

## Surrogate Parents in Special Education

### Factsheet for Virginia's Parents

#### What is a Surrogate Parent?

Sometimes, children with disabilities need someone to speak up for them in the special education process. When their parent or legal guardian is not available, a **surrogate parent** can be appointed to ensure the child receives the services they need. A student must be notified in writing if a surrogate parent is appointed.

#### Definition of Parent in Virginia Law: [§ 22.1-213.1](#).

- **A biological or adoptive parent**
- **A foster parent**, even if the child's biological or adoptive parents still have rights—(see below)
- **A legal guardian** who is allowed to make decisions for the child
- **A person acting in the place of a parent**, like a grandparent, stepparent, or other relative who lives with the child or is legally responsible for the child's care
- **A surrogate parent**, chosen by the school division, if no one from the groups above can be found and is willing to take on the role

If more than one person meets the qualifications above, the **biological or adoptive parent will usually be considered the parent**, unless their legal rights have been officially ended by a court.

If a **foster parent is acting as the parent**, the school division must send a **written notice** to the biological or adoptive parent at their last known address. The foster parent can continue acting in this role until the biological or adoptive parent steps in.

If a **judge names someone specific** to act as the child's parent or to make educational decisions, that person becomes the **official "parent"** in special education matters—even if others on the list above also qualify.

#### When Is a Surrogate Parent Needed?

- When **no parent or guardian** as defined in [§ 22.1-213.1](#) or [8VAC20-81-10](#), can be found
- When the child is a **ward of the state** and there is no parent, or the parent cannot be found
- When the child is an **unaccompanied homeless youth** as defined in the McKinney-Vento Homeless Assistance Act (Education for Homeless Children and Youth (EHCY) Program)
- When the student has reached age 18 and the school division has been notified in writing that the **adult student is not competent** to provide informed consent, and no family member can step in

#### How Are Surrogate Parents Chosen?

The school division must have **procedures** (that comply with regulations) to decide if a child needs a surrogate parent. They must keep a **list of qualified individuals** who can serve as surrogate parents. The school can look outside the local area to find someone with the right experience and skills. Whenever possible, the school will try to choose a relative or someone who knows the child. Contact your school division **to get a copy** of their surrogate parent procedures.

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## Who Can Qualify to Be a Surrogate Parent?

- An adult with **no personal or professional conflicts of interest** that would impact the student.
- An adult who has the **knowledge and skills** to adequately represent the student.
- An adult who is **not an employee** of the Virginia Department of Education, the child's school division, or other agency serving the child.

Note: If a child is an unaccompanied homeless youth, staff from a shelter, independent living program, or outreach program **can be assigned as a temporary surrogate parent**—even if they work for an agency involved in the child's care. This is only allowed until a fully qualified surrogate parent can be assigned.

## What Does a Surrogate Parent Do and How Long Do They Serve?

A surrogate parent takes part in meetings about the child's evaluations, Individualized Education Programs (IEPs), placement and services, and other decisions affecting the child's special education rights and services.

Typically, the appointment of a surrogate parent **lasts for the school year**. It can be extended over the summer if needed or ended early in certain situations—for example, if the child turns 18 and can make their own decisions, if a parent or guardian becomes available, if legal guardianship changes, or if the surrogate is no longer eligible. **At the end of each school year**, the school division will decide whether a surrogate parent is still needed for the following year.

## What Rights Do Surrogate Parents Have?

They have the **same rights as any parent** representing their child's educational interests. They can:

- Attend IEP meetings
- Review school records
- Give or deny consent for special education decisions (e.g., evaluations, IEP implementation, amendment or termination, placement, etc.)
- File complaints or request mediation or a due process hearing

### ADDITIONAL INFORMATION/RESOURCES:

[8VAC20-81-220. Surrogate parent procedures.](#)

[Education for Homeless Children and Youths-McKenny Vento](#)

[Virginia Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#)

[What if a parent is unable to serve in their role in the special education process? – PACER Center](#)

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