



south dakota DEPARTMENT OF EDUCATION

Learning. Leadership. Service.



Surrogate Parent Manual

April 2024

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Introduction

Each school district in South Dakota shall establish procedures for assigning a surrogate parent for qualifying children in accordance and compliance with South Dakota's administrative rules §24:05:30:15 and 34 C.F.R. §300.519. Surrogate parents ensure the rights of a child are protected. This manual provides information to school districts on the regulatory and administrative rules regarding surrogate parents as well as guidance on implementing an effective surrogate parent program.

Information contained herein outlines federal regulations regarding surrogate parents, including information on McKinney-Vento as reauthorized in Every Student Succeeds Act (ESSA), and information on surrogate parents for students with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) 34 C.F.R. §300.519. Additionally, state-specific Administrative Rules governing the implementation of federal regulations are addressed and district implementation of all requirements are addressed. This manual serves as implementation guidance to support both regulatory compliance and quality of implementation.

Federal Regulations and State Administrative Rules

Definition of a Parent

The Individuals with Disabilities Education Act (IDEA) 34 C.F.R. §300.30 and South Dakota §24:05:13:04 both define a parent 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 and 34 C.F.R. §300.519.

The Administrative Rule [§24:05:13:04](#) further states:

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 ([§24:05:13:04](#)) 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.

Therefore, if a biological or adoptive parent is attempting to act as the parent, another qualifying person will only be considered the “parent” if the court has removed the educational rights of the biological or adoptive parent.

Any person who qualifies as a parent under this definition, including a surrogate parent, has the procedural rights and protections of a parent under the IDEA, including the right to request a due process hearing.

Definition of a Surrogate Parent

Surrogate parents are individuals assigned to act as parents on behalf of a student in specific circumstances. A surrogate parent is a person with specific knowledge regarding the requirements of the IDEA and South Dakota Administrative Rules on special education. The person appointed to be the surrogate parent will learn about the child's educational skills and needs, and the appointee will represent the interests of the child in the special education process.

Student Referral for a Surrogate Parent

Under [§24:05:30:15](#), each school district shall establish procedures for the assignment of a surrogate parent to ensure the rights of a child are protected if no parent, as defined in [§24:05:13:04](#), 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 on Jan. 1, 2009.

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.

The district superintendent or designee shall appoint surrogate parents.

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. It is important to note, South Dakota Administrative Rules and the IDEA regulations prohibit an employee of an agency responsible for the care or education of a child to serve as the surrogate parent for the purposes of special education decision-making, even if a court has assigned educational decision-making rights to them. For more information, see the [Disqualifications for a Surrogate Parent](#) section of this manual.

The South Dakota Department of Education (DOE) shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a district determines a child needs a surrogate parent. If a surrogate parent is needed to represent a child before those 30 days, then the school district should appoint a surrogate more quickly.

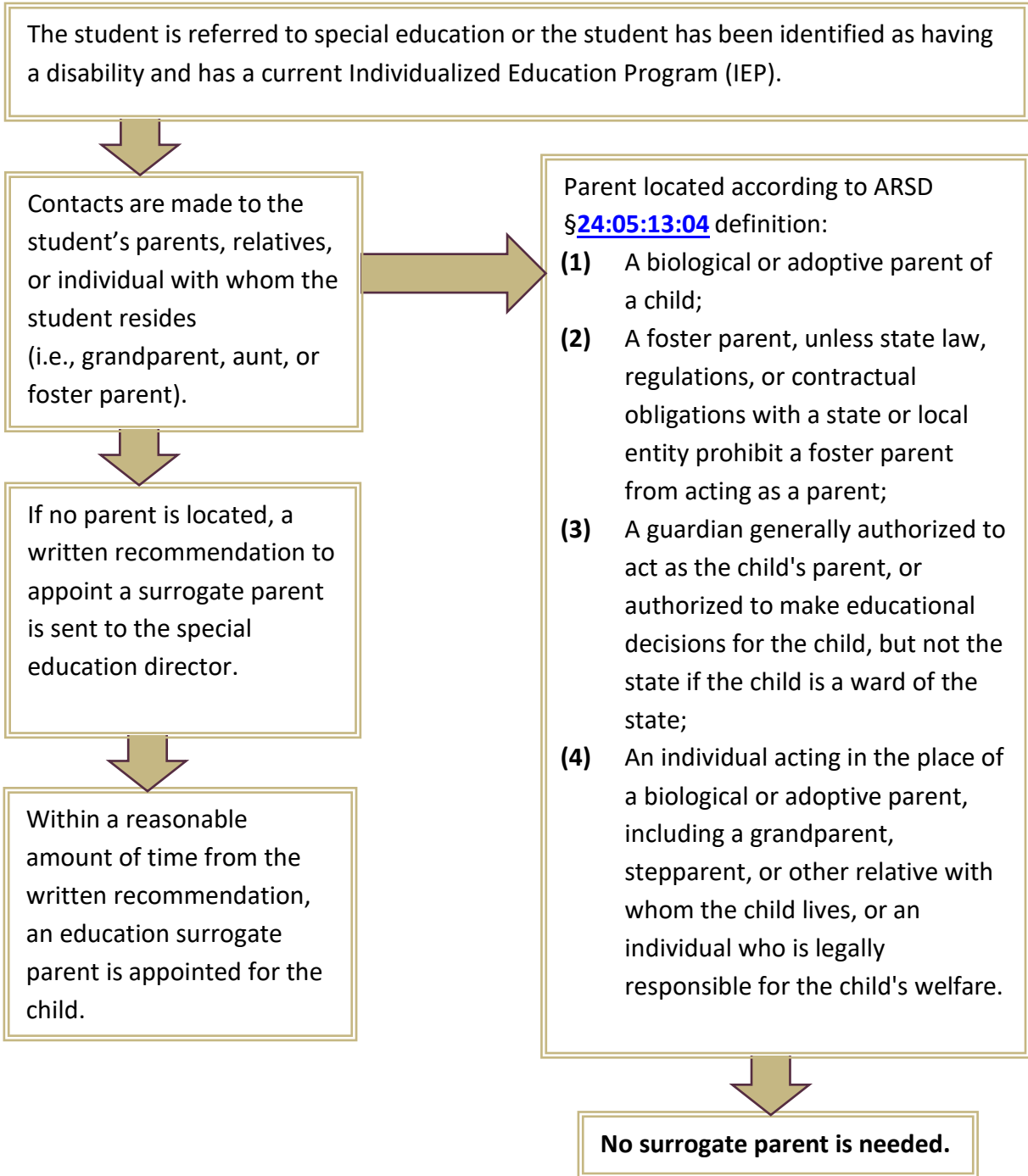
Ward of the State

“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 child who is in the custody of the state or county and does not have a foster parent and does not have a biological or adoptive parent who has maintained their rights to make educational decisions. 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](#). Ward of the state also does not include children whose biological or adoptive parents maintain their rights to make educational decisions for the child.

Unaccompanied Homeless Youth

“Unaccompanied homeless youth,” as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act ([42 U.S.C. 11434a\(6\)](#)), is an individual who lacks a fixed, regular, and adequate nighttime residence and who is not in the physical custody of a parent or guardian. For more information regarding what constitutes the lack of a “fixed, regular, and adequate nighttime residence,” see the definitions in [42 U.S.C. 11434a\(2\)\(B\)](#).

Surrogate Parent Process



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

Selection of a Surrogate Parent

It is the responsibility of the district to maintain a list of qualified persons who may serve as surrogate parents. Surrogate parents must have knowledge and skills that ensure adequate representation of the child. To this end, the district must provide training and certification of surrogate parents no later than the time of each surrogate parent's appointment. More information can be found in the [Training](#) section of this manual. It is the responsibility of the school district superintendent or his/her designee to appoint surrogate parents.

Disqualifications for a Surrogate Parent

Selected surrogate parents must not have personal or professional interests that may conflict with the interest of the child whom the surrogate parent represents.

An individual assigned as a surrogate may not be an employee of:

- The South Dakota Department of Education,
- The appointing school district,
or
- Any other agency that is involved in the education or care of the child.

A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because they are paid by the agency to serve as a surrogate parent. If the proposed surrogate parent was employed by the school district prior to their surrogacy appointment, they do not qualify to act as a surrogate parent.

Children in Foster Care

As stated in §24:05:13:04, a foster parent can be identified as the student's "parent," unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a "parent."

In instances when a child is in the custody of the state or county, does not have a foster parent, and does not have a biological or adoptive parent who has maintained their rights to make educational decisions, the child is a "ward of the state." For children who are wards of the state, it is not allowable for caseworkers to serve as the parent, as the caseworker is employed by an "agency that is involved in the education or care of the child," as stated in §24:05:30:15.

Children in Treatment Facilities

Districts are responsible for the selection of surrogate parents for children receiving care in treatment facilities if a parent, as defined in §24:05:13:04, cannot be identified. Staff and employees of treatment facilities where the child resides cannot be appointed or serve as the surrogate parent of the child because these individuals are employees of an “agency that is involved in the education or care of the child,” as stated in §24:05:30:15.

Children Who are Unaccompanied Homeless Youth

If a child is an unaccompanied homeless youth referred for a surrogate parent, 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, until a more lasting surrogate parent can be appointed who meets all the requirements of §24:05:30:15. It is important to note this exception to the nonemployee provision should only be temporary, and reasonable efforts must be made to identify and assign a permanent surrogate parent who meets all requirements.

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 this 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 personal or professional conflicts with the interests of the student.
- The school district superintendent or designee will select an individual from this list.
- If the selected individual meets criteria and qualifications, the school district shall appoint them as a surrogate parent and record the appointment in the student’s record.
- The selected individual must accept the appointment of surrogate parent in writing.
- Whenever possible, the selected individual should reside in close geographic proximity to where their corresponding student’s special education services are provided.

Training

The district is responsible for the training and certification of surrogate parents. All surrogate parents must complete a training program that, at minimum, includes instruction on the material contained in this manual. Training should also address best practices for meeting the child in person to whom the surrogate parent is appointed. For young children, surrogate parents may present themselves as a friend, as the surrogate parent role may be confusing. However, for older students, surrogate parents can provide more detail about their role in the child's education.

The role of a surrogate parent is to represent the child in special education decision-making. In order to appropriately support and advocate for the child, the surrogate parent should have the knowledge and skills to gather relevant information, learn about the student's disability area(s), and maintain confidentiality.

Gather Information

- Meet the child in person, visit the child's home if possible, or visit the child's school.
- 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 child's classroom to observe the child at school and talk with their teachers.
- Make certain teachers, therapists, supervisors, and other professionals involved with the child know 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.

It is important for the surrogate parent to spend time observing the child at school, seeing the child in their 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.

Learn About the Disability

- The surrogate parent will also need to learn about the child's disability area(s).
- Using the information gathered from observations, as well as knowledge of the disability area(s), the surrogate parent can advocate for the child based on their specific presentation of the disability area(s).

- Questions the surrogate parent should have an answer for include:
 - How does the child learn? By watching, hearing? In a group, alone, with models?
 - What does the child like and dislike about school?
 - What is the child's favorite academic subject? What is their least favorite?
 - What is the child's favorite part of the school day? What's the child's least favorite part?
 - What does the child do well? Where does the child need support?

Maintain Confidentiality

- Surrogate parents have access to the child's confidential information, including health, personal, and educational information.
- Additional confidential information may be obtained through discussions with teachers, social workers, or other case managers.
- Respecting the privacy of the child requires care and discretion. Surrogate parents should receive training in the handling and use of confidential information.

Responsibilities, Tenure, Compensation, and Liability

Responsibilities of Surrogate Parents

Following a surrogate parent training, including follow-up sessions, the surrogate parent is responsible for representing the child when decisions are made about the child's special education program. The surrogate parent will have the authority and responsibility to:

- Represent the child with disabilities in all decision-making related to special education services and the provision of a free appropriate public education (FAPE).
- Grant or deny permission for initial evaluation or placement based on the child's individual needs.
- Engage as a full team member in identifying the need for the child to receive special education services.
- Participate in designing the child's individualized education program (IEP) including placement.
- Review the child's educational progress on an ongoing basis.
- Initiate mediations, complaints, resolution sessions, and due process hearings when necessary.

The surrogate parent has the same special education rights as any parent regarding educational decisions in the identification, evaluation, program placement, and FAPE of a student with disabilities. These special education rights include the rights to receive written notice, give or refuse consent, review records, and receive full explanations of all procedural safeguards available under IDEA. Surrogates will receive all letters, forms, and handbooks provided to any biological or adoptive parent. As with a biological or adoptive parent, a surrogate parent is an equal partner on the student's IEP team.

Tenure

A surrogate parent can continue to serve in their role until or unless:

- A student moves, exits from special education, or is assigned a legal guardian. If any of these occur, the surrogate parent is no longer responsible for that student.
- The surrogate parent no longer fulfills all qualifications or is not fulfilling their responsibilities. If a surrogate parent is not fulfilling their responsibilities, the school district could, with cause, terminate the appointment of the surrogate parent.
- Termination of services is initiated by 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 for a surrogate parent 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, for qualification purposes, is not considered an employee of the agency or school district solely because he or she is paid by the agency or school district to serve as a surrogate parent.

The surrogate parent meets the legal requirements to be considered a "parent" under IDEA and is afforded the same rights and protections as all other parents. Therefore, if a surrogate parent requests a due process hearing, the surrogate would also have a right to reasonable attorney's fees, as described in the *Letter to Copenhaver*, 29 IDELR 1091 (OSEP 1997).

Liability

- The surrogate parent may act in place of the biological or adoptive parent in all matters relating to the identification, evaluation, and educational placement of a child in need, and to the provision of FAPE to the child in need.
- The surrogate parent is immune from lawsuits when acting in the capacity of a surrogate parent except for acts or omissions which are grossly negligent, wanton, reckless, or malicious per [South Dakota Codified Law 13-37-27](#).

Frequently Asked Questions (FAQs)

1. What happens to the surrogate parent when the “providing district” is not the same as the student’s resident district?

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

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

A. No formal limits are documented on the number of students who may be served by one surrogate parent. In appointing multiple students to one surrogate parent, the school district should consider whether or not the surrogate’s total caseload will allow him/her the time necessary to perform their required duties.

3. 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, and the parent’s child is living with the child’s grandmother. Since the district knows where the biological parent is located, do they need to obtain consent from this parent?

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

It is important to remember, if more than one individual qualifies as a “parent” under IDEA’s definition, the biological or adoptive parent is presumed to be the “parent” unless their legal authority to make educational decisions for their child has been terminated.

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

A. No. The IDEA of 2004 amended the definition of a “parent” to include a foster parent as reflected in the Part B regulations at 34 CFR 300.30. Additionally, the biological or adoptive parent would still be considered the parent for Part B purposes unless the biological or adoptive parent no longer has legal authority to make educational decisions, or a judicial decree or order has identified another person to act as the “parent.”

5. When is a student a “ward of the state”?

A. A student is a “ward of the state” when their parent’s legal 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 their rights to make decisions concerning the student’s education, the student is not a “ward of the state” and no surrogate parent is needed.

6. Does a surrogate parent need to be appointed for a student with a disability who is a ward of the state with no foster parent?

A. Yes. If the student is a ward of the state and a parent, as defined in IDEA, cannot be found, then the school district providing educational services must appoint a surrogate parent. The surrogate parent who is appointed must not be an employee of the agency, school district, or the South Dakota Department of Social Services.

7. What if there is more than one individual who meets criteria under the definition of “parent” and is attempting to act as the parent for a student’s educational decision making?

A. The biological or adoptive parent is always presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for their child, or if a judicial decree or order specifically identifies another individual as the parent.

8. What if a parent cannot be identified for a child who is receiving treatment or care from an in-patient facility?

A. In this instance, the school district responsible for providing educational services for the student must appoint a surrogate parent who is not an employee of the agency, school district, or in-patient facility.

9. Who are some of the persons not eligible to serve as surrogate parents?

A. The persons excluded by both federal and state rules and regulations are those who receive public funds to care for the student, who have any interests 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 the student.

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

- A. If the court has appointed a legal guardian for the student, the school district shall consider the legal guardian as the parent, unless the legal guardian is an employee of an “agency that is involved in the education or care of the child.” If the court-appointed legal guardian meets all qualifications for a surrogate parent, then no surrogate parent need be appointed by the school district. However, the school district should still notify the court-appointed legal guardian and offer them the appropriate surrogate parent training.

11. What constitutes “reasonable effort” in attempting to locate a parent?

- A. Reasonable effort means more than one activity must be included in the effort to locate the parents and all efforts in locating the parents are 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.

12. What would be considered “interests that may conflict with the interests of the student”?

- A. A person has a professional conflict of interest when their employment requires him/her to balance the interests of the student with the interests of their employer. A person may have a personal conflict of interest if their personal circumstances (e.g., their children enrolled in the same school district) require him/her to balance the interests of the student with the interests of himself/herself or others in their care.

13. Who is responsible for monitoring and evaluating the performance of surrogate parents?

- A. The school district that nominates and appoints a surrogate parent is responsible for ensuring the surrogate parent’s responsibilities are carried out. The local special education director should evaluate the performance of each surrogate parent in their school district. The DOE has ultimate responsibility to see that monitoring activities are carried out.

Contact Information

For questions concerning surrogate parents, or any other issue concerning special education and related services, please contact the offices listed below.

- South Dakota Department of Education, Office of Special Education Programs **605-773-3678**
<https://doe.sd.gov/sped/>
- Disability Rights South Dakota
1-800-658-4782
drsd@drsdlaw.org
- South Dakota Parent Connection
1-800-640-4553
<https://sdparent.org/>

Appendices

Determination of a Student's Need for Surrogate Parent Appointment

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

Student: _____ **Date of Birth:** _____

Grade: _____ **Placement:** _____

School: _____ **Teacher:** _____

Name of Caregiver: _____ **Primary Language:** _____

Address: _____

Phone: (*home*) _____ (*work*) _____

Relationship of Caregiver to Student:

___ Biological or Adoptive Parent

___ Foster Parent

___ Legal Guardian

___ Other Relative (specify) _____

___ Other (specify) _____

Check Appropriate Box:

[] The student is represented by biological or adoptive parent(s) or by a legal guardian.

Does the biological or adoptive parent(s) have the legal authority to make educational decisions for the child? (Yes / No) If yes, no surrogate parent is needed.

[] The student's parent(s) are unknown.

[] At least three attempts have been made to locate the biological or adoptive parent(s). Attach a copy of written documentation.

[] The student is a ward of the state.

Based on these findings, it has been determined:

_____ The child has a known parent, as defined by IDEA, and a surrogate parent **IS NOT** needed.

_____ A parent of the child, as defined by IDEA, cannot be identified or located, and a surrogate parent **IS** needed.

Authorized Signature/Title

Date

South Dakota Application to Serve as a Surrogate Parent

Name: _____ Date: _____

Address: _____

Home Phone: _____ Work Phone: _____ DOB: _____

Employer: _____ Position: _____

Primary Language: _____ Cultural Heritage: _____

Preference: Age _____ Gender _____ Grade Level(s) _____

Please answer the following questions (Circle response).

- 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 and able to participate in training sessions for educational surrogate parents?

Please list your educational and community experience with children or youth (Attach additional pages as needed):

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 references provided.

Signature/Date: _____

South Dakota Surrogate Parent Eligibility Verification

Nominee: _____

Address: _____

Home Phone: _____ **Work Phone:** _____

Student's Name: _____ **Student's DOB:** _____

This verifies that _____ meets the criteria within state and federal regulations for appointment as a surrogate parent to ensure appropriate representation in all matters related to the provision of a free and appropriate public education for the student, including the identification, evaluation, and educational placement of the student.

Authorized Signature/Title

Date

Sample Letter of Notification

Sample School District
123 School Avenue
Brookings, South Dakota 57006

March 28, 2024

Evelyn Mace
321 Home Street
Brookings, South Dakota 57006

Dear Ms. Mace,

The Sample School District would like to appoint you as a surrogate parent in accordance with both federal and state laws and regulations. Accordingly, as a surrogate parent, you will have all the rights and responsibilities of parents in matters relating to the special education process.

The student with whom you have been matched is Gail Bodily, aged 10. Gail is a resident at the American Center in Brookings and attends fifth grade at Sample Elementary School. The school principal is Ms. Leona Lyon, and Gail's teacher is Mr. Jon Graham. Both Ms. Lyon and Mr. Graham can be reached by contacting the school office at 555-555-5555.

If you have any questions about your appointment as a surrogate parent, or you can no longer serve as a surrogate parent, please contact me on my direct line at 123-456-7890 or my email speddirector@sample.k12.sd.us.

We thank you for volunteering for this important activity.

Sincerely,

John Copenhaver
Special Education Director, Sample School District