



COLORADO
Department of Education

**SPECIAL EDUCATION
AND
EDUCATIONAL SURROGATE PARENTS
Technical Assistance and Training Manual
2018**



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This manual is dedicated to the memory of Buck Schrotberger, who was always dedicated to students with disabilities, and began the CDE Educational Surrogate Parent training in the 1990s.



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Introduction

Colorado's school districts have a continuing need for community members willing to serve as educational surrogate parents (ESPs) for students with disabilities who do not have a parent or guardian to protect their interests in the special education process. The purpose of this handbook is to assist school districts with their responsibilities under the Individuals with Disabilities Education Act (IDEA) and the Exceptional Children's Educational Act (ECEA) to identify, assign and train ESPs for students in need of this important service.

Surrogate parents serve a very important role in the special education process. They help the child navigate their educational experience and assist the school/district to fulfill their legal obligation in providing a free appropriate public education (FAPE) to the child. Educational Surrogate Parents may need assistance from administrators and educators to enable them to become effective advocates for students with disabilities.

The Surrogate Parent Mandate

The Individuals with Disabilities Education Act (IDEA) 2004 stipulates that each public agency must ensure that the rights of each student with a disability are protected when no parent can be identified, the parent cannot be located, the student is a ward of the State, or the child is an unaccompanied homeless youth. 34 CFR §300.519. Each school district must implement local, State, and federal policies and procedures for safeguarding the rights of students with disabilities who are without legal guardians. The Colorado Department of Education, adhering to the requirements of the IDEA, addresses the need and appointment of educational surrogate parents in its State Rules for the Administration of the Exceptional Children's Educational Act, 1 CCR 301-8, 2220-R-6.02(8).

Regulations at the Federal and State level specify that an ESP has the same rights as any parent with regard to educational decisions in the identification, assessment, program placement, and free appropriate public education of a student with a disability. Included in these rights are: the right to receive notice of meetings, provide or refuse consent, review records, and receive full explanation of all procedural safeguards available under the IDEA. They must be provided with all letters, forms, and handbooks provided to any parent. As is any parent, an ESP is an equal partner with all other professionals in the educational decision-making process.

This manual is intended to provide technical assistance to:

- Administrative Units (AUs) in implementing state and federal requirements regarding the appointment of ESPs for students determined to be in need;
- AU administrators, facility schools, social service agencies related to the determination and appointment of ESPs; and,
- AU Special Education Directors or Coordinators who will assign ESPs or implement ESP training programs in their areas.



State Responsibilities

- Develop policies and procedures regarding educational surrogate parents. (see ECEA, 1 CCR 301-8, 2220-R-6.02(8))
- Provide guidance to the AUs and support effective training to their prospective ESPs.
- Provide technical assistance to AUs on issues related to educational surrogate parents.
- Ensure that ESP assignments occur within 30 days of the AU determination of need for an ESP. The Department may monitor ESP assignments through the general supervision process.
- Maintain a registry of each child with a disability determined to be in need of an ESP and the ESP assigned to the child.

Administrative Unit Responsibilities

The Individuals with Disabilities Education Act's procedural safeguards stipulate that students with disabilities who do not have a parent or guardian to represent their educational interests shall have an educational surrogate parent appointed for them. The AU must appoint an ESP for any student with a disability in need. A surrogate parent may also be appointed by a judge who is overseeing the child's care. A judge may also appoint a guardian ad litem (GAL) as an educational surrogate parent or issue an order providing the GAL with educational decision making authority.

Assignment of ESPs are the responsibility of the administrative unit of attendance, unless the student is in an approved facility school, then it is the responsibility of the administrative unit of residence.

An assignment must be made within 30 days of the district's determination that a student with a disability is in need of an ESP. In addition, the administrative unit assures that the person appointed as a surrogate parent has the knowledge and skills to serve in the capacity of educational surrogate parent.

The appointment of a surrogate parent must be completed by the director of special education and provided to both the assigned ESP and the Department.

Administrative Units are responsible for the following:

- Recruiting volunteers to serve as educational surrogate parents.
- Training educational surrogate parents regarding their roles and responsibilities.
- Maintaining a list of trained ESPs for your area.
- Developing a method for determining whether a child needs an ESP and for assigning an ESP to that child.
- Assigning educational surrogate parents to students with disabilities who are determined to be in need of an ESP under 34 CFR §300.519(a).
- Verifying with the Department of Education for any student that is in need of an ESP to determine if an ESP may have already been assigned to the student.



- Assigning ESPs within 30 days of the AU determination of the need for an ESP.
- Reporting ESP assignments to the Department of Education no later than 3 days after the assignment has been made. (This is a required form and can be obtained by contacting the Department for a copy. A copy of the written assignment provided to the ESP must accompany the report to the Department.)
- Ensuring that individuals can only serve as ESPs for students when the student has been identified to be in need of an ESP under the provisions of 34 CFR §300.519 **and** a written, valid ESP assignment from the AU has been provided to the ESP assigned to that student.

Students Who Need an Educational Surrogate Parent

The following situations may require the appointment of an educational surrogate parent for a student suspected of having a disability or is presently eligible for special education:

- A. Parental rights have been terminated by the courts.
- B. A court has revoked the parent's educational decision-making authority.
- C. Parents or guardians of a student with disabilities are unknown or cannot be located.
- D. Student has been committed to the Division of Youth Services and the parents are unknown or cannot be located.
- E. Student has a guardian ad litem but specific court orders do not include responsibility for educational decision making.
- F. A student who has been determined homeless under the McKinney Vento Act, C.R.S. 22-1-102.5.

The need for an educational surrogate parent could be recommended by the school district, social service agencies, approved facility schools, advocacy groups, juvenile justice, and child placement agencies.

Determining the Need for an Educational Surrogate Parent

If the school district suspects the need for an educational surrogate parent, the following steps should be taken:

1. Initiate contact with the student's parent, legal guardian, relative, or individual with whom the student resides. Attempt and document several contacts by telephone, letter, email and certified mail.
2. If legal guardian is discovered, move forward with the legal guardian in the special education process.



3. An ESP cannot be appointed in situations involving a disinterested parent who chooses not to participate in the special education process. See appendix, Letter to Perryman.
4. If no parent, legal guardian or relative can be identified or located, the AU Special Education Director must contact the Department to determine if an ESP has already been appointed for this student prior to making an ESP assignment.
5. If an ESP has previously been appointed, contact that ESP and provide notice of meeting, etc.
6. If an ESP has not already been appointed, or if the current ESP no longer wishes to continue to serve as ESP for the student, then the AU Special Education Director must appoint a qualified ESP from their list of trained candidates.
7. The AU must report the assignment of an ESP to the Department on the CDE required form, within 3 days of the assignment of an ESP. Instructions for submission are provided on the form.
8. The school district has no longer than 30 days to appoint an educational surrogate parent. 34 CFR §300.519(h)

Qualifications of an Educational Surrogate Parent

An Educational Surrogate Parent is qualified if the person meets these criteria:

1. Is an adult at least 18 years of age and a resident of Colorado.
2. Must have no interest that conflicts with the interests of the student whom the ESP represents.
3. Is not an employee of the Department of Education, the Administrative Unit, approved facility school, or any agency involved in the education or care of the student.
4. Has knowledge and skills that ensure adequate representation of the child in the special education process. This may be obtained through the educational surrogate parent training provided by the Administrative Unit. Adequate training provides awareness and knowledge of state and federal regulations, special education process, individualized education program (IEP) for students with disabilities, and the procedural safeguards.
5. Educational surrogate parents must provide information about themselves including current employment history, previous school experience history, references, and any information regarding possible conflict of interest in serving as an educational surrogate parent. (A technical assistance form titled "Colorado Application for Educational Surrogate Parent" can be utilized to help document this information.) (See Appendix)

Potential ESPs

The following individuals may be considered as a possible ESP for a student:

1. Adult relatives (not living with the student);



2. Court appointed special advocates (CASA);
3. The student's Guardian Ad Litem;
4. Another adult who possesses the knowledge and skills to serve as an ESP for the student.

A Guardian Ad Litem (GAL) may be given educational decision-making authority or designated as the student's Educational Surrogate Parent by a State Court. The GAL can represent the student in educational matters if the court specifically includes educational representation in the court order. Alternatively, a Director of Special Education can also appoint a GAL as ESP if the Court has not already done so - keeping in mind that the same requirements of an ESP must be maintained and the Director must assure that the GAL maintains the knowledge and skills to represent the child in special education matters.

Recruitment

AUs should consider recruitment of ESP volunteers through marketing and advertisements with agencies or individuals such as:

1. Various civic organizations having an interest in students with disabilities.
2. Colorado parent organizations.
3. Community volunteer organizations.
4. Retired teachers and administrators.
5. Family services organizations.
6. Special education graduate students.
7. Guardian Ad Litem.
8. Juvenile Court Systems.

All Nominees must be qualified and meet criteria set forth in the qualification section.

[Recruitment assistance may be obtained by contacting PEAK Parent Center.]

Training

Candidates who register for the training should be sent in introductory letter and Surrogate Parent Application that will need to be completed and sent in prior to the training. AUs will need to determine if the applicant meets the qualifications of an ESP prior to confirming that they may attend the training. The AU process may include additional requirements (i.e., background



check). Follow up with the approved potential candidate with an acceptance letter to the training.

Educational surrogate parent training may be conducted by the School District or BOCES or PEAK Parent Center. The training should include instruction in and an explanation of the materials contained in the Colorado Educational Surrogate Parent Manual (or content equivalent), which outlines the special education process and how an ESP is involved in the process. A copy of the manual (or content equivalent) should be provided to each participant who attends and completes the training.

Follow-up training may be coordinated by the Special Education Director or designee. Re-training or updated training of ESPs may need to be conducted every few years. The Director should monitor all educational surrogate parents and provide encouragement and support whenever necessary.

Appointment of an Educational Surrogate Parent

Once it has been determined that a student needs an ESP. The Director or their designee must contact the Colorado Department of Education in order to determine if an ESP has already been assigned to the student. The Department maintains a registry of all ESP assignments in Colorado. The Department only has the authority to speak directly with the Special Education Director or their authorized designee regarding specific students, due to confidentiality requirements. Please submit a contact authorization form (appendix #) to the Department if the Director grants this authorization to a designee in their district.

If the registry indicates an existing assignment, the AU should continue to contact and involve the ESP assigned to the student. If there is no record of a previous assignment, the AU will need to assign an ESP for the student within 30 days of the determination that the student needed an ESP. Each AU must maintain a list of educational surrogate parents available to serve as ESPs for the students in their AU. The AU ESP list must include only those individuals who have successfully completed ESP training or those individuals that a Director can assure already possess the knowledge and skills required of an ESP.

The Special Education Director or designee will make contact with a selected person from the ESP list to determine the availability of an individual to serve as ESP. Upon confirmation of availability, a written assignment from the Director must be sent to the assigned ESP, indicating the specific information including the student's name, grade level, school, etc. and district personnel contact information for the ESP (AUs must maintain privacy requirements when sending this information). A copy of this assignment must be placed in the student's special education file. A copy of this assignment must also accompany the CDE required form and submitted via approved secure method (i.e., DMS/Syncplicity) to the Department.

Educational surrogate parents must be made aware that they are only able to serve as an educational surrogate parent for those students for which they have officially been assigned. Verbal assignments are not adequate prior to service – a written assignment must be made by the Director of the AU and received by the ESP. If an individual that has not been validly assigned to a student and signs an IEP or written permission to assess, etc., those documents



are invalid and challengeable in the State general supervision process. Whenever possible, the person selected should reside no further than 75 miles from the location where special education services are provided. But an ESP can be involved through the use of a teleconference if they are unable to attend in person. Directors of Special Education are certifying, by signature on the required form, that the ESP assigned to each student has no conflict of interest and has the knowledge and skills to adequately represent the child.

Responsibilities, Tenure, Compensation, and Liability

Responsibilities of Educational Surrogate Parents

- Participate in educational surrogate parent training and any follow-up sessions provided by the AU.
- Represent the student in all educational decision-making and matters relating to the identification, evaluation, placement, and provision of FAPE.
- Attend IEP meetings and other meetings regarding the student's special education program.
- Become acquainted with the student and knowledgeable about the student's disabilities and educational needs.
- Comply with confidentiality laws (FERPA).
- Grant or deny permission for initial assessment or placement.
- Become active in developing and monitoring the student's Individual Education Program (IEP).
- Be familiar with special education services pertaining to the student.
- When necessary, discuss or initiate dispute resolution options such as mediation, or a state or due process complaint.

Tenure

- The length of time is contingent on the person. Educational surrogate parents are encouraged to continue as long as possible.
- Tenure is contingent on the student's need for a surrogate and may be terminated if: the student is determined to no longer be eligible for special education services; the legal guardian of the student is able to carry out the role of the parent; a parent who was previously unknown becomes known, or the whereabouts of the parent, which were previously unknown, are discovered; the appointed ESP no longer wishes to represent or is unable to represent the student; the Director of Special Education determines that the ESP no longer adequately represents the student; the student moves to a geographic location that is not reasonably accessible to the ESP; the court appointed surrogate is no longer responsible for that student.
- If a Court orders *educational decision-making authority* to a Guardian Ad Litem or assigns an Educational Surrogate Parent to a student, then the Court's authority supersedes any previous ESP appointment made for that student. The special education director must notify the previously assigned ESP of this change and notify the Department of the order as well.



- A person may fill the role as long as the ESP fulfills qualifications and is representing the student in educational matters. If the educational surrogate parent is not fulfilling their responsibilities or has developed a conflict of interest, the special education director, with cause, could terminate the appointment of the ESP. This termination must be documented and provided to the Department.
- Alternatively, an educational surrogate parent can resign their services by writing a letter to the Director of Special Education of the school district in which the student receives special education services. When possible, this should occur at least fifteen (15) days prior to resignation as the ESP, allowing the Director time to find a new ESP to serve.

Compensation

This is a voluntary position. However, Administrative Units may consider providing reimbursement for mileage.

Liability

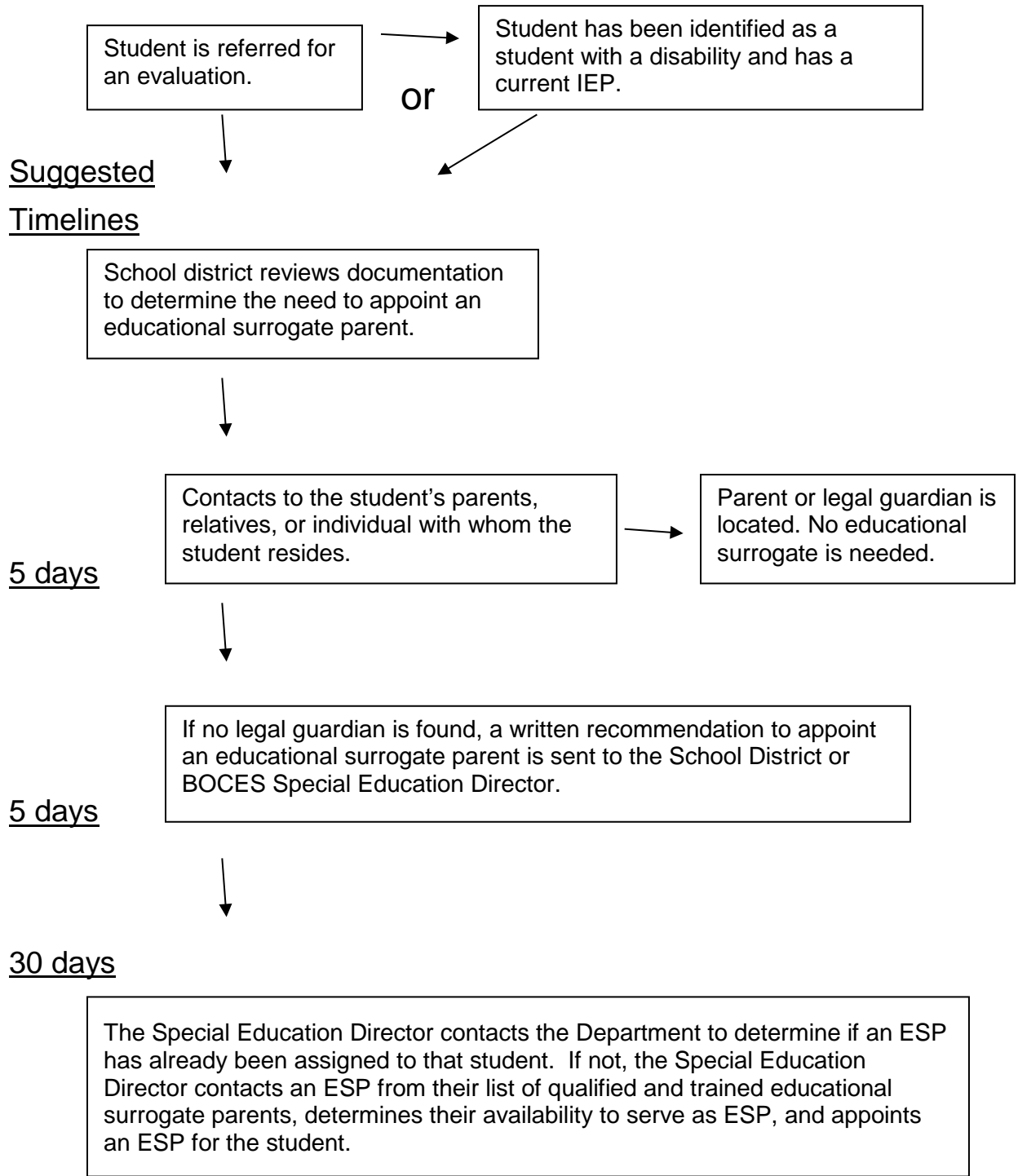
An educational surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the student.

Rights of the Educational Surrogate Parent

A surrogate parent maintains all the same rights of a parent or guardian related to the student's special education services. The district assures that the surrogate parent receives and has available to them all applicable procedural safeguards. An ESP is afforded all procedural safeguards afforded a parent of a student with a disability with respect to identification, evaluation, placement and the provision of FAPE as described in the IDEA and ECEA at section 6.02(8). These rights include, but are not limited to: receiving notices, participating in IEP meetings and decision making, giving or refusing consent, being provided a copy of the procedural safeguards, being authorized to request an independent educational evaluation, having access to all dispute resolution options including mediation, due process or state complaint procedures. Additionally, the ESP also has the right to inspect or review records, have someone explain anything in the record, receive a copy of the record, or ask to make a change to the record.



Outline of the Educational Surrogate Parent Process



***The school district has no longer than 30 days to appoint a surrogate parent**



Questions and Answers

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

A. There are no formal limits on the number of students who may be served by each educational surrogate parent. In appointing multiple students to a person, the school district should consider whether or not the ESP's total "load" will allow him or her the time to perform the required duties.
2. Q. *Can you describe some of the persons who are not eligible to serve as educational surrogate parents?*

A. The categories excluded by federal and state rules and regulations are those persons who receive public funds to care for the student, who have any interest that may conflict with the interests of the student represented, or who are employed by a public agency involved in the education or care of a student. This would include Social Services Case Workers, Directors of Special Education for any AU, any AU employee, and any CDE employee.
3. Q. *When is a student "a ward of the State" and thus eligible for an educational surrogate parent?*

A. A student is a "ward of the State" when the parent rights have been terminated and the State or county has assumed the legal responsibility for the student. However, if the State or county is a custodian of the student, but the parent retains the rights to make decisions concerning education, the student is not a "ward of the State" and no educational surrogate parent is needed.
4. Q. *What is "reasonable effort"?*

A. The term comes from "reasonable effort to locate a student's parents as stated in federal regulations and should be applied with the "legal rule of reason." It means that more than one activity must be included in the effort to locate the parents and that all efforts should be documented. At least three attempts to locate the parents should be made including phone calls, letters, certified letters or visits to the parent's last known address. All attempts should be documented in the student's record.
5. Q. *Can a foster parent serve as an educational surrogate parent?*

A. Foster parents do not have to be assigned as an ESP if the parental rights for a student in their care. Foster parent falls under the definition of "Parent" in the IDEA Regulations and therefore, the foster parent can act as any other parent with regard to the educational decision-making for that student.
6. Q. *How is "conflict of interest" defined?*

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



7. Q. *Can a social worker serve as an educational surrogate parent?*
 - A. No. It would be a conflict of interest for a social worker to serve as an educational surrogate parent, since they are employed by an agency involved in the care of the child.
8. Q. *Who is responsible for the oversight and accountability of educational surrogate parents?*
 - A. The School District or BOCES that trains and appoints the educational surrogate parent is responsible for oversight and accountability.
9. Q. If a student's only identifiable parent is incarcerated. Can an ESP be assigned?
 - A. Only if the parental rights have been terminated or if some other court order is in place (i.e., a "No Contact" order) may an ESP be assigned in this situation. If the parent is incarcerated but their whereabouts are known, parent may be able to participate through a telephone conference.
10. Q. What if there is more than one "parent" in the picture?
 - A. If there is more than one parent that could be involved, the AU should consult with their legal counsel to determine who the appropriate parent is for educational purposes.



Appendix



Sample Interest Letter

[Date]

[Applicant]

Dear [Applicant],

Thank you for your interest in becoming an educational surrogate parent (ESP). The purpose of the Educational Surrogate Parent Program is to provide students with disabilities who do not have parent or guardian assistance with their special education program. The ESP is responsible for learning about the student's educational needs and working with the school to help meet those needs.

Please complete the enclosed ESP Application and return it to:

[Name, Title]
[School District]
[Address]
[phone]

Confirmation of your registration for the ESP training will be confirmed once your application has been processed and reviewed. You are welcome to call if you have any questions. We appreciate your interest in becoming an educational surrogate parent.

Sincerely,

[Special Education Director]



Sample Colorado Application for Educational Surrogate Parent

Name _____ Date _____

Address _____

Home Phone _____ Work Phone _____ DOB _____

E-mail address _____

Place of Employment _____ Position _____

Do you speak any languages other than English? If yes, please list the language(s):

Please Answer the Following Questions by Circling Yes or No.

- Yes No 1. Are you a citizen of the United States?
- Yes No 2. Are you a resident of the state of Colorado?
- Yes No 3. Are you an employee of the school district or any public or private agency involved in the education or care of children?
- Yes No 4. Do you have any interests or are you engaged in any activities that could be considered to be in conflict with the interest of any child that may be assigned to you? If you are unsure, please explain your circumstance:

- Yes No 5. Are you willing to participate in, and complete the required training to be an ESP?
- Yes No 6. Do you have time available to attend meetings as an Educational Surrogate Parent?
- Yes No 7. Are you familiar with the special education process?
- Yes No 8. Are you willing to inform yourself about the student's educational history, abilities, disabilities, educational needs and services?

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

1. _____

2. _____

3. _____



Please discuss any skills or traits that would make you an effective surrogate parent:

Please list at least two references that may be contacted about your application to be an ESP:

1. Name _____ Relationship _____
Address _____ Phone _____
2. Name _____ Relationship _____
Address _____ Phone _____

If I consent to become an educational surrogate parent, I will keep all information I receive about the student in strict confidence, while serving as surrogate and thereafter. I further intend to assist the student's to whom I am assigned for the duration of their education or at least one school year.

Signature: _____

Printed name: _____ Date _____

Please complete this form and send it to: [name, title]
[school district, address]
[city, state, zip]



Sample Applicant Eligibility Letter and Training Confirmation

[Date]

[Applicant]

[Address]

Dear [Applicant],

Thank you for applying to provide Educational Surrogate Parental support to students who do not have a parent or guardian available to them. This is very important service.

We have received your completed educational surrogate parent application and are pleased to inform you that you meet the eligibility requirements. Your registration is confirmed for attendance at the ESP training to be held on [date, time, location]. Completion of this training is required before assignment as an educational surrogate parent.

During the training you will learn about the special education process and your role as an educational surrogate parent. Participants will receive written materials that will assist you with your responsibilities as an ESP and you will have full access to ask questions and get support from the school and administrative unit just as any parent would.

After you have completed the training, your name will be placed on the list of available, trained ESPs maintained by the district. You may be contacted at any time and asked to serve as an ESP for any student determined to be in need of an ESP.

We sincerely appreciate your assistance in serving as an educational surrogate parent. If you have any questions or concerns, please feel free to contact our office at any time.

Sincerely,

[Special Education Director]



Sample ESP Training Attendance Sign-In

Training date: _____

Location: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____

Participant's Name: _____

Address: _____

City & Zip Code: _____

Phone number: _____ E-mail: _____



ESP Training Self-Evaluation Form

Please complete this form to help us meet your needs and improve our training program.

Training date: _____ Location: _____
Facilitator: _____

Below is a list of the topics introduced at the training today. Please mark each topic that you feel you now have a basic understanding of:

- The determination that a student is in need of an ESP
- The responsibilities of an ESP
- Basic information about students with disabilities and how to get more information about specific disabilities
- Services for students with disabilities, including accommodations and modifications
- The special education process, including referral, evaluation, eligibility, IEP development and participation in the process, provision of services, review and re-evaluation
- District specific IEP forms
- Procedural safeguards
- Dispute resolution options, including mediation, due process, and state complaint
- Early dispute resolution Facilitated IEP option

List any topics you want to learn more about:

Please return this form to the facilitator before you leave.



Sample ESP Assignment Letter

[Date]

[ESP]

[Address]

Dear [ESP],

This is a formal notification that you have been appointed, in accordance with both federal and state law and regulations, as the Educational Surrogate Parent (ESP) for John Doe, a 4th grade student at Mile High Elementary. Accordingly, as an educational surrogate parent, you will have all the rights and responsibilities of parents in matters relating to the special education process, including working with the school to provide appropriate educational services for the student.

Consultation to assist you in your duties as an ESP is available from the [School District/BOCES] by contacting [Special Education Director] at [phone number].

We thank you for volunteering for this important service.

Sincerely,

[Name]

Director of Special Education

[School District/BOCES]



Sample ESP Assignment Termination Letter

[Date]

[ESP]

[Address]

Dear [ESP],

Thank you for serving as an educational surrogate parent for [student], who attends [school]. The purpose of this letter is to inform you that your appointment as an ESP for this student has ended for the reason indicated below:

- The student has been determined to no longer be in need of special education services.
- The legal guardianship of the student has been assigned to a person who is able to carry out the role of the parent.
- The parent who was previously unknown has become known, or the whereabouts of a parent that was previously unknown have become known.
- You, as the appointed ESP, no longer wish to represent or are unable to represent the student.
- The student has moved to a geographic location that is not reasonably accessible to you.
- A court has assigned educational decision making authority to the student's Guardian Ad Litem.

Thank you for participating in the ESP program. We hope you will continue to be willing to serve as an ESP for other students with disabilities.

Sincerely,

[Name]

Director of Special Education



Authority

- Federal Regulations implementing the Individuals With Disabilities Education Act, 34 CFR 300.30 (Definition of Parent) and §300.519 (Surrogate Parents)
- The Rules for the Administration of the Exceptional Children’s Educational Act, 1 CCR 301-8, 2220-R-6.02(8) (Educational Surrogate Parents)

IDEA Regulations

Sec. 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 §300.519 or section 639(a)(5) of the Act.

(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

(Authority: 20 U.S.C. 1401(23))

Sec. 300.519 Surrogate parents.

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

- (1) No parent (as defined in Sec. 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 U.S.C. 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 U.S.C. 1415(b)(2))

ECEA Rules

6.02 (8) 34 CFR §300.519—Educational Surrogate Parents

6.02 (8) (a) General.

The administrative unit of attendance and each state-operated program must ensure that the rights of a child are protected when—

6.02 (8) (a) (i) No parent (as defined in Section 2.33 of these Rules) can be identified;

6.02 (8) (a) (ii) The administrative unit of attendance or the state-operated program, after reasonable efforts, cannot locate a parent;

6.02 (8) (a) (iii) The child is a ward of the State; or

6.02 (8) (a) (iv) The child is a homeless child as defined in Section 22-1-102.5, C.R.S.

6.02 (8) (b) Educational Surrogate Parent Registry

The Department shall maintain a registry of each child with a disability determined to be in need of an educational surrogate parent and the educational surrogate parent assigned to the child. The purpose of the registry is to track those students for whom an educational surrogate parent has been assigned through the procedures established in this Section 6.02(8).

6.02 (8) (c) Duties of the administrative unit of attendance or state-operated program.

The duties of an administrative unit of attendance or a state-operated program under Section 6.02(8) include the assignment of an individual to act as an educational surrogate parent for the child. This must include a method-

6.02 (8) (c) (i) For determining whether a child needs an educational surrogate parent; and

6.02 (8) (c) (ii) For assigning an educational surrogate parent to the child.

6.02 (8) (d) Children placed in the legal custody of the Colorado Department of Human Services.

In the case of a child who is placed in the legal custody of the Colorado Department of Human Services, the educational surrogate parent alternatively may be appointed by the court overseeing the child's case, provided that the educational surrogate parent meets the requirements in Section 6.02(8)(e)(iii).

6.02 (8) (e) Criteria for selection of educational surrogate parents.



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- 6.02 (8) (e) (i) The Special Education Director of the administrative unit of attendance or state-operated program shall assign educational surrogate parents.
- 6.02 (8) (e) (ii) After determining that a child needs an educational surrogate parent but before the educational surrogate parent is assigned, the Special Education Director must contact the Department to verify that there is no existing educational surrogate assignment for the child.
- 6.02 (8) (e) (iii) The Special Education Director must ensure that a person selected and assigned as an educational surrogate parent—
- 6.02 (8) (e) (iii) (A) Is not an employee of the Department, the administrative unit of residence, the administrative unit of attendance (if different from the administrative unit of residence), or state-operated program, or any other public agency that is involved in the education or care of the child;
- 6.02 (8) (e) (iii) (B) Has no personal or professional interest that conflicts with the interest of the child whom the educational surrogate parent represents; and
- 6.02 (8) (e) (iii) (C) Has knowledge and skills that ensure adequate representation of the child.
- 6.02 (8) (f) Requirement for written certification
- The Special Education Director shall document in writing, on a form approved by the Department of Education, each assignment of an educational surrogate parent, including a written certification that the requirements of Section 6.02(8)(e)(iii) have been met. The Special Education Director shall provide a copy of the written assignment to the Department within three (3) business days of the date of the assignment.
- 6.02 (8) (g) Non employee requirement; compensation.
- A person otherwise qualified to be an educational surrogate parent under Section 6.02(8)(e)(iii) is not an employee of the administrative unit of attendance or state-operated program solely because he or she is paid by such administrative unit or state-operated program to serve as an educational surrogate parent.
- 6.02 (8) (h) Homeless children.
- In the case of a child who is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to Section 6.02(8)(e)(iii), above, until an educational surrogate parent can be appointed that meets all of the requirements of Section 6.02(8)(e)(iii).



6.02 (8) (i) Educational surrogate parent responsibilities.

The educational surrogate parent may represent the child in all matters relating to—

6.02 (8) (i) (i) The identification, evaluation, and educational placement of the child; and

6.02 (8) (i) (ii) The provision of FAPE to the child.

6.02 (8) (j) Responsibility of the Department.

The Department must make reasonable efforts to ensure the assignment of an educational surrogate parent not more than 30 days after the responsible administrative unit or state-operated program determines that the child needs an educational surrogate parent.

6.02 (8) (k) Approved Facility Schools.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an approved facility school needs an educational surrogate parent, the child's administrative unit of residence or state-operated program is responsible for locating and assigning the educational surrogate parent. If the approved facility school is not located within the boundaries of the administrative unit of residence, the administrative unit in which the approved facility school is located shall cooperate with the administrative unit of residence in locating an educational surrogate parent for the child.



Current EDAC approved ESP assignment form
[Update approval scheduled for EDAC's May 2018 Meeting]



Contact Authorization Form

[Special Education Director's authorization and designation of a specific staff member to communicate with CDE regarding the ESP registry]