

The Individuals with Disabilities Act (IDEA) requires that state and local educational agencies must ensure the rights of a child with a disability are protected, when: (1) No parent (as defined in 34 Code of Federal Regulations (CFR) § 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 United States Code 11434a(6)). 34 CFR § 300.519(a). Federal law further requires state and local educational agencies establish and maintain procedures for assigning an educational surrogate parent. 34 CFR § 300.519(b).

### **What is an Educational Surrogate Parent?**

An educational surrogate parent is an individual who has been appointed to represent the educational interests of a child with a disability. A surrogate parent ensures the educational rights of a child with a disability are protected. Montana law defines a surrogate parent in the context of special education as “an individual appointed to safeguard a child’s rights and protect the child’s interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.” Montana Code Annotated (MCA) 20-7-401(6).

### **When Must an Educational Surrogate Parent Be Appointed?**

A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. Within 10 days of determining that a child is in need of a surrogate parent, the school district or its designee or the governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court. MCA 20-7-461(1).

### **How is an Educational Surrogate Parent Appointed?**

The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child. MCA 20-7-461(3).



### **Who can be an Educational Surrogate Parent?**

- The person nominated as a surrogate parent must be an adult who is not an employee of the of a state or local educational agency that is providing educational services to the child.
- The person may not have a vested interest that will conflict with the person's representation and protection of the child.
- If practicable, the surrogate parent must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child. MCA 20-7-461(2).

### **What is the Duration of Appointment of the Educational Surrogate Parent?**

The appointment of a surrogate parent may be terminated when:

- A child's parents are identified;
- The location of the parents is discovered;
- The child is no longer a ward of the state; or
- The surrogate parent wishes to discontinue the appointment. MCA 20-7-461(4)

### **What Are the Responsibilities of the Surrogate Parent?**

A person appointed as a surrogate parent shall represent the child with a disability in all decision making processes concerning the child's education by:

- Becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;
- Complying with state and federal law as to the confidentiality of all records and information to which the person is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;
- Becoming familiar with the educational evaluation and placement for the child;
- By giving approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and other programs that may be available; and
- Initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever the assistance is in the best interest of the child. MCA 20-7-462(1)-(4).



## Can a Foster Parent Serve as an Educational Surrogate Parent?

Maybe. There is nothing in IDEA or Montana law that precludes a foster parent from being appointed as a surrogate parent. However, a foster parent may already have the authority to act as a parent\* under IDEA, if the natural or adoptive parent's authority to make educational decisions on the student's behalf has been extinguished and the foster parent is willing to make the educational decisions required by parents under IDEA and has no interest that would conflict with the interests of the student. Administrative Rules of Montana (ARM) 10.16.3504(2).

### 34 CFR § 300.30 (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;

(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.

## Are Surrogate Parents Immune from Liability & Do They Get Reimbursement?

- A person appointed as a surrogate parent is exempt from liability for any act or omission performed by the person in the capacity as a surrogate parent except an act or omission that is found to have been committed in a grossly negligent or malicious manner. MCA 20-7-463(1).
- A surrogate parent has the same protection and immunity in professional communications as a teacher. MCA 20-7-463(2).
- A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of the surrogate parent's duties, as described by rules adopted by the Superintendent of Public Instruction. MCA 20-7-463(3).

### For More Information Contact:

Dispute Resolution Office  
Montana OPI  
P.O. Box 202501 Helena, MT 59620  
(406) 444-2046

## RESOURCES

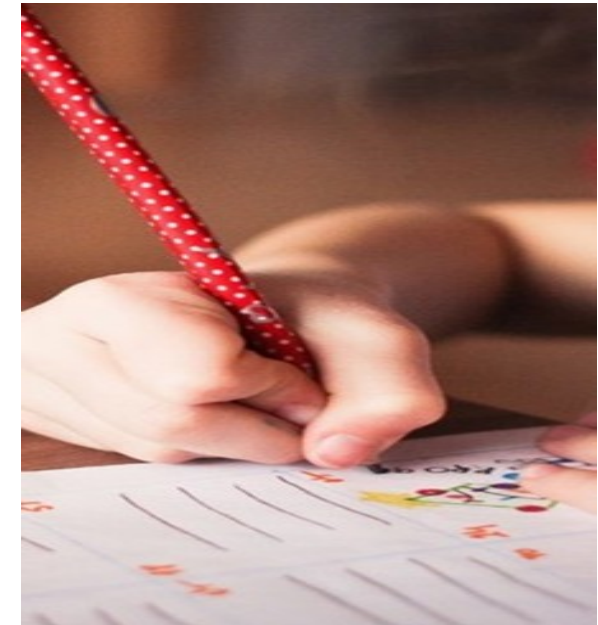
### Montana Empowerment Center

P.O. Box 2307  
Great Falls, MT 59403  
Phone: (877) 870-1190  
mtempowermentcenter.org

### Disability Rights Montana

1022 Chestnut Street Helena, MT 59601  
Phone: (406) 447-8080 or (800)245-4743  
Voice/TDD: (406) 449-2344  
disabilityrightsmt.org

# EDUCATIONAL SURROGATE PARENTS



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