



south dakota  
DEPARTMENT OF EDUCATION  
Learning. Leadership. Service.

South Dakota Department of Education

# Surrogate Parent Manual



January 2008

# Table of Contents

---

<b>Introduction.....</b>	<b>3-4</b>
<b>Surrogate Parent in the Administrative Rules.....</b>	<b>5-7</b>
<b>Surrogate Parent Process.....</b>	<b>8</b>
<b>Qualifications to be a Surrogate Parent.....</b>	<b>9</b>
<b>Training.....</b>	<b>10</b>
<b>Responsibilities, Tenure, Compensation, and Liability....</b>	<b>11</b>
<b>Questions and Answers.....</b>	<b>12-14</b>
<b>Contact Information.....</b>	<b>15</b>
<b>Sample Letters and Forms.....</b>	<b>16-20</b>



# Introduction

---

Under § [24:05:30:15](#), each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent, as defined in § [24:05:13:01](#), can be identified and the district, after reasonable effort, cannot locate a parent or if the child is a ward of the state or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2007. A district's method for determining whether a child needs a surrogate parent must include the following:

- (1) The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;
- (2) The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and
- (3) The establishment of a referral system within the district for the appointment of a surrogate parent.

If a child is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, if the surrogate meets the requirements of this section.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of the department, district, or any other agency that is involved in the education or care of the child.

If a child 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 the nonemployee provision above, until a surrogate parent can be appointed who meets all of the requirements of this section.

The South Dakota Department of Education adheres to the requirements of the Individuals with Disabilities Education Act that addresses the appointment of a surrogate parent. The school district designee shall select an individual from the list of qualified surrogate parents.

The surrogate parent has the same special education rights as any parent with regard to educational decisions in the identification, evaluation, program placement, and free appropriate public education of a student with disabilities. Included are the rights to receive written notice, give or refuse consent, review records, and receive full explanation of all procedural safeguards available under the Individuals with Disabilities Education Act. Surrogates will receive all letters, forms, and handbooks provided to any parent. As with a parent, a surrogate parent is an equal partner with all other school staff in the educational decision-making process.

These guidelines will serve to provide information to school districts in implementing an effective surrogate parent program.



# Surrogate Parent in the Administrative Rules

---

According to §[24:05:13:04](#), a parent is defined as:

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 § [24:05:30:15](#).

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is 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.

If a judicial decree or order identifies a specific person or persons under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

---

A surrogate parent is, according to § [24:05:30:15](#), an individual who ensures that the rights of a child are protected if no parent, as defined in § [24:05:13:01](#), can be identified and the district, after reasonable effort, cannot locate a parent or if the child is a ward of the state or the child is an unaccompanied homeless youth.

A district's method for determining whether a child needs a surrogate parent must include the following:

1. The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;
2. The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and
3. The establishment of a referral system within the district for the appointment of a surrogate parent.

If a child is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, if the surrogate meets the requirements of this section.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of the department, district, or any other agency that is involved in the education or care of the child.

If a child 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 the non-employee provision above, until a surrogate parent can be appointed who meets all of the requirements of this section.

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

The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement, and provision of FAPE to the students.

The department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a district determines that the child needs a surrogate parent.

"Ward of the state," as found in § [24:05:13:01](#) is defined as a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in § [24:05:13:04](#).

District required to identify children in need of special education or special education and related services according to § [24:05:22:01](#). Each school district shall develop and utilize a system for the identification, location, and evaluation of children in need of special education or special education and related services. The system must include all children residing within the jurisdiction of the district who are ages birth through 21 regardless of the severity of their disability, including children in all public and private agencies and institutions, private schools, including religious schools, and children receiving alternative instruction under SDCL [13-27-3](#) within the legal boundaries of the district. The requirements of this section apply to:

- (1) Wards of the state and highly mobile children with disabilities such as migrant children and homeless children; and
- (2) Children who are suspected of being children with disabilities under this article and in need of special education, even though they are advancing from grade to grade.



# Surrogate Parent Process

The student is referred to special education or the student has been identified as having a disability and has a current IEP.

Contacts are made to the student's parents, relatives, or individual with whom the student resides. (i.e. grandparent, aunt, foster parent)

If no parent is located, a written recommendation to appoint a surrogate parent is sent to the special education director.

Within a reasonable amount time of the written recommendation, an education surrogate parent is appointed for the

Parent located according to ARSD § [24:05:13:04](#) definition:

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;

**No surrogate parent is needed.**

**Note:** The district shall make reasonable efforts to ensure the assignment of a surrogate parent not more than **30 days** after a district determines that the child needs a surrogate parent.

# Qualifications to be a Surrogate Parent

---

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of:

- The department,
- district, or
- any other agency that is involved in the education or care of the child.

If a child 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 the non-employee provision above, until a surrogate parent can be appointed who meets all of the requirements of this section.

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

# Training

---

The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents. The training should include instruction in and on the material contained within this manual.

The role of a surrogate parent is to:

## Gather information:

- Meet the child, visit the child's home if possible, or visit the child's school.
- If the child is young or has cognitive limitations, present yourself as a friend since the surrogate parent term may be confusing to the child.
- If the child is a ward of the state, talk with the child's case manager about his or her educational history.
- Review the child's special education records.
- Visit the class to observe the child and talk with the teachers.
- Make certain that teachers, therapists, supervisors, and other professionals involved with the child know that you are acting as the child's surrogate parent.
- Keep a record and file of all written and verbal contact you have with the school.
- Ask questions about anything you do not understand.

## Learn about the disability:

- The surrogate parent will also need to learn about the child's disability area(s). Learn about the child:
- It is important for the surrogate parent to spend time observing the child at school and seeing the child in the home environment, reviewing the child's records, and talking to the child's case manager. Then the surrogate parent can begin to answer questions about the child.

## How does the child learn?

- By watching?
- By hearing?
- In a group? Alone?

## What does the child like or dislike about school?

- What is the child's favorite part of the school day? Favorite academic subject? Least favorite subject?
- What are the child's general feelings about school?

## Confidentiality

- Surrogate parents have access to the child's confidential information. They also will receive confidential information while talking with teachers and social workers. It is important to use this information with care and discretion and respect the privacy of the child.
-

# Responsibilities, Tenure, Compensation, and Liability

---

## Responsibilities of Surrogate parents

A surrogate parent, who has participated in surrogate parent training and follow-up sessions, is responsible for representing the child when decisions about his/her special education program are made concerning:

- Represent the student with disabilities in all education decision-making.
- Grant or deny permission for initial evaluation or placement based upon the child's individual needs.
- Identification of the need for the child to receive special education services
- Participate in the design of the child's individualized education program, including placement
- Ongoing reviews of educational progress
- When necessary, initiate mediation, complaints, resolution session, and due process hearings.

## Tenure

- If a student moves, exits from special education, or is assigned a legal guardian, the surrogate is no longer responsible for that student.
- A person may fill the role as long as the surrogate fulfills qualifications and is representing the student in educational matters. If the surrogate parent is not fulfilling their responsibilities, the school district, with cause, could terminate the appointment of the surrogate parent.
- A surrogate parent can terminate services by writing a letter to the superintendent of the school district in which the student receives special education services.

## Compensation

- Compensation shall include reimbursement for in-state travel to attend meetings regarding the student. Such compensation will be subject to the school district's fiscal rules.
- A Surrogate parent is not considered an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

## Liability

- The surrogate parent may act in place of the parent in all matters relating to the identification, evaluation, and educational placement of a child in need; and to the provision of a free appropriate public education to the child in need. The surrogate parent is immune from suit when acting in the capacity of a surrogate parent except for acts or omissions which are grossly negligent, wanton, reckless, or malicious. SDCL [13-37-27](#)
-

# Questions and Answers

---

1. Q. *What happens to the educational surrogate appointment when the “providing district” isn’t the same as the student’s resident district?*

The district actually providing educational services to a student is responsible for appointment of a surrogate if that student needs one. In such cases, it is suggested that the providing school district consult with the student’s district of residence.

2. Q. *How many students can be served by one surrogate parent?*

There are no formal limits on the number of students who may be served by each surrogate parent. However, experience in other States, according to a report prepared by the National Association of State Directors of Special Education (NASDSE), suggests that an ideal caseload for each surrogate would be up to three students. In appointing multiple students to a person, the school district should consider whether or not the surrogate’s total “load” will allow him or her the time to perform the required duties.

3. Q. *Can those individuals with whom the child lives provide **consent** if the whereabouts of the biological or adoptive parent **is** known and their parental rights have **not** been removed? For example: A biological parent whose educational rights have not been removed is incarcerated. The child is living with grandma. Since the district knows where the parent is located, do they need to obtain consent from the biological parent?*

If the biological or adoptive parent’s location is known and their parental rights have not been terminated, then the district must seek consent from the biological or adoptive parent.

4. Q. *Does a surrogate parent need to be appointed for a student with a disability who has a foster parent?*

No. The Individuals with Disabilities Act of 2004 amended the definition of a parent to include a foster parent. This change is reflected in the final part B regulations at 34 CFR 300.30. Additionally, the Part B definition of a parent clarifies the situation when more than one party is qualified to act as a parent and is attempting to do so. Under

this circumstance, the biological or adoptive parent is considered the parent for Part B purposes, unless they do not have legal authority to make educational decisions or a judicial decree or order has identified another person to act as the parent.

5. Q. *Can you describe some of the persons who are not eligible to serve as surrogate parents?*

The categories excluded by federal and State rules and regulations are those persons who receive public funds to care for the student, who have any interest that may conflict with the interests of the student represented, or who are employed by a public agency involved in the education or care of a student.

6. Q. *When is a student “a ward of the State” and thus eligible for a surrogate parent?*

A student is a “ward of the State” when the parent rights have been terminated and the State or county has assumed the legal responsibility for the student. However, if the State or county is a custodian of the student, but the parent retains the rights to make decisions concerning education, the student is not a “ward of the State” and no surrogate parent is needed.

7. Q. *If a legal guardian has been appointed for a student, does the student need a surrogate parent?*

If the court has appointed a legal guardian for the student, the district shall consider the legal guardian as the parent. No surrogate parent need be appointed. The school should notify the court—appointed surrogate and offer the appropriate training.

8. Q. *What is “reasonable effort”?*

It means that more than one activity must be included in the effort to locate the parents and that all efforts should be documented. At least three attempts to locate the parents should be made including phone calls, letters, certified letters or visits to the parent’s last known address. All attempts should be documented in the student’s record.

9. Q. *How is “conflict of interest” defined?*

A person has a conflict of interest when their employment requires him/her to balance the interests of the student with the interests of the employer.

**10.** Q. *Who is responsible for monitoring and evaluating the performance of surrogate parents?*

The school district that nominates the surrogate parent is responsible. The local special education director should evaluate the performance of each surrogate parent in their school district. The South Dakota Department of Education has ultimate responsibility to see that monitoring activities are carried out.



# Contact Information

---

For questions concerning Surrogate Parent or any other issue concerning special education and related services, please contact the:

- South Dakota Department of Education, Office of Education Services and Supports at **605-773-3678** or visit the website at:  
<http://doe.sd.gov/oess/specialed/index.asp>
  - South Dakota Advocacy Services at **1-800-658-4782** or email at  
[sdas@sdadvocacy.com](mailto:sdas@sdadvocacy.com)
  - South Dakota Parent Connection at **1-800-640-4553** or visit the website at:  
[www.sdparent.org](http://www.sdparent.org)
-

# Determination for Educational Surrogate Parent Appointment

This form is to be used when determining need for a surrogate parent for a student who (1) is now receiving special education or (2) who is suspected of needing special education.

Student \_\_\_\_\_ Date of Birth \_\_\_\_\_

Grade \_\_\_\_\_ Placement \_\_\_\_\_

School \_\_\_\_\_ Teacher \_\_\_\_\_

Name of Caregiver \_\_\_\_\_ Primary Language \_\_\_\_\_

Address \_\_\_\_\_

Phone (home) \_\_\_\_\_ (business) \_\_\_\_\_

## Relationship of Caregiver to Student

\_\_\_\_\_ Parent

\_\_\_\_\_ Legal Guardian

\_\_\_\_\_ Foster Parent

\_\_\_\_\_ Other Relative (specify) \_\_\_\_\_

\_\_\_\_\_ Other (specify) \_\_\_\_\_

## Check Appropriate Box:

The student is represented by parent(s) or by a legal guardian.

The student's parents are unknown.

Attach a copy of written documentation of at least three attempts to locate the natural parents.

The student is a ward of the State.

Other

## Based on these findings, an Surrogate parent

\_\_\_\_\_ must be appointed.

\_\_\_\_\_ does not need to be appointed.

\_\_\_\_\_  
Authorized Signature/Title

\_\_\_\_\_  
Date

# Appointment

The school district maintains and distributes a list of surrogate parents with the knowledge and skills necessary to effectively represent students with disabilities.

- The list will include only individuals who have successfully completed the training, including receipt of the South Dakota Surrogate Parent Manual.
- The list must include information about the surrogate parent including current employment history, previous school experience history, references, and any information regarding possible conflict with the student.
- The school district designee will select a person from the list.
- If the individual selected meets criteria and qualifications, the school district shall appoint the person as a surrogate parent and record the appointment in the student's record.
- The person selected must accept the appointment in writing.
- Whenever possible, the person selected should reside in close proximity to where special education services are provided.

# South Dakota Application for Surrogate Parent

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_ DOB \_\_\_\_\_

Employed by \_\_\_\_\_ Position \_\_\_\_\_

Primary Language \_\_\_\_\_ Cultural Heritage \_\_\_\_\_

Preference: Age \_\_\_\_\_ Gender \_\_\_\_\_ Grade Level(s) \_\_\_\_\_

## Please Answer the Following Questions by Circling Yes or No.

Yes No 1. Does your employment involve the education of students?

Yes No 2. Does your employment involve the care of students?

Yes No 3. Do you have time available to attend meetings as an Educational Surrogate Parent?

Yes No 4. Are you familiar with the special education process?

Yes No 5. Are you willing to participate in training sessions for educational surrogate parents?

Please list your educational and community experience with children or youth:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

## References:

1. Name \_\_\_\_\_ Relationship \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

2. Name \_\_\_\_\_ Relationship \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

I give my permission for the special education director to contact the above named references. Signature/Date \_\_\_\_\_

# South Dakota Surrogate Parent Eligibility Verification

---

Nominee \_\_\_\_\_

Address \_\_\_\_\_

Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

Student's Name \_\_\_\_\_ DOB \_\_\_\_\_

This verifies that \_\_\_\_\_ meets the criteria for appointment as an surrogate parent by State and federal regulations to ensure appropriate representation in all matters relative to the identification, evaluation, and educational placement of the student and in delivery of a free appropriate public education.

\_\_\_\_\_  
Authorized Signature/Title

\_\_\_\_\_  
Date

# Sample Letter of Notification

---

Mile High School District  
123 School Avenue  
Rocky Flats, South Dakota

October 27, 2006

Evelyn Mace  
321 Anderson St.  
Mile High, Colorado 80204

Dear Mrs. Mace,

The Mile High School District would like to appoint you as a surrogate parent in accordance with both federal and State law and regulations. Accordingly, as a surrogate parent, you will have all the rights and responsibilities of parents in matter relating to the special education process.

The student with whom we have matched you is Gail Bodily, age 10. Gail is a resident at the American Center in Rapid City. She attends fifth grade at Rocky Flats Elementary School. The School Principal is Ms. Leona Lyon, and Gail's teacher is Mr. Jon Graham. Both may be reached by contacting the school at 345-6789.

If you have any questions about your appointment as a surrogate parent, please call me.

We thank you for volunteering for this important activity.

Sincerely,

John Copenhaver  
Special Education Director