

Surrogate Parent

I. In Newport News Public Schools, the surrogate parent appointed in accordance with this section, represents the child in all matters relating to:

- A. The identification, evaluation, or educational placement of the child; or
- B. The provision of a free appropriate public education to the child.

II. Appointment of surrogate parents

A. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

1. The natural parent or parents or guardians are allowing relatives or private individuals to act as a parent;
2. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 16.1-283, § 16.1-277.01, or § 16.1-277.02 of the Code of Virginia. The permanent foster parent appointed by the court or other individual appointed by the judge for that child may serve as the parent of the child for the purposes of any special education proceedings; or
3. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 63.1-206.1 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

- B. A surrogate parent will be appointed for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: 34 CFR § 300.515.
 - 1. No parent can be identified;
 - 2. The Division, after reasonable efforts, including contacts with community agencies, cannot discover the whereabouts of a parent; or
 - 3. The child is an unaccompanied homeless youth, not in the physical custody of a parent or guardian, as defined by the McKinney-Vento Homeless Assistance Act.

- C. A surrogate parent shall be appointed as the educational representative for a child who reaches the age of majority if the school division has received written notification that the child is not competent to provide informed consent in accordance with 8 VAC 20-80-72 C 3 or C4 and no family member is available to serve as the child's educational representative.

- D. The Division will follow these guidelines for determining whether a child needs a surrogate parent; and

- E. For assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by a judge overseeing the child's care or by the Division's Superintendent or designee upon recommendation from the Director of Special Education and Assessment Services or designee. 34 CFR § 300.515 (b)
 - 1. A surrogate parent will be appointed within 30 days after determination that the child needs a surrogate parent.
 - 2. The appointment having been effected, the administrator shall notify in writing:

- a. The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
 - b. The surrogate parent-appointee;
 - c. The person charged with responsibility for the child; and
 - d. The custodial state agency charged with responsibility for the child.
3. The surrogate parent shall serve during, or for the duration of, the school year for which the surrogate parent is appointed.
- a. When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of the child's IEP.
 - b. If the child requires the services of a surrogate parent during the summer months, the appointment will be extended as needed, consistent with timelines required by law.
4. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the appropriate special education administrator.
- F. The Division operational guidelines include the following conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. The guidelines provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

1. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8 VAC 20-80-72;
2. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of those services;
3. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
4. The parent or parents, whose whereabouts were previously unknown, are now known and available; or
5. The appointed surrogate parent is no longer eligible according to subsection IV of this section.

III. Identification and recruitment of surrogate parents

- A. The Special Education Department has developed and maintains a list of individuals who are qualified to serve as surrogate parents. It may be necessary, at times, to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.
- B. Individuals who are not on the list may be eligible to serve as surrogate parents, subject to the Division's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the determination of surrogate eligibility. Other factors which warrant attention are as follows:
 1. Consideration of the appointment of a relative to serve as surrogate parent;

2. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;
3. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and
4. The appropriateness of the child's participation in the selection of the surrogate parent.

IV. Qualifications of surrogate parents

A. A person appointed as a surrogate:

1. Has no interest that conflicts with the interest of the child;
2. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed a Division-approved training session prior to representing the child. Thereafter, annual training will be provided, as necessary, for surrogate parents to ensure that they possess knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively;
3. Is not an employee of the Virginia Department of Education, or any other agency which is involved in the education or care of the child;
4. Is an adult; and
5. Resides in the same general geographic area as the child, whenever possible.

- B. An individual may be selected as a surrogate if an employee of a nonpublic agency that only provides noneducational care for the children and who meets the above standards.

- C. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

V. Rights of surrogate parents

The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children with disabilities for whom they are responsible, including children placed in private schools.