

# **SURROGATE PARENTS IN CALIFORNIA SPECIAL EDUCATION: AN OVERVIEW**

## Acknowledgments

The prepublication release of the *2008 Surrogate Parents in California Special Education: An Overview* was written and reviewed by California Department of Education (CDE) staff.

The federal Individuals with Disabilities Education Act (IDEA) requires assurances from states receiving federal funds for the provision of special education that surrogate parents will be appointed for pupils with disabilities who are without parental representation in special education procedures.

In compliance with this federal mandate, California *Government Code* Section 7579.5(m) requires the California Department of Education to “develop a model surrogate parent training module and manual that shall be made available to local educational agencies.”

The revised edition of *Surrogate Parents in California Special Education: An Overview* (2008) updated the 1991 manual. Minor revisions were made in 2012. The manual is intended for use as a reference to assist education agencies to develop and implement procedures for parental representation that comply with federal law.

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This document can also be downloaded free of charge from the CDE Web site: <http://www.cde.ca.gov/sp/se/sr> Look under publications for *Surrogate Parents in California Special Education: An Overview*.

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## **Surrogate Parents in California Special Education: A Legislative Overview**

In 1975, Congress enacted the Education of All Handicapped Children Act (EAHCA) (20 *United States Code* Section 1400, et seq., Public Law 94-142) to support states and localities in protecting the rights of, meeting the individual needs of, and improving educational results for infants, toddlers, children, and youths with disabilities and their families. Among the protections this law introduced was the assurance that a surrogate parent would be provided for a student when necessary (Public Law 94-142, Section 5(a)). An individual was to be appointed as a surrogate parent when no parent could be identified, located, or if the student was a ward of the State. The role of the surrogate parent was to represent the student in all matters relating to the identification, evaluation, educational placement and provision of a free appropriate education (*ibid.*). In 1990, California provided more specific direction for the appointment of a surrogate parent by enacting Assembly Bill (AB) 1528, which prohibited the appointment of individuals who would have a conflict of interest in representing the child. AB 1528 enacted California *Government Code* Section 7579.5 (Stats. 1991, c. 182, Section 5). At the federal level, the EAHCA was replaced by the Individuals with Disabilities Education Act in 1997 (IDEA '97) which established the rights of students, from birth through twenty-one years of age, to a free appropriate public education (Public Law 105-17).

In 2004, IDEA '97 was reauthorized and signed into law, revising certain requirements related to the assignment of surrogate parents (20 *United States Code* Section 1415(b)(2)(A) and (B); Public Law 108-446). As a result of this reauthorization, IDEA '97 is now referred to as "IDEA 2004."

This manual was developed to assist local educational agencies (LEAs), placing agencies, and other service providers in the implementation of state and federal requirements pertaining to the appointment of surrogate parents. Explanations of state and federal mandates about parental involvement, educational entitlements, and procedural safeguards for individualized education programs (IEPs) are contained in this manual as required by California *Government Code* Section 7579.5(m).

This manual covers the major considerations under state and federal laws that should be applied by LEAs when surrogate parent appointments are made:

- the identification of children in need of a surrogate parent
- the appointment process
- the rights, responsibilities and requirements of surrogate parents
- the recruitment of surrogate parents
- the training of surrogate parents
- the responsibilities and roles of agencies in this program

The goal of this manual is to develop a common body of information for local policy makers, administrators from both educational and social service agencies, and

coordinators of local training programs who will implement or participate in the appointment and training of surrogate parents.

This manual also provides references to statutes and regulations, sample forms, documents containing other agency guidelines, and charts that outline the suggested appointment process.

The information in this document is not binding on local educational agencies or other public agencies but is provided to give guidelines for exemplary surrogate parent programs. Compliance with these guidelines is not mandatory except for the statutes, regulations, and court decisions that are referenced in the text.

## **Overview of the Surrogate Parent Mandate**

This section provides an overview of state and federal legal mandates and describes surrogate parents and other persons who have legal authority to act on a child's behalf in the special education process.

## **Current State and Federal Law**

Federal law requires state, intermediate, and local educational agencies to establish and maintain procedures for assigning a surrogate parent to a student whenever the location of the biological parents or guardian of the child is not known or available or the child is a ward of the state. The surrogate parent must not be an employee of any public agency involved in the education or care of the child (20 *United States Code* Section 1415(b)(2)(A), 34 *Code of Federal Regulations* Section 300.519(d)(2)(i)).

Federal implementing regulations provide legal definition of a "surrogate parent" and stipulate the requirements that must be met when a public agency selects and assigns a surrogate parent for a child with no identifiable parent or to a child who is a ward of the state. State law provides that "surrogate parent" shall be defined as it is defined in the IDEA regulations cited above. (34 *Code of Federal Regulations* Section 300.519(d).) A surrogate parent may represent a person with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individual education program, and in other matters relating to the provision of a free appropriate education to the individual (California *Education Code* Section 56050, 34 *Code of Federal Regulations* Section 300.519(g)).

## **Who Can Be A Surrogate Parent?**

A surrogate parent must be an adult appointed by the LEA to represent a student whenever the student does not have parental representation and has been referred for, or is currently being served in, special education (California *Education Code* Section 56050; California *Government Code* Section 7579.5(c); 34 *Code of Federal Regulations*

Section 300.519(d)(2)). State and federal law require that each person appointed as a surrogate parent shall:

- not be an employee of a public or private agency involved in the education or care of the child
- have no interest that conflicts with the interests of the child he or she represents
- have knowledge and skills that ensure adequate representation of the child

An LEA shall, as a first preference, select a surrogate who is a relative caregiver, foster parent, or court-appointed special advocate. If none of these is willing or able to serve, another person may be appointed to be the surrogate (*California Government Code* Section 7579.5(b)).

The basic premise is that surrogate parents will be persons with appropriate knowledge and skills required to adequately represent students served by special education who do not have parent representation in educational matters.

### **When Must A Surrogate Parent Be Appointed?**

*California Government Code* Section 7579.5 states that the LEA must appoint a surrogate parent for a child with a disability under the following circumstances:

- The biological or adoptive parents cannot be identified or located after reasonable effort.
- The child has a court-appointed person authorized to make educational decisions.
- The child's court-appointed "parent" is unwilling or unable to serve as the surrogate parent.

It is important to know which persons fall within the definition of "parent" because the LEA may not appoint a surrogate parent for a child who has a parent. For this purpose, the federal regulations implementing IDEA define "parent" as a biological or adoptive parent of a child or a specific person authorized to act as the "parent" by virtue of a court order (*34 Code of Federal Regulations* Section 300.30(b)(2)). Such persons could include guardians, foster parents, caregiver relatives, or other court-appointed child advocates (*34 Code of Federal Regulations* Section 300.30(a)(2)-(4)).

*California Education Code* Section 56028 uses slightly different language. "Parent" includes any person having legal custody of a child, any adult pupil for whom no guardian or conservator has been appointed, a person acting in the place of a natural or adoptive parent including a grandparent, step-parent, or other relative with whom the child lives, or a foster parent if the authority of a parent to make educational decisions on the child's behalf has been specifically limited by court order. "Parent" also includes a parent surrogate. "Parent" does not include the state or any political subdivision of government and a non-public, non-sectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child (*California Education Code* Section 56028(b)).

School administrators are encouraged to familiarize themselves with the definitions of “parent” set forth in California *Education Code* Section 56028 and 34 *Code of Federal Regulations* Section 300.30. It is also advised that school administrators determine the most efficient way to find out whether parents of children who are wards of the court have retained their educational rights.

It should be noted that a district’s authority to appoint a surrogate may be exercised only when the parent(s) cannot be located or parental rights have been terminated. If the location of the parent(s) is known but the parent(s) fail or refuse to participate in the IEP meeting, the district may need to implement a due process hearing to obtain approval for the district’s offer of free and appropriate public education (FAPE). In this case, the district does not need a surrogate parent.

In its publication of the 2006 regulations, 46540 *Federal Register*; Vol. 71; No. 156; Monday, August 14, 2006; Rules and Regulations, the Department of Education (federal) provided further clarification when responding to comments about IDEA:

Comment: A few commenters recommended that placement meetings not be held, or decisions made, without a representative of the child. The commenters recommended appointing a surrogate parent when the biological or adoptive parent refuses to attend, or is unable to participate, in the placement meeting.

Discussion: There is no statutory authority to permit the appointment of a surrogate parent when a parent is either unable or unwilling to attend a meeting in which a decision is made relating to a child’s educational placement. In section 615(b)(2) of the Act, a public agency does not have the authority to appoint a surrogate parent where a child’s parent is available or can be identified and located after reasonable efforts, but refuses, or is unable, to attend a meeting or otherwise represent the child.

Educators are advised to consult with qualified local legal counsel in order to identify who has been assigned legal authority to make educational decisions for the child.

## **Conservatorship**

In some situations, a student over the age of 18, who is legally an adult, may have a conservator who will continue to act on the student’s behalf in regard to special education and related services. The term “conservator” refers to a person given legal authority and responsibility by the superior court to make decisions for an adult person, married minor, or married minor whose marriage has been dissolved who is not competent to make such decisions or to give informed consent. Duly appointed conservators can be identified by a document called “Letters of Conservatorship” issued by the court, pursuant to California *Probate Code*, Section 1800 et seq. The “Letters of Conservatorship” define the scope of the conservator’s power over the person and property of the incompetent adult.

For further information regarding the appointment and responsibilities of conservators, please refer to the information at <http://www.courtinfo.ca.gov/selfhelp/seniors/handbook.htm>.

## **Adult Students in Special Education**

When a student reaches the age of eighteen, adult rights accorded under California law include the authority over his or her own education unless the adult student chooses not to make decisions or a court deems the student incompetent (*California Government Code* Section 7579.5(k)).

An LEA has no authority to appoint a surrogate parent for an adult student even if the IEP team considers the student incapable of participating in the educational process as a result of his or her disabilities. A court may appoint a conservator for this purpose (see “Special Situations” below).

## **Rights, Responsibilities, and Requirements of Surrogate Parents**

### **The Surrogate Parent Role**

The surrogate parent role on the IEP team is to represent the rights of a student with special education needs in all educational matters related to the provision of a free appropriate public education (*California Education Code* Section 56050). These rights within the educational process are the same as for any “parent,” with identical guarantees for participation in decision-making and procedural safeguards. The surrogate parent may represent the child throughout the special educational process (*34 Code of Federal Regulations* Section 300.519[g]).

The primary differences for surrogate parents are (1) local training requirements, as stipulated in the local plan, before appointment; (2) the term of appointment; and (3) the fact that the surrogate parent’s service may be terminated if a conflict of interest arises that may affect the child’s educational program (*34 Code of Federal Regulations* Section 300.519(d)(iii)), (*California Government Code* Section 7579.5 (g)-(k)).

Surrogate parents should learn as much as possible about the child with disabilities to appropriately represent the rights of the child throughout the special education process. Federal regulation and California statutes require that LEAs ensure that appointees have knowledge of special education requirements, local special education options and procedures, and an adequate understanding of the child’s disability and the disability’s effect on the child’s learning processes. For this purpose, not only does CDE recommend that LEAs provide training to each prospective surrogate before a surrogate parent is appointed for a specific child, but *34 Code of Federal Regulations* Section 300.519(d)(2)(iii) and *California Government Code* Section 7579.5(d) require that the surrogate parent meet with the child at least one time.

## **Authority of the Surrogate Parent**

Under current law, the surrogate parent shall assume all parental rights in the IEP process (California *Education Code* Section 56050). The surrogate parent represents the child in all education matters including, but not limited to, identification, assessment, instructional planning, educational placement, reviewing and revising the IEP, and the provision of a free appropriate public education (California *Education Code* Section 56050). The surrogate parent may exercise any and all of the rights granted under federal and state education law (34 *Code of Federal Regulations* Section 300.519(g)). If a surrogate parent requires legal assistance in the representation of the child, the LEA must provide information about low-cost legal resources (California *Education Code* Section 56502(h)).

## **Relationship of the Surrogate Parent to Other Agencies**

LEAs should also provide surrogate parents with information about all other state and local agencies that provide services to special education students (California *Education Code* Section 56050(b)).

## **Access to Records**

The surrogate parent's rights necessarily include access to educational records relevant to any decisions made regarding the educational program of the child. That is, the surrogate parent has the right to review and inspect any records collected, maintained, or used by an agency to make decisions affecting the child's educational program within five (5) business days of the information request (California *Education Code* Section 56504).

## **Liability**

Surrogate parents are held harmless when acting in their official capacity except in acts or omissions found to have been wanton, reckless, or malicious (California *Government Code* Section 7579.5(l)).

## **Suspension and Expulsion**

When a student is being considered for suspension or expulsion, or there is a dispute over the identification, assessment, or placement of the student, the surrogate parent is entitled to participate as the "parent" in all phases of the proceedings (California *Education Code* Sections 48900, et seq. and 56505, et seq.). Surrogate training should include information regarding parents' procedural rights during suspension or expulsion proceedings and due process hearing procedures.

## When to Appoint Surrogate Parents

This section presents procedural considerations for LEA surrogate parent appointment processes.

### Basic Criteria for Appointing a Surrogate Parent

As described above, each public agency must ensure that the rights of a child are protected by determining the need for, and assigning, a surrogate parent whenever the child is referred or eligible for special education and either:

- no parent can be identified
- the public agency, after reasonable efforts, cannot locate a parent
- the child is a ward of the State under the laws of that State
- the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 *United States Code* Section 11434a(6)), and

### Wards and Dependents of the Court

Under California law, there are both “dependent” children as well as children who are described as “wards” of the courts (*California Welfare and Institutions Code* sections 300, 601 and 602). A minor may be declared a ward of the court for habitual refusal to obey parents or guardians or truancy from school (*California Welfare and Institutions Code* Section 601). A minor may also be declared a ward for commission of a crime (*California Welfare and Institutions Code* Section 602). A “dependent” child may be one that is at risk of abuse or neglect by his or her parents (*California Welfare and Institutions Code* Section 300).

When a court decides that a minor is a ward or dependent, the court may limit the parent’s educational rights (*California Welfare and Institutions Code* sections 361(a) and 726). If the court limits parental rights, it must issue an order clearly assigning those educational rights to another responsible adult. After limiting the parent’s educational rights the court must use JV-535 (Appendix B) to document one of the following:

- appointment of an educational representative
- determination that the caregiver may make educational decisions
- referral to the LEA, or
- educational decisions made by the court with input from interested persons

(*California Rules of the Court*, Rule 5.650(b)).

An educational representative is the responsible adult who holds the educational rights for a child when the parent’s or guardian’s educational rights have been limited by the court (*California Rules of the Court*, Rule 5.502(13)). The appointed educational representative has the same rights and responsibilities as a surrogate parent regarding

special education. If the court cannot identify an educational representative and the child is or may be eligible for special education and related services, the court must refer to the LEA (California *Rules of the Court*, Rule 5.650(b)(2)).

JV-535 and JV-536 (Appendix B) must be served on the LEA no later than seven calendar days after the date of the court's order.

The LEA must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court's referral.

If the LEA appoints a surrogate parent, it must send copies of the notice to the social worker or probation officer identified on JV-535. If the LEA does not appoint a surrogate parent within 30 days of receipt of the JV-535, it must, within the next seven calendar days, notify the court on form JV-536 of its inability to appoint a surrogate parent and its continuing reasonable efforts to assign a surrogate parent.

Silence of the court on the issue means the parent's rights have remained intact. The LEA should be notified by the placing agency pursuant to California *Government Code* Section 7579.1 et seq.

### **Unaccompanied Homeless Youth**

The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

- children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement
- children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and migratory children (42 *United States Code* Section 11434a(2))

The term "unaccompanied youth" is defined as a youth not in the physical custody of a parent or guardian (42 *United States Code* Section 11434a(6)).

A temporary surrogate parent may be appointed for a child who is an unaccompanied homeless youth. Such temporary surrogates may include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs. These temporary surrogates may be employees of the State Education Agency (SEA), the LEA, or any other agency that is involved in the education

or care of the child until a surrogate parent can be appointed that meets all of the appointment requirements.

## **The Appointment Process**

This section presents considerations for LEA appointment procedures for surrogate parents. Recruitment efforts and time lines for appointments will be different for persons already eligible for special education services and for those persons suspected of having a disability in education.

The suggestions presented in this section for a step-by-step approach to the appointment process are offered for guidance only. Except for the reference statutes, regulations, and court decisions, the described practices are not mandatory. Related sample forms are included in Appendix B and are optional.

### **Getting Started**

Any student who has been referred for assessment because of a suspected disability, who is already eligible for special education, or who is enrolled in special education may have need of a surrogate parent. If documented “reasonable inquiries” do not locate the parent or guardian, or a child has been declared a ward or dependent of the court, a surrogate parent appointment would be in order.

### **Step 1: Contacting Parents**

Efforts to locate the parent should begin immediately upon referral. Time is of the essence for several reasons. First, a series of tasks with specific timelines begin upon referral, related to identification, assessment, and placement decisions (California *Education Code* Section 56043). Since a parent must be involved in those decisions, the determination of the need for a surrogate parent should be made within 30 days of the referral. LEAs should continue to send notices to the parent whose educational rights may still be intact, even during the process of appointing a surrogate parent. If the parent is located, and is willing to participate in the educational process, the surrogate parent appointment should be terminated (California *Government Code* Section 7579.5(k)(4)). If the parent is located but refuses to participate in the IEP team meeting or refuses to designate a representative to participate, the LEA may want to contact the placing agency to seek clarification from the court.

If the student is not a ward or dependent, and if the LEA cannot determine that the student is in a home with an adult who is acting as a parent or who could be appointed as the surrogate parent, the LEA is advised to consider making a report of neglect or abuse to the child welfare agency in the county (California *Penal Code* sections 11165.7 and 11165.9).

Reasonable efforts to contact parents include, but are not limited to, the following measures:

- documented telephone calls
- letters
- certified letters with return receipts
- documented visits to the parents' last known address
- the placement of an agency notice of a court order that terminates parent rights

If the reasonable efforts described above fail to locate the parent or to obtain parent status notification from the placing agency, an interim surrogate parent appointment may be necessary. A surrogate parent shall be appointed not more than 30 days after the LEA determines that a student needs a surrogate parent (*California Government Code Section 7579.5(a)*). This appointment will facilitate timely IEP review, establish consent for special education assessment, or both.

Unless the educational rights have been removed, it is a good practice to send required special education notices to the natural parent or guardian when a known address becomes available.

If a surrogate parent is appointed for a child who is a ward or dependent of the court, the LEA must submit form JV-536 to the court within seven calendar days of the appointment. If the child has been referred by a "placing agency," it is helpful if the LEA informs the placing agency of the appointment.

## **Step 2: Selecting Surrogate Parents**

When appointing a surrogate parent, the LEA shall give first preference to a relative caregiver, foster parent, or court-appointed advocate. However, if none of those individuals are willing or able to act as a surrogate parent, the LEA must be prepared to appoint another qualified responsible adult to act in that capacity (*California Government Code Section 7579.5(b)*). The local surrogate parent appointment program is more likely to be successful if an ongoing process of recruitment, screening, and training is used to develop and maintain a pool of candidate surrogate parents.

## **Finding Volunteers**

Appropriate community groups should be contacted for purposes of recruiting surrogate parents. It is recommended that such groups be given a clear explanation of the roles and responsibilities of educational representatives as well as an overview of the time commitments that are involved in representing a special education student. Volunteers should be informed that they will be representing children who have special and sometimes unique needs. They must be willing to be trained to act as educational representatives for students requiring surrogates.

Other resources to consider are local school-parent organizations, volunteer offices of LEAs, community advisory committees, retired teachers associations, service clubs (e.g., Rotary, Lions, Soroptimists, Kiwanis), and court-appointed special advocates (see the list of California Court Appointed Special Advocate Programs in Appendix E). There are some volunteer organizations that have established screening processes for use in recruiting persons to work with children (e.g., Big Brothers, Big Sisters, Foster Grandparents, and so forth).

Successful recruitment is more likely to occur when LEAs bring the needs of their surrogate parent program to the attention of their local interagency network groups. The combination of local resource and referral networks—which include public and nonpublic schools, other public non-educational agencies, private agencies, private practitioners, and other local community volunteer agencies—may assist LEAs in locating potential surrogate parents.

Reasonable efforts should be made to ensure that persons representing all sections of the community and all racial, ethnic, linguistic, and economic subgroups within the community are recruited and made available for appointment as educational representatives (California *Government Code* Section 7579.5(e)). When cultural matches are not possible in spite of focused recruitment efforts, it is helpful to include information about cultural awareness when training individuals to become surrogate parents.

The procedures for selecting surrogate parents will differ with the home circumstances in which students are found. When students are living in a household with family members, it is a good idea to consider the adults within the household as potential surrogate parents.

## **Foster Parents**

Foster parents and care providers who live with the child in small foster family homes have the usual rights of parents to participate in educational decisions, unless a court expressly excluded them from such decisions in a written order (California *Education Code* Section 56055). Even if so excluded, these persons continue to have caretaking responsibilities related to the non-special education portion of the child's school program; for example, assurances of regular school attendance, consent for field trips, and immunizations.

State law allows these in-home care providers to be appointed except when there is a conflict of interest (California *Government Code* Section 7579.5(i)(j)). An additional factor to consider is that monies received by foster parents and small foster family home care providers are not regarded by the California Department of Social Services (DSS) as payment for contracted services but as reimbursements for expenses incurred on the child's behalf. In-home providers are not likely to have conflicts of interests unless changes in residential placement are under consideration.

When a child is placed by the juvenile court, determinations about residential placement are outside the scope of the IEP team. When residential placement for educational purposes is under consideration, conflicts of interest are improbable if the in-home care provider is advocating the change in placement. However, a conflict of interest could arise when the provider seeks to retain the child in the current placement since changing the residential placement of a child would mean a loss of income to the provider. Therefore, local “blanket” policies concerning conflicts of interest may be problematic regarding in-home care providers as educational parent representatives or surrogates. When substantial issues are likely to result in a change in residential placement are faced by the IEP team, it is suggested that the LEA review appointments to reflect conflict of interest concerns (34 *Code of Federal Regulations* Section 300.519(d)(i)(ii)), (California *Government Code* Section 7579.5 (i)(j)). Each case should be determined on its own merits.

### **Step 3: Surrogate Parent Application**

Local volunteer application procedures usually try to ascertain, at the outset, the following applicant information:

- Facts that show that the applicant does not have any interests that will conflict with the student’s in the area of special education.
- Assurance that the applicant has or is willing to acquire knowledge about the special educational interest of the student and the qualities and skills necessary to fulfill the role of educational representative.
- Facts that show that the applicant is not an employee of a public, non-public, or private agency involved in the care or education of the student.
- Assurance that the applicant is willing to commit the time and energy necessary to effectively present and advance the best interests of students in educational matters without pay or reimbursements.

It is helpful to develop or adapt forms for a surrogate parent application procedure that not only meets local personnel requirements but also assures appropriate surrogate parent appointments (see samples in Appendix B). Generally, implementing districts have included an application, a disclosure statement to screen potential conflicts of interest, an acknowledgment that the potential appointee will complete the local training program for surrogates, and an agreement between the appointing agency and the surrogate parent that includes an assurance of confidentiality for student records.

The application package may also include a personal interest questionnaire, personal references for verification of personal information, releases of information for Department of Motor Vehicles screening, or even possible fingerprinting documentation (see sample forms included in Appendix B). If an LEA already has an existing volunteer program, it may be expeditious to adapt the program for surrogate appointment purposes.

#### **Step 4: Screening for Conflict of Interest**

Federal law mandates that the surrogate parent not have a conflict of interest (34 *Code of Federal Regulations* Section 300.519(d)(2)(ii)). Some factors to consider are whether the volunteer:

- is employed by an LEA or any agency involved in the education or care of the student
- holds a position that might restrict or bias his or her ability to represent the student's educational needs
- holds a position that might subject the volunteer to administrative influence or reprimand for acting as the student's educational representative
- has interests that might restrict or bias his or her ability to advocate for all the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in California *Government Code* Section 7579.5(i).

Group homes and other residential facilities that are not operated within the licensee's residence are considered businesses and viewed as having a financial conflict of interest. Therefore, employees and officers of such agencies should not be considered for appointment as a surrogate parent.

Disclosures of financial interests are the primary measures that special education local planning areas (SELPAs) and LEAs may use to establish "conflict of interest" criteria. Currently adopted forms available at local or county personnel departments may be adapted as surrogate parent conflict of interest disclosure statements. It is advisable to complete the eligibility determination before inviting the surrogate parent candidate to a formal training.

The Surrogate Parent Agreement sample, included in Appendix B, contains the terms and conditions agreed upon between the surrogate parent and the LEA. These include:

- the responsibilities of a surrogate parent to the student, the LEA's responsibility to provide training regarding disabilities, the laws applicable to surrogate parent responsibilities, and the continuum of program placements and opportunities
- term of appointment
- termination of agreement
- confidentiality of student information

#### **Step 5: Training of Potential Surrogate Parents**

The responsibility of the SELPA or LEA to appoint persons who are knowledgeable about special education may be fulfilled by providing effective screening and training and consultation on an as-needed basis for potential surrogate parents. Training and ongoing consultation with potential volunteers may include familiarization with the

following items:

- educational needs of the student to be represented
- local programs and related services available in the SELPA or LEA
- procedural safeguards to ensure that the student's needs are met and IEP services are delivered
- time commitments of surrogate parents

### **Step 6: Additional Procedures**

It is suggested that the following procedures be considered:

- Match the student's needs to the most appropriate volunteer in the selection of the most appropriate potential surrogate parent
- Introduce the student and the potential surrogate parent
- Obtain a written agreement with the surrogate parent to serve the specific student in his or her IEP process and to maintain the student's and the family's rights to confidentiality
- Inform all involved persons and agencies responsible for the residential care and education of the student of the surrogate parent's appointment

It is also suggested that appointments be reviewed annually to determine whether the status of the parent of the child still warrants the appointment.

Caseloads for surrogate parents vary nationally depending on the complexity or severity of the individual cases and the availability of surrogate parents. Other local considerations may be the driving distances between the special education programs of the represented students.

It is recommended that a surrogate parent's agreement to serve be documented in writing. Some examples of appointment and agreement forms are included in Appendix B.

Whenever possible, an introductory meeting before finalizing the appointment may be arranged for the child and potential surrogate to become acquainted. Such preliminary introductions may allay any serious reservations held by the potential surrogate or the child. Once a surrogate parent is appointed, notices should be sent to all staff involved in the residential care and education of the student.

It is recommended that local policies be developed to ensure appropriate access by the surrogate parent to the student, the student's records, and the meetings necessary for the development and review of the IEP. When an IEP team determines "that there are no other appropriate public education programs available," the LEA may contract with a certified nonpublic, nonsectarian school or agency to provide the services specified by the IEP, pursuant to California *Education Code* Section 56366. A representative of the

selected nonpublic school and agency can participate in any subsequent meetings with the surrogate parent and IEP team to review and revise the IEP.

### **Appointment Terms and Dismissal of a Surrogate Parent**

The surrogate parent may represent the child until any of the following are determined:

- The child is no longer in need of special education.
- The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent.
- Another responsible adult is appointed to make educational decisions for the minor.
- The right of the parent or guardian to make educational decisions for the minor is fully restored.

(California *Government Code* Section 7579.5(k))

The LEA shall terminate the appointment of a surrogate parent if either of the following apply:

- The person is not properly performing the duties of a surrogate parent.
- The person has an interest that conflicts with interests of the child entrusted to his or her care.

(California *Government Code* Section 7579.5(h))

Additionally, the LEAs may want to consider terminating the appointment under the following instances:

- Ineligibility for special education services is determined by the IEP team. (However, if due process is invoked to challenge the issue of ineligibility, the surrogate remains until the challenge is resolved).
- Actions that fall under the mandated reporting laws and threaten the health and well-being of the child are present.
- Parents are located and retain their educational rights.

(California *Government Code* Section 7579.5(a))

The surrogate parent may resign from his or her appointment only after he or she gives notice to the LEA (California *Government Code* Section 7579.5(g)).

It is advisable for LEAs to establish policies and procedures for the dismissal, resignation, or involuntary removal of appointed surrogate parents and to monitor the surrogate parents who are appointed to ensure that they perform their duties in the special education process and stay free of conflicts of interest. If decisions are made to rescind the appointment of a surrogate parent, it would be helpful if the reasons are documented and given to the volunteer.

Parental rights automatically revert to the student's parents when the parents return to assume their roles, unless their rights have been limited by a court. When the student reaches the age of majority, the student will assume the parental role within the IEP process. Emancipated minors or married minors can act on their own behalf educationally unless a court has determined otherwise (California *Government Code* Section 7579.5(k)).

## **The Roles of Public Non-educational Agencies, Foster Care Providers**

This section describes the responsibilities of the placing agencies and foster care providers, provides information needed by these agencies, and highlights the need for interagency collaboration. It also addresses issues related to local mental health involvement with appointed surrogate parents.

The majority of youth who will require surrogate parents are those who are under the jurisdiction of a county agency (such as Social Services, public guardian, or Probation) or a state agency (such as the California Youth Authority, state hospitals, or developmental centers). Areas of concern are as follows:

- determination of parental educational rights
- notification regarding status of wards and dependent children
- interaction with LEAs and SELPAs
- interaction with surrogate parents
- confidentiality
- mental health assessment and treatment

Since placing agencies (including Regional Centers for the Developmentally Disabled) are charged with the responsibility of maintaining "care, custody, and control" over children, it is helpful if the agency staff and the surrogate parent understand each others' roles and responsibilities.

## **Determination of the Parents' Educational Rights**

At the time of placement, it is assumed that the parental rights regarding education are retained unless the order specifically indicated a restriction (California *Welfare and Institutions Code* sections 245.5 and 361(a)). If a court declares the minor a dependent child, the court must specifically state what limits have been imposed on the rights of the parents or guardians. The court may also place the child in a "planned permanent living arrangement." Placing agencies are advised to begin efforts to confirm a parent's educational rights at the earliest point of placement as possible.

## **Notifications about the Status of Wards and Dependent Children**

Before placing a student who has an existing IEP or is suspected of requiring special education services, the placing agency is responsible for notifying two agencies of the impending discharge: the local LEA in which the special education program for the child

is being provided and the receiving SELPA to which the child is being transferred. The SELPA administrator is then responsible for providing information about the availability of an appropriate special education program in the area where the residential facility is located (California *Government Code* Section 7579(a)).

The operator or placing agency, as part of the written notification, shall provide the receiving special education local plan area (SELPA) with a copy of the child's IEP, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's IEP in the receiving SELPA (California *Government Code* Section 7579.1(a)(2)).

It is recommended that a written notification to the SELPA occur as soon as a placing agency has a reasonable expectation that a child with disabilities will be placed (see the suggested form in Appendix B and the list of SELPAs in Appendix D). The placing agency's provision of the following information is recommended as being useful for the SELPA's or LEA's facilitation of appropriate educational services for the students; the child's name, birthday, residential placement, former school, placement or referrals to special education, and legal status; name, address, and location and phone number of parent; legal status of parents' educational rights; and the address of the placing agency and current staff assignment (see Appendix B for suggested forms).

If parental rights have not been specifically limited by the court, it is suggested that the placing agency provide any additional appropriate information, including address and available telephone numbers regarding the location of parents so that the LEA may make a reasonable effort to contact them. Ongoing cooperation between the agencies is recommended.

In practical terms, since removal of a child is often on an emergency basis, it is a good idea for the placing agency to notify the SELPA or LEA of the move as soon as it is anticipated.

### **Interaction with Surrogate Parent**

Once a surrogate parent is appointed, it is important for the non-educational agencies to understand the role of the surrogate parent and facilitate appropriate interaction with the student.

For surrogate parents to be fully informed about the student's disability and educational needs, it is advised that LEAs develop working agreements with non-educational agencies that will enable surrogate parents to expeditiously receive vital information.

As long as the minor remains placed within the appointing SELPA or LEA and the surrogate parent appointment has not been withdrawn, it is the responsibility of the surrogate parent to participate in educational planning for the student. The placing agency worker remains responsible in all other aspects of the casework. The foster care

provider remains responsible for providing day-to-day supervision, care, and services as agreed on with the placing agency. Since each agency is responsible for developing appropriate plans for the child and each may have a different perspective regarding the child, this relationship is potentially problematic and extremely critical.

Since a surrogate appointment is contingent on a child's eligibility for special education services, the surrogate parent's appointment lapses when an LEA no longer has the responsibility to provide FAPE to a student who is represented by a surrogate parent. For example, if a child ceases to be a resident of a particular LEA, the new LEA of residence would be obligated to provide FAPE. The sending LEA, when terminating the surrogate parent appointment, should notify the new LEA that a surrogate parent was previously appointed, so that the former surrogate parent may provide important information concerning the child's educational needs to the new LEA and any new surrogate parent that may be appointed.

### **Confidentiality**

State and federal law protect the confidentiality of student records and limit the disclosure of such records. However, both state and federal law allow the parents to consent to the release of student information (*California Education Code* Section 49076; *20 United States Code* Section 1232g(b)(1)). Since a surrogate parent has all the rights that a natural or biological parent would have, these should include the right to consent to release of student information. In addition, the placing agency that is responsible for the student pursuant to an order of the juvenile court is entitled to obtain student records necessary to perform its duties under the court order (*California Education Code* Section 49076(a)(11), *20 United States Code* Section 1232g(b)(1)(E)).

The presiding judges of the juvenile courts in many counties have issued special orders outlining authorization to release information in specific circumstances. LEA administrators and surrogate parents should be aware of any such general orders in their county as well as specific orders regarding particular students, and should consult with local legal counsel as needed to obtain access to records or to obtain permission to share information when necessary.

To ensure the confidentiality of all records, it is advised that the LEA provide detailed training to the surrogate parent to ensure that any protected information will not be released and will be appropriately returned or destroyed when the surrogate parent appointment ends. Such an assurance should facilitate the case management interaction with the agencies.

### **Local Mental Health Intervention**

When a surrogate parent is appointed and agrees that there is a need for local mental health involvement, *California Government Code* Section 7579.5(c) authorizes the surrogate parent to give written consent for nonemergency medical services, mental health treatment services, and occupational or physical therapy services relative to the

IEP of the child being represented (See also California *Education Code* Section 56050(b)).

### **Monitoring and Complaint Procedures**

This section describes various methods for state and local oversight of surrogate parent appointment programs.

Each local plan, submitted to the California Department of Education for review and subsequent approval by the State Board of Education, must describe the manner in which it will comply with the federal surrogate parent mandate (California *Education Code* Section 56205(a)(11)).

LEAs are encouraged to maintain adequate records of appointment, training, and monitoring of the surrogate parent program. Likewise, individual surrogate parents are trained and encouraged to comply with appropriate record-keeping policies, procedures, and methods to ensure that each student's needs for special education and related services are appropriately represented in meetings of the IEP team.

To ensure that surrogate parent programs are consistent with both federal and state law, such programs are required to be monitored. Monitoring will occur through the California Department of Education's Quality Assurance Process (California *Education Code* Section 56045).

If a compliance complaint is filed by a surrogate parent, it will be handled pursuant to the California *Code of Regulations*, Title 5, sections 4600–4671. A surrogate parent is also entitled to request a due process hearing to resolve a dispute over the content of an IEP pursuant to California *Education Code* Section 56500 et seq. Complaints arising under the interagency coordination statute can be addressed pursuant to California *Government Code* Section 7585.

Other agencies and departments interacting with the child will have distinct monitoring and complaint procedures with which the LEA must coordinate. When contracting with a nonpublic school or agency to provide special education and related services for eligible students, it is recommended that the LEA include contract provisions that will ensure that appropriate visitations and involvement in the educational placement is provided to surrogate parents. In addition, public, non-educational agencies have established complaint procedures in place to ensure that the best interests of the child are always the primary concern of any assigned staff.

### **Three Special Situations: Questions and Answers**

**Situation One:** If a student is eighteen years old or older, is competent to represent himself or herself, and is not conserved...

Question: Who is the "parent" under California law - the student or the parent?

Answer: The student is legally considered to be the “parent.”

Question: Whose signature is required to conduct an assessment and so forth?

Answer: The student’s signature is required.

Question: Whose signature or consent is binding if the student and the parent are both at a meeting and disagree with each other?

Answer: The student’s signature or consent is binding.

Question: What role does the natural parent play if the student is the “parent”?

Answer: The natural parent may still have a role in an IEP meeting even though the student has become an adult. However, the natural parent no longer has due process rights at this point. If the adult student appears to be incompetent to make decisions at this point, the LEA may advise the student’s parent to research conservatorship procedures.

**Situation Two:** If a student is eighteen years old or older, does not appear to be competent, and is not conserved...

Question: Who is the “parent” under California Law?

Answer: Until a court appoints a conservator, the student continues to be the parent. The student could choose to have a surrogate parent appointed or to continue a surrogate appointed before age 18.

Question: Who determines whether a student is competent and what criteria are used to make that determination?

Answer: Local school officials are not qualified to make an official determination that an adult student is incompetent. If such a student comes to an IEP meeting and cannot function on his or her own behalf and there is no parent, the IEP process cannot go forward. If the student is also a client of another pertinent local or state agency, a school official may want to bring this matter to the attention of the agency’s staff.

As to all aspects of a conservatee’s affairs, which include education, the rights of a conservator are spelled out in the conservatorship statutes. A person who is appointed by a court to be a conservator is, as a matter of law, wholly unbiased. Thus, there would be no conflict problem.

**Situation Three:** If a student of any age is conserved and the conservator is an employee of a public or private agency involved in the care, custody, and control of the student...

Question: Does a conflict of interest exist and should a surrogate be appointed?

Answer: Since the conservator is appointed by a court, the court should be presented with the educational conflict issue. The court could either appoint a different conservator or authorize an LEA to appoint a surrogate for special education purposes.

Question: If the student or his or her natural parents are not residents of the district in which the conservator lives or works, which district is responsible for conducting assessments, holding IEP meetings, gaining access to AB 3632 services, or paying nonpublic school costs?

Answer: The district in which the conservator is living is the responsible LEA (California *Education Code* Section 56041(b)) and is responsible for conducting assessments, holding IEP meetings, gaining access to AB 3632 services, or paying nonpublic school costs. The natural parents' district does not apply because the natural parents' rights or any of the student's rights that may be attributed to the natural parents' residence is superseded by the conservatorship.

Question: Is there a difference if the (conserved) student is younger than eighteen years of age or older than eighteen years of age?

Answer: No.

## Appendix A: Statute Code of References

### Federal Surrogate Parent Mandates (Statute)

20 *United States Code* Section 1415(b)(2)(A)  
Procedural Safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or LEA that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2)

(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the LEA, or any other agency that is involved in the education or care of the child. In the case of:

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in Section 11434a (6) of Title 42, the LEA shall appoint a surrogate in accordance with this paragraph.

### Federal Regulation Implementing Above Statute

*Code of Federal Regulations* 300.519

(a) General. Each public agency must ensure that the rights of a child are protected when:

(1) No parent (as defined in Section 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)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent--

- (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
- (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- (iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who 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 paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to--

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 *United States Code* 1415(b)(2))

## **State Statutory Mandate**

California *Education Code* Section 56050

Representation of Individuals With Exceptional Needs; Liability

(a) For the purposes of this article, "surrogate parent" shall be defined as it is defined in Section 300.519 of Title 34 of the Code of Federal Regulations.

(b) A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development,

educational placement, reviewing and revising the IEP, and in other matters relating to the provision of a free appropriate education to the individual. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the IEP including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the California *Government Code*. The surrogate parent may sign any consent relating to IEP purposes.

(c) A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

(d) A surrogate parent shall also be governed by Section 7579.5 of the California *Government Code*.

### **Federal Definition of “Parent”**

34 *Code of Federal Regulations* Section 300.30

Parent

(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 Section 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.

(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.

(Authority: 20 *United States Code* 1401(23)).

## State Definition of “Parent”<sup>1</sup>

California *Education Code* Section 56028

(a) "Parent" means any of the following:

(1) A biological or adoptive parent of a child.

(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the *Code of Federal Regulations*.

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the *Welfare and Institutions Code*.

(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.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the *Government Code*, and in accordance with Section 300.519 of Title 34 of the *Code of Federal Regulations* and Section 1439(a)(5) of Title 20 of the *United States Code*.

(b) (1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall 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 (1) to (4), inclusive, of subdivision (a) to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the *Government Code*, and Sections 361 and 726 of the *Welfare and Institutions Code*.

(c) "Parent" does not include the state or any political subdivision of government.

(d) "Parent" does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

## Appointment, Qualification, and Liability of Surrogate Parents

California *Government Code* Section 7579.5

Surrogate Parents

(a) In accordance with subparagraph (B) of paragraph (2) of subsection (b) of Section 1415 of Title 20 of the *United States Code*, a local educational agency shall make

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<sup>1</sup> As of January 1, 2009, the California *Education Code* 56028 parent definition will be updated by Assembly Bill 2057, Chapter 223, Statutes of 2008.

reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent. A local educational agency shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the *Code of Federal Regulations* under one or more of the following circumstances:

(1) (A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid IEP,

(B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and

(C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the California *Welfare and Institutions Code* or Section 56055 of the California *Education Code*.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the *United States Code* and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the *Code of Federal Regulations*. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the IEP including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's IEP meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to IEP purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the

necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(l) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The State Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(o) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-0890 of Section 2.00 of the annual Budget Act.

## **Criteria for a Minor to be Adjudged a Dependent of the Court**

California *Welfare and Institutions Code* Section 300

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian.

For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, non-treatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or non-treatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or non-treatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

## **Court Specificity Concerning Limitation of Parent's Rights**

### California *Welfare and Institutions Code* Section 245.5

In addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or for the rehabilitation of the minor. These orders may concern the care, supervision, custody, conduct, maintenance, and support of the minor, including education and medical treatment.

### California *Welfare and Institutions Code* Section 361(a)

(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

- (1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.
- (2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.
- (3) The right of the parent or guardian to make educational decisions for the minor is fully restored.
- (4) A successor guardian or conservator is appointed.
- (5) The child is placed into a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the California *Education Code*. An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, "an individual who would have a conflict of interest," means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the *Government Code*, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

If the court is unable to appoint a responsible adult to make educational decisions for the child and paragraphs (1) to (5), inclusive, do not apply, and the child has either been referred to the local educational agency for special education and related

services, or has a valid IEP, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the *California Government Code*.

If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the *California Education Code* is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the *California Education Code*, the court may, with the input of any interested person, make educational decisions for the child.

#### *California Welfare and Institutions Code 726*

a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall in its order, clearly and specifically set forth all those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

(b) Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) or (6) of subdivision (b) of Section 727.3, at which time the foster parent, relative caretaker, or non-relative extended family member as defined in Section 362.7 has the right to represent the child in educational matters pursuant to Section 56055 of the *Education Code*.

An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. For purposes of this section, "an individual who would have a conflict of interest," means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the *Government Code*, and the receipt of

compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section. If the court is unable to appoint a responsible adult to make educational decisions for the child and paragraphs (1) to (5), inclusive, do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the *Government Code*.

All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

(c) If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the *Penal Code*, but without the need to follow the provisions of subdivision (b) of Section 1170 of the *Penal Code* or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the *Penal Code*, plus enhancements which must be proven if pled. If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the *Penal Code*, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the *Penal Code*, and Section 11370.2 of the *Health and Safety Code*.

If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the *Penal Code*, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

"Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority. This section does not limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

## Exchanging Information Between Non-Educational Placing Agencies and LEAs

### California *Government Code* Section 7579(a) Prior to Placement in a Residential Facility

Prior to placing a disabled child or a child suspected of being disabled in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the SELPA in which the residential facility is located. The administrator of the SELPA shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the SELPA where the residential facility is located.

### California *Government Code* Section 7579.1(a) Notifications Required Prior to Discharge

(a) Prior to the discharge of any disabled child or youth who has an active IEP from a public hospital, proprietary hospital, or residential medical facility pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2 of Part 30 of the *Education Code*, a licensed children's institution or foster family home pursuant to Article 5 (commencing with Section 56155) of Chapter 2 of Part 30 of the *Education Code*, or a state hospital for the developmentally disabled or mentally disordered, the following shall occur:

(1) The operator of the hospital or medical facility, or the agency that placed the child in the licensed children's institution or foster family home, shall, at least 10 days prior to the discharge of a disabled child or youth, notify in writing the local educational agency in which the special education program for the child is being provided, and the receiving SELPA where the child is being transferred, of the impending discharge.

(2) The operator or placing agency, as part of the written notification, shall provide the receiving SELPA with a copy of the child's IEP, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's IEP in the receiving SELPA.

(b) Once the disabled child or youth has been discharged, it shall be the responsibility of the receiving local educational agency to ensure that the disabled child or youth receives an appropriate educational placement that commences without delay upon his or her discharge from the hospital, institution, facility, or foster family home in accordance with Section 56325 of the California *Education Code*. Responsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which the child resides pursuant to sections 56156.4, 56156.6, and 56167 of the California *Education Code*.

(c) SELPA directors shall document instances where the procedures in subdivision (a) are not being adhered to and report these instances to the Superintendent of Public Instruction.

## **Reporting Responsibilities When Placing Children in Licensed Children's Institutions (LCIs)**

California *Education Code* Section 56156

(a) Each court, regional center for the developmentally disabled, or public agency that engages in referring children to, or placing children in, LCIs shall report to the special education administrator of the district, SELPA, or county office in which the licensed children's institution is located any referral or admission of a child who is potentially eligible for special education.

(b) At the time of placement in a LCI or foster family home, each court, regional center for the developmentally disabled, or public agency shall identify all of the following:

(1) Whether the courts have specifically limited the rights of the parent or guardian to make educational decisions for a child who is a ward or dependent of the court.

(2) The location of the parents, in the event that the parents retain the right to make educational decisions.

(3) Whether the location of the parents is unknown.

(c) Each person licensed by the state to operate a LCI, or his or her designee, shall notify the special education administrator of the district, SELPA, or county office in which the licensed children's institution is located of any child potentially eligible for special education who resides at the facility.

(d) The superintendent shall provide each county office of education with a current list of LCI in that county at least biannually. The county office shall maintain the most current list of licensed children's institutions located within the county and shall notify each district and SELPA within the county of the names of LCIs located in the geographical area of the county covered by the district and SELPA.

The county office shall notify the director of each LCI of the appropriate person to contact regarding individuals with exceptional needs.

## **Failure to Provide Service**

California *Government Code* Section 7585

Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's IEP, the parent, adult pupil, or any local education agency (LEA) referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

## **Role of Nonpublic School or Agency**

California *Education Code* Section 56366

It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to a local educational agency and parents.

## Confidentiality of Student Information

California *Education Code* Section 49076

A school district is not authorized to permit access to pupil records to any person without written parental consent or under judicial order except that:

(a) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(1) School officials and employees of the district, members of a school attendance review board appointed pursuant to Section 48321, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing follow-up services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and administrative head of an education agency, state education officials, or their respective designees, or the United States Office of Civil Rights, where the information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law, provided that except when collection of personally identifiable information is specifically authorized by federal law, any data collected by those officials shall be protected in a manner which will not permit the personal identification of pupils or their parents by other than those officials, and any personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, and enforcement of federal legal requirements.

(4) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the *Internal Revenue Code* of 1954.

(6) A pupil 16 years of age or older or having completed the 10th grade who requests access.

(7) Any district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5, or Section 601.3 of the California *Welfare and Institutions Code*, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the California *Welfare and Institutions Code*.

(8) A prosecuting agency for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200) of Part 27) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400) of Part 27).

(9) Any probation officer or district attorney for the purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

(10) Any judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the California *Welfare and Institutions Code*. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this paragraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(11) Any county placing agency for the purpose of fulfilling the requirements of the health and education summary required pursuant to Section 16010 of the California *Welfare and Institutions Code* or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law and to assist with the school transfer or enrollment of a pupil. School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by electronic mail, facsimile, electronic format, or other secure means.

(b) School districts may release information from pupil records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons.

(2) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(3) The county elections official, for the purpose of identifying pupils eligible to register to vote, and for conducting programs to offer pupils an opportunity to register to vote. The information, however, shall not be used for any other purpose or given or transferred to any other person or agency.

(4) Accrediting associations in order to carry out their accrediting functions.

(5) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations and the information will be destroyed when no longer needed for the purpose for which it is obtained.

(6) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

A person, persons, agency, or organization permitted access to pupil records pursuant to this section may not permit access to any information obtained from

those records by any other person, persons, agency, or organization without the written consent of the pupil's parent. However, this paragraph does not require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate interest in the information.

(c) Notwithstanding any other provision of law, any school district, including any county office of education or superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or districts as to information or records which are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements are met:

(1) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(2) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(3) Each school district shall comply with the access log requirements of Section 49064.

(4) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(5) An agency or school district may not make public or otherwise release information on an individual contained in the database where the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

#### California *Welfare and Institutions Code* Section 827

(a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the *Penal Code*.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12, of the *Family Code* to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of

Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the California *Health and Safety Code*, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(K) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the *Family Code*, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the *Family Code*, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the *Family Code*. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(L) A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the *Probate Code* and acting within the scope of his or her duties in that case.

(M) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(N) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(O) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

## Appendix B: Sample Forms

Forms used in California in the Surrogate Parent program:

- Request for Surrogate Parent Volunteer - <http://199.88.112.54/selpa/selpa%20forms/pdf%20versions.2006/req%20for%20surrogate%20parent.pdf>
- Surrogate Parent Agreement – following pages
- Notification of Surrogate Parent Authorization– following pages

Superior Court of California Surrogate Parent Appointment Forms:

- Findings And Orders Limiting Right To Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs (JV-535) - <http://www.courtinfo.ca.gov/forms/documents/jv535.pdf>
- Local Educational Agency Response to JV-535 - Appointment of Surrogate Parent (JV-536) - <http://www.courtinfo.ca.gov/forms/documents/jv536.pdf>
- Educational Representative or Surrogate Parent Information (JV-537) - <http://www.courtinfo.ca.gov/forms/documents/jv537.pdf>

Special Education Local Plan Areas (SELPA) Representing:  
San Juan, Sacramento City, Elk Grove, Folsom Cordova and Sacramento County

## SURROGATE PARENT AGREEMENT

This Surrogate Parent Agreement (“Agreement”) is made and entered into effective the date of \_\_\_\_\_, 20\_\_\_\_ between the Sacramento County SELPA and \_\_\_\_\_ (“Surrogate Parent”) with respect to the following recitals:

- A. District desires to fulfill its obligations to appoint a surrogate parent to represent a special education student to ensure that the student obtains a free and appropriate education under the Individuals with Disabilities Education Act (“IDEA”) and state law.
- B. Surrogate Parent has expressed a desire and willingness to act as the Student’s Surrogate Parent for educational purposes.

### **Now, therefore, the parties agree as follows:**

1. Appointment – Surrogate Parent agrees to act as the “Parent” and educational Representative for Student in accordance with 34 *Code of Federal Regulation* Section 300.519, California *Education Code* Section 56050, California *Government Code* Section 7579.5 and other applicable provisions of state and federal law.
2. Representations – Surrogate Parent represents that he or she has no interest that conflicts with the interest of the Student and that Surrogate Parent is not an employee of any agency involved in the care, custody or education of Student. Surrogate Parent further agrees to act on behalf of Student and to advocate for the education of Student in all ways necessary to ensure that Student receives a free and appropriate public education. Surrogate Parent also agrees to communicate with Student and other appropriate individuals or agencies to the extent necessary to ensure that Student receives a free and appropriate public education. Finally, Surrogate Parent agrees to meet with Student, as appropriate and others and to review Student’s educational records to develop knowledge and understanding of Student’s disability and Student’s individual needs for special education and related services. If at any time, during the term of this Agreement, Surrogate Parent develops an interest which may conflict with the interests of Student, or becomes an employee of an agency involved in the care, custody or education of Student, Surrogate Parent agrees to immediately notify the District. Upon verification the district shall terminate the agreement.

3. Training – Surrogate Parent acknowledges that District has provided training regarding Student’s handicapping condition, the laws applicable to Surrogate Parent responsibilities, and the continuum of program placements and opportunities available in the Sacramento County SELPA.
4. Term – District hereby appoints Surrogate Parent for a term of 2 years.
5. Termination – Either party may terminate this agreement for any reason upon thirty (30) days written notice to the other party.
6. No Assignment - Surrogate Parent agrees that this Agreement shall be a personal contract and shall not be assignable, in whole or in part, in any manner whatsoever.
7. Student Records – Surrogate Parent agrees to maintain all records of Student reviewed or maintained by Surrogate Parent in a confidential manner and agrees that, upon the termination of this Agreement, all such records shall be returned to District.

Surrogate Parent	Address	Phone	Date
SELPA/Designee	Sacramento County SELPA	Phone	Date

Special Education Local Plan Areas (SELPA) Representing:  
San Juan, Sacramento City, Elk Grove, Folsom Cordova and Sacramento County

NOTIFICATION OF SURROGATE PARENT AUTHORIZATION

In accordance with AB 1528 (Chapter 182, Statutes of 1990), and General Regulation Sections 300.514 of the *Code of Federal Regulations*, the Sacramento County SELPA shall ensure that the rights of the child are protected.

In compliance,

\_\_\_\_\_  
(Name of Surrogate)

has been appointed and has agreed to act as a surrogate parent for:

\_\_\_\_\_  
(Name of Child)

The appointed surrogate must represent the child in all matters relating to identification, assessment, instructional planning and development, educational placement, review and revision of the individualized education program, and provision of a free and appropriate education for the child.

Surrogate Parent	Address	Phone	Date
SELPA/District/Designee	Sacramento County SELPA	Phone	Date

Distribution: White - SELPA  
Yellow - Surrogate  
Pink - District

## **Appendix C: SELPA Directory**

Go to the CDE Web site at <http://www.cde.ca.gov/sp/se/as/caselpas.asp> for the names and locations of the Special Education Local Plan Areas in California.

## **Appendix D: California Court Appointed Special Advocates (CASA)**

In 1977, a Seattle Superior Court Judge named David Soukup was concerned about trying to make decisions on behalf of abused and neglected children without enough information. He conceived the idea of appointing community volunteers to speak up for the best interests of these children in court. He made a request for volunteers; 50 citizens responded, and that was the start of the CASA movement. Today, there are thousands of advocates serving in California alone.

The mission of California CASA Association is to enhance and strengthen CASA in California and support individual programs in their efforts to provide quality advocacy services to all abused and neglected children in the juvenile courts through the use of trained Court Appointed Special Advocates (CASAs) volunteers. These volunteers build close relationships with and serve as one-on-one advocates for children in foster care. Over 40 CASA programs in California recruit and specially train these volunteers from the community, who are then appointed as advocates by a juvenile court.

For the most current information and details about the CASA program in your area, visit California CASA's Web site at <http://www.californiacasa.org>