations.
- Represent the student in any mediation, appeals, and/or due process procedures.
- Check on the student's educational progress during the school year. For example, are the IEP objectives being met or are the services being provided that are listed on the IEP?

## **CONFIDENTIALITY**

The **Family Educational Rights and Privacy Act (FERPA)** (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. Education records are records that are directly related to a student and are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.

- A special education surrogate parent is required to adhere to confidentiality safeguards concerning information about the student.
- The LEA should review the responsibilities regarding confidentiality with all special education surrogate parents.
- Surrogate parent volunteers should return all copies of student records upon dissolution of their appointment to represent a student.

# The Appointment Process

---

**The LEA is responsible for assigning a special education surrogate parent to act in the place of a parent in the special education decision-making process.**

To ensure that the rights of the student is protected under the IDEA, the LEA has established procedures for selecting and training volunteers to serve as surrogate parents to address the following areas:

- Development of a comprehensive training program for special education surrogate parents.
- Recruitment of individuals who meet the qualifications to serve as special education surrogate parents.
- Delivery of training to individuals approved to serve as special education surrogate parents.
- Documentation of completion is provided to individuals participating in the special education surrogate parent training.
- Establishment of an ongoing support and training program for individuals serving in the role of special education surrogate parents.
- Evaluation and monitoring the special education surrogate parent program is an ongoing process.

## Identification of Students in Need of a Special Education Surrogate Parent

**The LEA is responsible for ensuring that a parent is available to represent a student when making decisions for special education services and must identify those students who are in need of a special education surrogate parent through the following activities:**

- The LEA develops a process for identifying students who need to be assigned a special education surrogate parent.
- The LEA receives a written request for an assignment of a special education surrogate parent from the student's school.

- The LEA reviews the current court order and custody documentation.
- The LEA verifies the status of the parental rights of the student's parents.
- The LEA documents the appointment of an educational representative as described in NC 1504-1.21 *Special Rule* for a student age 18 and over that is determined unable to provide informed consent.
- The LEA maintains a copy of the documentation in the student's record.
- The LEA documents whether the student needs a special education surrogate parent.
- The LEA assigns an individual who has been trained to serve as a special education surrogate parent, as required.
- The individual signs the agreement and acknowledgement of confidentiality with the LEA to serve as a surrogate parent.
- The LEA maintains a file with all signed agreements.
- The LEA provides written notification of the surrogate parent assignment to the student's school.
- The written notification is maintained in the student's EC record.

## **Process for Assigning and Tracking Special Education Surrogate Parent Volunteers**

**The LEA is responsible for assigning and tracking all special education surrogate parent appointments to ensure that the student with a disability has his or her rights protected through the following procedures:**

- The LEA develops a written process for assigning a special education surrogate parent.
- The LEA maintains a current list of individuals who have been trained as special education surrogate parents.
- The LEA appoints all special education surrogate parent assignments, as necessary.
- The LEA maintains a current list of students who are assigned a special education surrogate parent.

- The LEA monitors and annually evaluates the activities of each special education surrogate parent to make sure that he or she is performing the duties as set forth by federal and state regulations.
- The LEA investigates all written notifications regarding any cases of conflict of interest or reports that the special education surrogate parent is not acting in the best interest of the student.

## **When a Student No Longer Requires a Special Education Surrogate Parent**

### **A special education surrogate parent is no longer needed when:**

- The student has reached the age of majority and the right to make educational decisions is transferred to the student. The student represents him or herself unless a guardian has been appointed. However, a special education surrogate parent can be assigned at the request of the student.
- The LEA is able to locate the biological or adoptive parent.
- The biological or adoptive parent of the student assumes responsibility for making educational decisions through court order.
- The student is no longer in need of or eligible for special education and related services.
- The student moves out of the district.
- A new guardian is appointed by the court.
- The special education surrogate parent wishes to relinquish his or her responsibility.
- The student has been assigned to a foster care placement and the foster parent is qualified and is willing to serve as a parent as defined in the IDEA and NC *Policies*. In this instance, the foster parent is not required to participate in training or to be appointed as a special education surrogate parent.

### **The LEA may terminate the assignment if the district is able to document cases of impropriety when:**

- An individual has been unable to perform as a special education surrogate parent.
- There becomes a conflict of interest while an individual is in the role of the special education surrogate parent.

## Special Education Surrogate Parents

- The special education surrogate parent has violated the minimum standards of practice, including a breach of confidentiality.
- The well-being of the student is threatened.

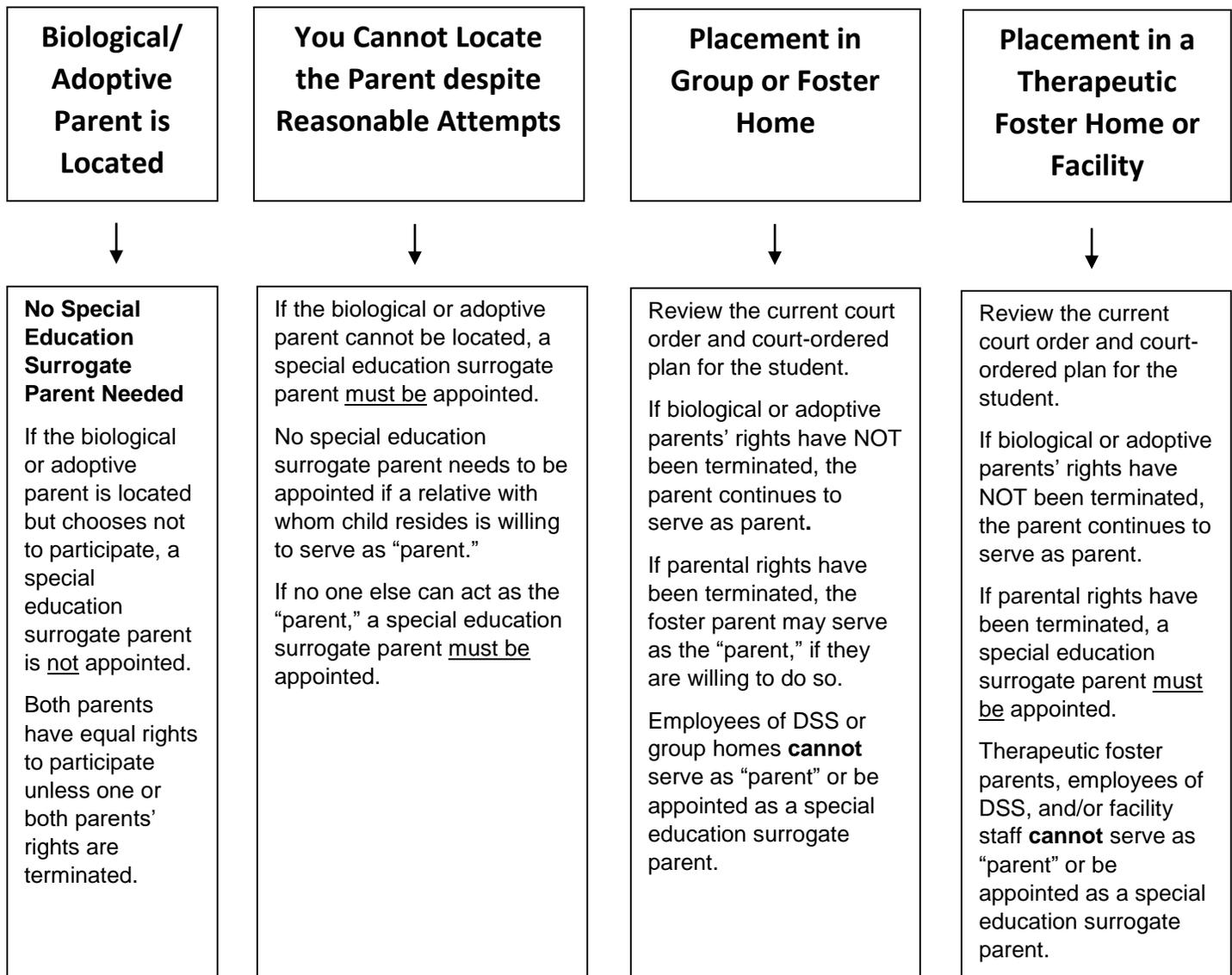
**The LEA cannot remove an assigned special education surrogate parent when he or she does not agree with the district.**

**Upon dissolution of the individual's duties as special education surrogate parent, he or she must return all student records to the LEA.**

## When Do I Appoint a Special Education Surrogate Parent?

**Step 1: Ensure that the rights of both the parent and student are protected.**

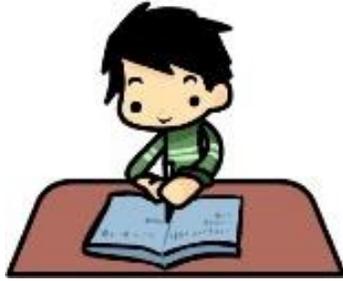
**Step 2: Request to review the current custody agreement between the parents or the current court order if the Department of Social Services (DSS) is involved. Do not assume anything.**



- Any time parental rights have been terminated by the court, a special education surrogate parent is appointed unless another individual, who meets the definition of parent in NC 1500-2.24, can serve in that role.
- Employees of group homes, DSS, Mental Health, or the LEA, and therapeutic foster parents may not serve as the parent or be appointed as special education surrogate parents.

# **A Handbook for Special Education Surrogate Parent Volunteers**

---



## Welcome to the Special Education Surrogate Parent Program!

If you are reading this, thank you for your important role in the life of a student with disabilities. We offer this handbook to guide you in your understanding of the role of the special education surrogate parent and the circumstances of the students we serve, along with providing useful information about our program.

Special education surrogate parents (SESPs) are volunteers who accept the responsibility to be **special education** decision-makers for students who are in state custody and are receiving special education services. The students that special education surrogate parents represent reside in a variety of living situations, including residential schools, group homes, hospitals or pediatric nursing homes, state institutions, diagnostic placements, shelters, and foster homes. They may be in a full-inclusion setting at a local public school or be attending a highly structured day school program.

Children and adolescents in the custody of the state have often experienced numerous traumatic losses and stressful upheavals, and typically have very few family supports available to help them. They wage an uphill battle for success every day of their lives. Appropriate academic services equal a better chance of success in school, and subsequently a better chance of a positive future.

So welcome aboard! We thank you for the time, knowledge, skill and devotion that you bring to the children in our program. We are always in need of volunteers, so we encourage you to invite your friends, neighbors and colleagues to join us as volunteers in this important work in our community.

## What are my Rights as an SESP?

A special education surrogate parent is a unique volunteer position, and comes with specific rights, responsibilities, and limitations associated with the role.

### Your Rights

As a special education surrogate parent, you have the rights and authority of a parent as outlined in the federal regulations (IDEA 2004).

These include, but are not limited to the following:

- Access to all regular and special education records of the student, including all progress reports and report cards.
- Provide written permission for special education evaluations.
- Review all education evaluations.
- Attend all special education team meetings for the student.
- Request an IEP Team meeting when there are concerns or changes regarding your student's academic, social or emotional status.
- Review educational placements that are being considered.
- Rights to due process if necessary.
- Request additional special education evaluations as appropriate.
- Right to participate in manifestation determination hearings.
- Participate in the development of the student's Individualized Education Program (IEP).

## What is my role in the SESP Process?

| Special Education Surrogate Parent (SESP)  | DSS Social Worker or Designee  | LEA (School District)  |
|--|--|--|
| <ul style="list-style-type: none"> <li>• Request copies of all evaluations and records from the school district</li> <li>• Sign consent for initial evaluation and re-evaluation</li> <li>• Meet the student before making any special education decisions</li> <li>• Visit any proposed educational placements</li> <li>• Participate as the “parent” in the IEP process</li> <li>• Request additional special education evaluations as appropriate</li> <li>• Request an IEP meeting as appropriate</li> <li>• Request Independent Evaluation as appropriate</li> <li>• Pursue the appeals process, <i>if necessary</i></li> </ul> | <ul style="list-style-type: none"> <li>• Verify status of parental rights and share the court-ordered plan for the student</li> <li>• Ensure that student is enrolled in school</li> <li>• After consultation with school personnel, request an initial special education evaluation as a third-party, as appropriate</li> <li>• May participate as a member of the student’s IEP Team</li> <li>• Sign school related consent forms (i.e. field trips, photo permission, medical releases); <b>they cannot sign as “parent” on special education forms</b></li> <li>• Provide authorization to the LEA to release confidential information</li> <li>• Provide authorization to bill Medicaid for services</li> <li>• Authorize withdrawal of a student when he or she transfers to another LEA (school district)</li> <li>• Assist the LEA (school district) with obtaining the appropriate documentation for students at age of majority, as appropriate</li> <li>• Provide all other signatures related to regular education and the Section 504 Civil Rights legislation</li> </ul> | <ul style="list-style-type: none"> <li>• Assign a suitable SESP to students in need</li> <li>• Recognize that the SESP has the same educational decision – making rights and responsibilities as any parent of a student with a disability</li> <li>• Schedule IEP meetings in collaboration with the SESP’s availability</li> <li>• Mail progress reports, report cards, and educational correspondence to the SESP</li> <li>• Keep the SESP informed of any changes to the student’s educational plan</li> <li>• Maintain communication with the SESP</li> <li>• Provide training</li> </ul> |

**DSS**--Department of Social Services

**LEA**—Local Education Agency (School District)

**Designee**—foster parent, therapeutic foster parent, or staff of a private child-placing agency designated by DSS

## What are my responsibilities as an SESP?

**Your responsibility as an SESP volunteer is to represent the best interest of the student(s) you are appointed to regarding all aspects of their *special education*.**

- Receive SESP training from a knowledgeable provider.
- Act as a "parent" by fulfilling all rights associated with the role of the SESP.
- Advocate for FAPE for the student.
- Attend all special education and related meetings for student.
- Maintain regular communication with the student's providers.
- Monitor the student's progress and special educational services provided.
- Maintain student records in your possession in an organized fashion.
- Maintain and respect the confidentiality of all records/information related to the student.
- Return student records in your possession in an organized fashion.

## What responsibilities are NOT expected of the SESP?

- Sign classroom/school documents – i.e. permission slips
- Attend school functions
- Provide transportation to school or school functions

## What do I do after I am appointed?

### **I just received my first Letter of Appointment, and am ready to support a student in need. . . now what do I do?**

You are about to play an important role collaborating and advocating for a student's special education program. You will be part of their Individual Educational Program (IEP) Team. Every case is unique, although the process and guidelines follow federal and state mandates.

**Please use the Special Education Surrogate Parent Guidelines checklist to help you get started.**

### **SESP Guidelines Checklist**

- Meet the student as soon as possible.
- Obtain the names, addresses, and telephone numbers of the major people and agencies involved with the child you will be representing.
- Call the school where the student currently attends. Introduce yourself, explain your role and make an appointment to review the student's entire school records. Find out who is in charge of special education and the names of the persons involved such as special education teachers, regular teachers, guidance counselor, principal, and the supervisor or director of special education for the school system.
- Call and introduce yourself to the student's "caretaker" (foster parent, group home supervisor, residential director, etc.).
- Read the student's school records. In addition to learning about the student's educational history, particularly read the current IEP.
- When assigned, request an IEP Team meeting to discuss the student's plan.

## What is an Educational Records Review?

Every school system keeps "educational records" for their students. The school has a reasonable time to provide a copy of the documents for you. Someone at the school may explain the records, which may contain:

- Information identifying the student (name, address, birthday, etc.)
- Special education forms (some which you will sign)
- Evaluation results – Including psychological, occupational therapy (OT), Functional Behavior Assessments, speech/language, Vocational
- Observation notes
- Academic achievement, standardized tests
- Copies of Individualized Education Program plans
- Progress reports or report cards
- Test results
- Documentation of parent meetings
- Correspondence from parents, evaluators, doctors, minutes of meetings, etc.
- Transition plan

**(See Sample Form 5)**

Every student's educational records should include all of the information that is used to document his special education services. The student's school can help you with any questions or concerns related to the special education process. Your interactions with the school can support and assist you as you advocate for your student.

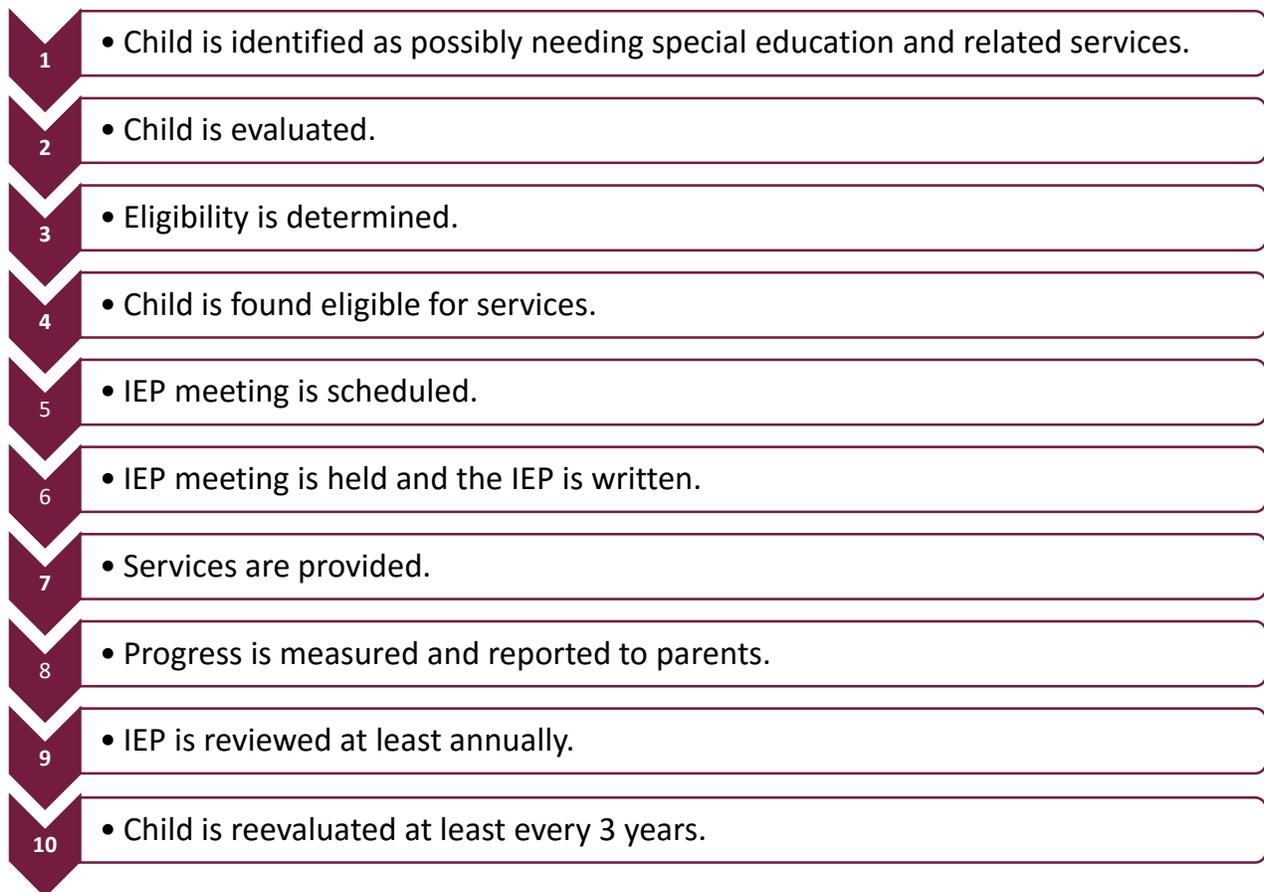
## Special Education Acronyms

|       |   |          |   |
|-------|---|----------|---|
| ADHD  | Attention Deficit Hyperactivity Disorder    | SLD (LD) | Specific Learning Disability                            |
| ADD   | Attention Deficit Disorder                  | LEA      | Local Education Agency                                  |
| AT    | Assistive Technology                        | LRE      | Least Restrictive Environment                           |
| AU    | Autism Spectrum Disorder                    | MTSS     | Multi-Tiered System of Support                          |
| BIP   | Behavior Intervention Plan                  | MU       | Multiple Disabilities                                   |
| CFT   | Child and Family Team                       | OCS      | Occupational Course of Study                            |
| CRC   | Community Residential Center                | OHI      | Other Health Impairment                                 |
| DB    | Deaf - Blindness                            | OI       | Orthopedically Impairment                               |
| DD    | Developmental Disability                    | OM       | Orientation and Mobility                                |
| DF    | Deafness                                    | OT       | Occupational Therapy                                    |
| EC    | Exceptional Children                        | OTA      | Occupational Therapy Assistant                          |
| ECAC  | Exceptional Children's Assistance Center    | PBIS     | Positive Behavior Intervention Support                  |
| ECS   | Extended Content Standards                  | PLAAFP   | Present Level(s) of Academic and Functional Performance |
| ESY   | Extended School Year                        | PRTF     | Psychiatric Residential Treatment Facility              |
| FAPE  | Free and Appropriate Public Education       | PT       | Physical Therapy  |
| FBA   | Functional Behavioral Assessment            | PTA      | Physical Therapy Assistant                              |
| FERPA | Family Educational Rights and Privacy Act   | RE       | Regular Education                                       |
| GE    | General Education                           | SEA      | State Educational Agency                                |
| HI    | Hearing Impairment                          | SED      | Serious Emotional Disability                            |
| IDEA  | Individuals with Disabilities Education Act | SI       | Speech and/or Language Impairment                       |
| IDMI  | Intellectual Disability - Mild              | SLP      | Speech Language Pathologist                             |
| IDMO  | Intellectual Disability - Moderate          | SLPA     | Speech Language Pathologist Assistant                   |
| IDSE  | Intellectual Disability – Severe            | TBI      | Traumatic Brain Injury                                  |
| IEE   | Independent Educational Evaluation          | VI       | Visually Impairment                                     |
| IEP   | Individualized Education Program            | VR       | Vocational Rehabilitation                               |

## How does the IEP Process work?

To be sure, the Individual Educational Program process can be overwhelming. Each step of the special education process is specific and MUST be followed in the correct order. The chart below maps out the basic special education process for a student that the IEP Team determines is in need of special education services. However, the chart is not intended to fully explain the process or every student's situation. The expanded version of the chart can be found online. (National Dissemination Center for Children with Disabilities, 2011)

### The Basic Special Education Process under IDEA 2004



**For more information, please contact the Exceptional Children's Assistance Center (ECAC).** This is a training and information center that provides free information and assistance with educational issues to parents of children with disabilities. They offer a lending library, newsletter, and a parent info line answered by parents. The toll free number is 800.962.6817 or 704.892.1321. The web site address is <http://www.ecac-parentcenter.org/>

**Remember to talk with the student's teacher(s) about any concerns that you may have. If needed, request an IEP Meeting to discuss your concerns with the IEP Team.**

**Never hesitate to ask questions.** You will be signing forms, and as with any legal document, you want to understand what you are consenting to for the student.

## **Additional Resources**

### **IEP Forms**

There are examples of statewide forms that are used to document this process found at <http://ec.ncpublicschools.gov/policies/forms/statewide-forms> . Remember that all forms are designed with the protection of the student's rights in mind.

### **Parent Resources**

Some additional links are provided at <http://ec.ncpublicschools.gov/parent-resources> that can be useful when questions arise. Information regarding the options of dispute resolution available to parents is included.

## References

---

National Association for the Education of Homeless Children and Youth (NAEHCY) and The National Association of State Directors of Special Education (NASDSE). (2016, March 22). *Surrogate Parents and Unaccompanied Homeless Youth Under the Individuals with Disabilities Education Act*. Retrieved from The National Association of State Directors of Special Education (NASDSE):

<https://www.nasdse.org/LinkClick.aspx?fileticket=Kck6yunXeEQ%3d&tabid=36>

National Dissemination Center for Children with Disabilities. (2011). *The Basic Special Education Process under IDEA 2004*. Retrieved from Exceptional Children's Assistance Center:

[\[parentcenter.org/userfiles/PTI/IEP%20stuff/NICHCY\\\_Special\\\_Education\\\_Process\\\_Steps.pdf\]\(http://ecac-parentcenter.org/userfiles/PTI/IEP%20stuff/NICHCY\_Special\_Education\_Process\_Steps.pdf\)](http://ecac-</a></p></div><div data-bbox=)

Surrogate Parents, *34 Code of Federal Regulations § 300.519(d)* (2006).

Surrogate Parents, *Policies Governing Services for Children with Disabilities*, NC 1504-1.2. (2014).

# APPENDIX: Sample Forms

---

## **SAMPLE FORM 1: Request for the Determination of Need for a Special Education Surrogate Parent (SESP)**

**Please provide as much information as possible and forward this form to the Exceptional Children Department.**

Child's name: \_\_\_\_\_

D.O.B.: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

County of residence: \_\_\_\_\_

Agency/Service Provider: \_\_\_\_\_

School: \_\_\_\_\_

Child Living With: \_\_\_\_\_

Relationship to child: (circle one)

1. Natural or adoptive parent
2. Legal guardian or court appointed temporary guardian
3. Adult who accepts full legal responsibility for the child and with whom the child is living
4. Foster parent
  - (Agency Contact & Phone) \_\_\_\_\_
5. Other(Name and Phone): \_\_\_\_\_
6. Address: \_\_\_\_\_

### **Reason for Need of a SESP:**

- Parent Unknown
- Parent Deceased
- Parent Unavailable (Geographic Whereabouts Unknown)
- Guardianship with State Agency or Official
- Child is Ward of the State and biological/adopted parent does not have educational Decision making rights.
- Review Court Order

## Office Use Only

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

Determination: \_\_\_\_\_ Approved \_\_\_\_\_ Denied

\_\_\_\_\_ Court Order Attached

Reasons:

---

---

---

---

**Copy of Records Prepared for the Special Education Surrogate Parent to include: Current IEP and all current evaluations (No more than 3 years old).**

Prepared By: \_\_\_\_\_

Date sent: \_\_\_\_\_

## SAMPLE FORM 2: Verification of Surrogate Parent Training

\_\_\_\_\_ (name) participated in Special Education Surrogate Parent Training on (date): \_\_\_\_\_ provided by the \_\_\_\_\_ (LEA Name).

The following topics were covered during training:

1. Introduction to disabilities special education services;
2. The regulations governing early intervention and special education;
3. The rights and responsibilities of parents, surrogate parents, and the children they represent;
4. Terminology used during the special education process;
5. Procedures for evaluation IEP development, conferences with service providers, access to records, and confidentiality;
6. Protections and procedural safeguards available to children with disabilities and parents/surrogate parents to ensure that the needs of the children are met;
7. Disciplinary Procedures
8. The range of programs and services available to children whose development is at risk, or who have disabilities; and the identification of key people within the local area.
9. An overview of the Surrogate Parent Resource Manual provided to participants. This allows representation of the child in the following ways:
10. Granting or denying signed consent for evaluation, provision of services, or change of services;
11. Participating in conferences with service providers to determine eligibility for services and for IEP development;
12. Reviewing the child's records;
13. Requesting mediation, a due process hearing, or filing a complaint; and
14. Exercising any other rights a parent has on behalf of the child as they relate to the provision of early intervention or special education services.

---

Participant Name (Printed)

Signature

### SAMPLE FORM 3: SESP Appointment Letter

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

As requested by \_\_\_\_\_, you have been appointed to serve as a surrogate parent for \_\_\_\_\_, a student enrolled in the \_\_\_\_\_ (LEA Name).

This appointment is necessary because this student:

- Is in **permanent** custody of the State and does not have a parent to represent him/her in educational matters.
- Is in **temporary** custody of the State, provided care by an agency other than foster care, and does not have a parent to represent him/her in educational matters at this time.

It has been documented that you have received the required training, do not have a conflict of interest, and are knowledgeable about matters relating to the student.

You will act as the parent related to the identification, evaluation, placement, and the provision of a free appropriate public education for the student. Other authority is not given nor intended. The length of this appointment will be until you give written notice to this office of your resignation, you receive written notice from this office that the student is no longer eligible for the services of a surrogate parent, or you are unable or have not actively represented the student in educational matters.

If you have any questions or you become aware of a change in this student's status,

Please contact:

\_\_\_\_\_

Name

\_\_\_\_\_

Telephone

Sincerely,

Superintendent/Designee

cc: Person requesting the appointment

## SAMPLE FORM 4: SPECIAL EDUCATION SURROGATE PARENT AGREEMENT (SESP)

This Special Education Surrogate Parent Agreement ("Agreement") is made and entered into effective the date of \_\_\_\_\_, 20\_\_\_\_ between (LEA) \_\_\_\_\_ and (SESP) \_\_\_\_\_ with respect to the following recitals:

- A. District desires to fulfill its obligations to appoint a surrogate parent to represent a special education student to ensure that the student obtains a free and appropriate education under the Individuals with Disabilities Education Act ("IDEA") and state law.
- B. SESP has expressed a desire and willingness to act as the Student's Surrogate Parent for educational purposes.

Now, therefore, the parties agree as follows:

- A. **Appointment** — SESP agrees to act as the "Parent" and educational Representative for Student in accordance with *Policies Governing Services for Children with Disabilities*.
- B. **Representations** — SESP represents that he or she has no interest that conflicts with the interest of the Student and that the SESP is not an employee of any agency involved in the care, custody or education of Student.
  - a. The SESP further agrees to act on behalf of Student and to advocate for the education of Student in all ways necessary to ensure that Student receives a free and appropriate public education.
  - b. The SESP also agrees to communicate with Student and other appropriate individuals or agencies to the extent necessary to ensure that Student receives a free and appropriate public education.
  - c. SESP agrees to meet with Student, as appropriate and others and to review Student's educational records to develop knowledge and understanding of Student's disability and Student's individual needs for special education and related services.
  - d. During the term of this Agreement, SESP develops an interest which may conflict with the interests of Student, or becomes an employee of an agency involved in the care, custody or education of Student, SESP agrees to immediately notify the District. Upon verification the district shall terminate the agreement.
- C. **Training** — SESP acknowledges that District has provided training regarding Student's handicapping condition, the laws applicable to SESP responsibilities, and the continuum of program placements and opportunities available in the state of North Carolina.
- D. **Term** — District hereby appoints Surrogate Parent for a term of 2 years.
- E. **Termination** — Either party may terminate this agreement for any reason upon thirty (30) days written notice to the other party.

Special Education Surrogate Parents

- F. **No Assignment** - SESP agrees that this Agreement shall be a personal contract and shall not be assignable, in whole or in part, in any manner whatsoever.
- G. **Student Records** — SESP agrees to maintain all records of Student reviewed or maintained by SESP in a confidential manner and agrees that, upon the termination of this Agreement, all such records shall be returned to District.

---

| Special Education Surrogate Parent | Address | Phone | Date |
|------------------------------------|---------|-------|------|
|------------------------------------|---------|-------|------|

---

| LEA/ Designee | County | Phone | Date |
|---------------|--------|-------|------|
|---------------|--------|-------|------|

## SAMPLE FORM 5: SESP Record Review Checklist

Child's Name: \_\_\_\_\_

SCHOOL: \_\_\_\_\_

AGE: \_\_\_\_\_

Grade/EC Program: \_\_\_\_\_

DATE RECORDS REQUESTED: \_\_\_\_\_

### RECORD REVIEW

- Current IEP
- Psychological evaluations
- OT (Occupational Therapy) evaluations
- Functional Behavior Assessment
- Speech/Language evaluations
- Academic achievement reports
- Standardized test results
- Medical records (if necessary)
- Behavioral evaluation/behavioral plan
- Vocational evaluation (interest, skills, aptitude)
- Transition plan
- Other

Copies Requested Date: \_\_\_\_\_

Date Copies Mailed to SESP: \_\_\_\_\_

## SAMPLE FORM 6: Letter of Rescission

Date

---

---

---

---

Dear \_\_\_\_\_:

Your appointment to serve as a surrogate parent for \_\_\_\_\_  
has been rescinded effective upon receipt of tills letter because:

### The Student:

- \_\_\_\_\_ Has withdrawn from this school system/agency.
- \_\_\_\_\_ Was declared not eligible for special education services
- \_\_\_\_\_ Is no longer eligible for special education services
- \_\_\_\_\_ Is in the custody of the State, placed in foster care and is represented by the foster parent in educational matters.
- \_\_\_\_\_ Has a parent to represent him/her in educational matters.
- \_\_\_\_\_ Has a guardian to represent him/her in educational matters.
- \_\_\_\_\_ Has a person acting as a parent to represent him/her in educational matters.
- \_\_\_\_\_ Has graduated.
- \_\_\_\_\_ Has reached the age of majority.
- \_\_\_\_\_ Other: \_\_\_\_\_

### You:

- \_\_\_\_\_ Requested to be relieved of your surrogate parent appointment.
- \_\_\_\_\_ Have been unable to fulfill your responsibilities as a surrogate parent.
- \_\_\_\_\_ Other: \_\_\_\_\_

### If you have questions, please contact:

\_\_\_\_\_

|      |           |
|------|-----------|
| Name | Telephone |
|------|-----------|

Sincerely,

\_\_\_\_\_  
Superintendent/Designee

## SAMPLE FORM 7: Public Service Announcement

# WANTED! WANTED! WANTED!

---

## SPECIAL EDUCATION SURROGATE PARENTS

### Would you like to make a difference in a child's life?

Must be caring and committed with time to share. Children who have disabilities are often in need of special education services. Some of these children have no parents and need a concerned volunteer who is willing to learn about their special needs. If you are an adult who is interested in helping represent a child's needs for services and interested in developing plans with service providers to meet those needs in the absence of their parents, please contact your local special education department to let them know of your interest and willingness.

***You can make a difference; please call today.***

In \_\_\_\_\_ County, the contact person is \_\_\_\_\_,  
Phone \_\_\_\_\_. The Exceptional Children Director  
for \_\_\_\_\_ (LEA/district) is \_\_\_\_\_,  
Phone \_\_\_\_\_.

Free Training is provided by \_\_\_\_\_ (LEA/school district).