

THE APPOINTMENT OF SURROGATE PARENTS FOR STUDENTS WITH DISABILITIES

INTERPRETATION AND TECHNICAL ASSISTANCE DOCUMENT

NEVADA DEPARTMENT OF EDUCATION

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Introduction

For over twenty years, public agencies such as school districts that provide education to students with disabilities have been required to insure that the rights of a child are protected when no parent can be identified or located or the child is a ward of the state. Such protection is to be facilitated by the assignment of an individual to act as a surrogate for the parents.

This interpretation and technical assistance document is an expansion and revision of one that has been in effect for several years in Nevada. It was developed after consultation with leaders of parent organizations, persons who have served as surrogate parents for students with disabilities, administrators of early intervention programs, and school district special education administrators. Deputies in the Office of Nevada's Attorney General who represent the Nevada Departments of Education and Human Resources were also consulted. Additionally, a review was conducted of federal guidance and case law on this subject.

The following material is provided to clarify for public agencies and parents why and when the appointment of surrogate parents is necessary and appropriate. Each agency has the responsibility and authority to develop its own procedures to insure that students in need of representation are promptly identified and that qualified individuals are assigned in a timely manner to act as surrogates.

Legal Requirements Applicable to Surrogate Parents

The 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) require state and local “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 (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents” (20 U.S.C. 1415(b)(2)).

Current regulations for the IDEA state:

34 CFR §300.515 Surrogate parents.

(a) **General.** *Each public agency shall ensure that the rights of a child are protected if—*

- (1) *No parent (as defined in §300.20) can be identified;*
- (2) *The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or*
- (3) *The child is a ward of the State under the laws of that State.*

(b) **Duty of public agency.** *The duty of a public agency under paragraph (a) of this section includes 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) **Criteria for selection of surrogates.**

- (1) *The public agency may select a surrogate parent in any way permitted under State law.*
- (2) *Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate—*
 - (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 interest that conflicts with the interest of the child he or she represents; and*
 - (iii) *Has knowledge and skills that ensure adequate representation of the child.*
- (3) *A public agency may select as a surrogate a person who is an*

employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.

*(d) **Non-employee requirement; compensation.** A person who otherwise qualifies to be a surrogate parent under paragraph (c) 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.*

*(e) **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.

(Authority: 20 U.S.C. 1415(b)(2))

Regulations in the Nevada Administrative Code (NAC) for Special Education programs offered to students ages 3 through 21 by local education agencies state:

NAC 388.283 Appointment of surrogate parent for pupil with disability.

1. *A public agency shall appoint or petition the superintendent to appoint a surrogate parent for a pupil with a disability, other than a gifted and talented*

pupil, when the:

(a) Parents cannot be identified;

(b) Location of a parent is not discovered after reasonable efforts;

or

(c) Pupil is a ward of the state.

2. *A person selected as such a surrogate parent must have no interest that conflicts with the interests of the pupil and have knowledge and skills that ensure the adequate representation of the pupil's interests. The surrogate parent must not be an employee of the public agency that is involved in the education or care of the pupil, but he may be paid by the public agency to serve as the surrogate parent.*

3. *The surrogate parent shall represent the pupil in all matters relating to the identification of a pupil, the assessment of any special educational needs of the pupil, the educational placement of the pupil and the provision of a free appropriate program of public education to the pupil. The program must be provided for the pupil without any cost to the parent. (Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93)*

Definitions of Terms Used in Applicable Regulations

Current federal definitions of terms used in applicable regulations include:

34 CFR §300.8 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services that --

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an IEP that meets the requirements of §§300.340-300.350.

(Authority: 20 U.S.C. 1401(a)(18))

34CFR §300.20 Parent.

*(a) **General.** As used in this part, the term parent means —*

(1) A natural or adoptive parent of a child;

(2) A guardian but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been appointed in accordance with §300.515.

*(b) **Foster parent.** Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the*

Act

if—

(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19))

34 CFR §300.14 Public agency.

As used in this part, the term "public agency" includes the SEA, LEAs, IEOs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(2)(B); 1412(6); 1413(a))

State definitions of terms used in applicable regulations include:

NAC 388.071 "Parent" defined. *"Parent" means*

1. *A natural or adoptive parent;*
2. *A guardian other than this state;*
3. *A person acting in the place of a parent;*
4. *A surrogate parent appointed pursuant to NAC 388.283; and*
5. *A foster parent, if:*
 - a) *The natural parent's authority to make educational decisions on the pupil's behalf has been extinguished under state law; and*
 - b) *The foster parent:*
 - (1) *Has an ongoing, long-term parental relationship with the pupil;*
 - (2) *Is willing to make the educational decisions required of parents pursuant to 20 U.S.C. §§1400 et seq.; and*
 - (3) *Has no interest that would conflict with the interests of the pupil.*

NAC 388.092 "Public agency" defined.

"Public agency" means any school district or other governmental entity responsible for providing education to a pupil with a disability.

*(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)--
(Substituted in revision by NAC 388.021)*

Acronyms Used:

- DCFS - Division of Child and Family Services
- DHR - Department of Human Resources

- FAPE - Free Appropriate Public Education
- IDEA - Individuals with Disabilities Education Act
- IEP - Individualized Education Program
- IEU - Intermediate Educational Unit (Nevada has none)
- IFSP - Individualized Family Service Plan
- LEA - Local Education Agency (Local School District)
- NAC - Nevada Administrative Code
- NRS - Nevada Revised Statute
- SEA - State Educational Agency
- TPR - Termination of Parental Rights

Identifying and Locating the Parent

1. If a parent is “not known,” the agency must make a reasonable effort to identify a parent before appointing a surrogate. Reasonable efforts shall include a minimum of an agency or school district records search and a written notice by certified mail to the last known address.
2. If a parent's identity is known but the parent's whereabouts are “unknown,” the parent may be considered “unavailable” after reasonable efforts have been taken and documented to locate the parent.
3. If a natural parent's identity is known, but the parent has not given consent for services, reasonable efforts to involve the parent in decision-making shall at a minimum include documentation of offers to conduct meetings by telephone, conduct meetings at convenient locations for parents, or permit the parent to designate someone near the child to act for the parent.
4. A person “acting as a parent” has the same legal authority as a natural parent to exercise the child’s rights.

Note: Unless the child is a “ward of the state,” notice should be provided to the natural parents, when their identity is known, of actions being taken by the “acting” parent. This notice shall be written and comply with requirements concerning notice to parents of proposed actions. The agency is advised to have written criteria and procedures for determining that a person is “acting as a parent.” Such persons may include a stepparent, grandparent, or a person the parent has designated. If there is a disagreement between the natural and acting parent, the agency may need to use procedures similar to those used when divorced parents disagree about an appropriate plan for a child. Disputes regarding the appointment of surrogate parents should be directed for resolution to the Program Director (in the case of a child ages birth through two), or to the local school district director of special education (in the case of a student ages 3 through 21). Questions may also be directed to Community Connections (775-688-2284) (birth through two), or to the Educational Equity Team at the Nevada Department of Education (775-687-9171) (ages 3 through 21).

5. In accordance with IDEA, the “parent” or persons acting as “parent” have the right to refuse services. A surrogate parent cannot be appointed for a child whose parent has refused to participate in the educational decision-making process or to give consent for services.

6. If at any point, the child's parents are located and/or resume their responsibilities or a guardian is appointed, the services of the surrogate parent shall be withdrawn.

Ward of the State Issues and Definitions

The Deputies Attorney General the Nevada Department of Human Resources and the Nevada Department of Education have provided the following information in helping to determine if a child is a ward of the state and to clarify other aspects of the appointment of surrogate parents.

Ward of the State

IDEA considers a child to be a “ward of the state” when the state has assumed under its own law the legal responsibility to make decisions concerning the child’s receipt of early intervention and special education.

A child is a “ward of the state” in Nevada when:

- a. Termination of Parental Rights (TPR) has been finalized;
- b. A Case Plan has been approved by the Juvenile Court, and the Case Plan includes termination of parental rights; or
- c. TPR is pending.

Participation in School District Procedures by Personnel of Department of Human Resources

1. Nevada Department of Human Resources (DHR) personnel (i.e., social workers, and/or case managers) may participate in the development of school district IEPs; however, they **shall not** be deemed to be "acting as parent," nor shall they be appointed as surrogate parents. Therefore, they **shall not** sign any document that gives permission for evaluation, placement, or other services. If the DHR representative is requested to sign the IEP, the document shall include a notation clarifying that the individual is participating for the sole purpose of sharing information. This notation should read as follows:
“(signature) for attendance purposes only” or “(signature); attendance only”
2. The IEP should be developed to identify the special education needs of the child. Once the IEP has been developed which identifies these services, the local education agency shall make arrangements for provision of the services.

- a. These arrangements may include negotiations with the appropriate agency representative in accordance with applicable interlocal contracts and/or cooperative agreements.
- b. These negotiations are not to be considered as a part of the IEP process.
- c. Financial matters must be addressed as a part of the negotiations in accordance with the applicable interlocal contracts and/or agreements to establish financial responsibility for services.

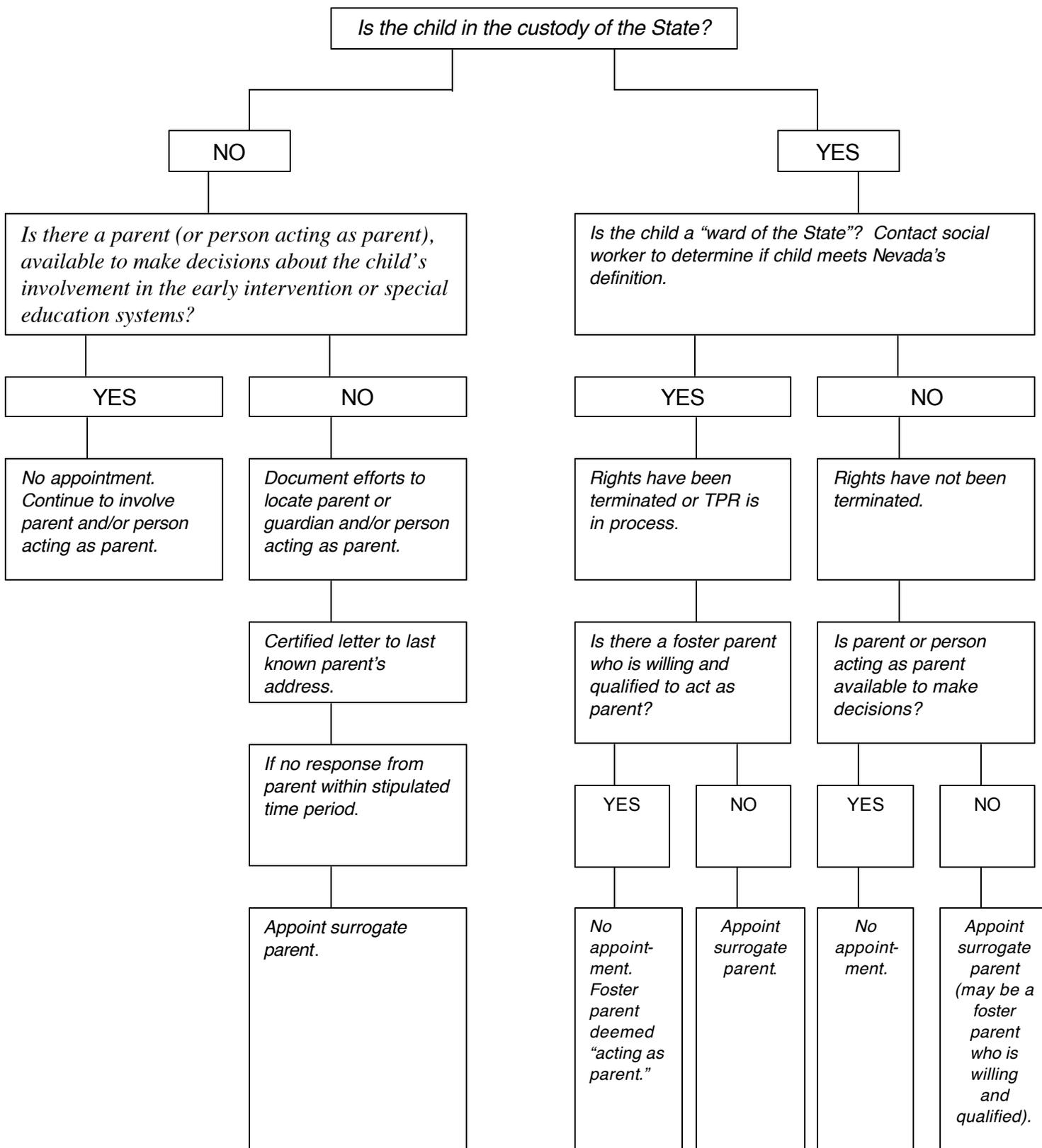
Timeline for Appointment of Surrogate Parent

A surrogate parent should be appointed to represent the child within ten (10) days of the confirmation of the need for a surrogate. Federal and state regulations require that parental consent (including surrogate) be obtained for initial evaluation and reevaluation and for initiation of services or placement. In the case of an initial referral, prompt appointment is necessary to assure compliance with the forty-five (45) school-day evaluation requirement. The initial evaluation cannot begin until the surrogate parent is appointed and gives written consent. Please refer to regulations for guidance regarding reevaluation consent and the agency's obligation to provide a free appropriate public education (FAPE).

Determining the Need for a Surrogate Parent Using Surrogate Parent Decision Tree

The following "Surrogate Parent Decision Tree" has been designed to assist agencies in determining the need for a surrogate parent.

Surrogate Parent Appointment Decision Tree



Appointment of Surrogate Parents

Criteria for Appointment

A surrogate parent shall:

1. Be at least 18 years of age and a resident of the State of Nevada.
2. Have no interests that conflict with the interest of the child/student being represented.
3. Have reviewed the agency's or school district's Surrogate Parent Orientation Manual or participated in training provided by the agency or a parent training project.
4. Not be an employee of the public or private agency providing services to the child/student, i.e., teacher, administrator, service coordinator, social worker, etc.
5. Have knowledge and skills that ensure adequate representation of the child.

Additional Considerations

The appointing agency or his or her designee must consider the following for the selection of a surrogate parent:

1. The recommendation of the service coordinator or social worker based on the Case Plan when the child/student is a ward of the state.
2. The availability and appropriateness of a relative or the foster parent. Foster parents are considered "licensees" in Nevada who receive a stipend for care of children. Therefore, foster parents may be appointed as surrogates when the child is a ward of the state. Foster parents are not state employees solely on the basis of receiving stipends for the care of children.
3. A surrogate parent with a cultural sensibility and/or ethnic background similar to the child/student.
4. The appropriateness of an older student's participation in the selection of his or her surrogate.
5. The surrogate parent's availability.

6. If child/student has a surrogate parent appointed by another agency, the receiving program shall honor and continue the appointment if the surrogate has fulfilled the duties and responsibilities and is still available.
7. If all parental rights have been terminated, the natural parent shall **not** be appointed as a surrogate. In cases with special consideration, this may occur with approval of the Deputy Attorney General assigned to the agency. If termination of parental rights has not been finalized, the case planning team shall consult with the Deputy Attorney General for guidance in determining the need for a surrogate.
8. If the child has been placed in an out-of-home placement, or is in the legal custody of the State, the Case Plan may designate who has the legal authority to provide consent and operate within the best interest of the child. (The Case Plan must be approved by the court. It is important to remember that case planning is a dynamic, ongoing process which can be amended or changed at any time and amended before the court.) If the natural parent “re-enters the picture,” the case-planning team should decide if the parent is capable of performing the responsibilities of a parent with regards to the child’s early intervention or special education services.
9. The head or other employee of an agency, institution, or community-based residential facility or group home is not automatically the legal guardian of a child in residence even though legal custody rests with the public agency. Directors or other employees of community-based residential facilities are not considered foster parents for these purposes and may not serve as surrogate parents.

Priority for the Appointment of a Surrogate

Surrogate parents will be selected for appointment according to the following priorities, providing the individual meets the criteria set forth under Criteria for Appointment and Additional Considerations outlined above.

1. Relative
2. Person familiar with the child, such as a foster parent
3. Individual recommended by the appointing or custodial agency

Termination of Appointment

The appointment of a surrogate parent will automatically terminate when any one of the following conditions occur:

1. A guardian is appointed by a court of competent jurisdiction; or
2. The child no longer requires early intervention or special education services.

The appointing agency may terminate an appointment:

1. When a surrogate parent notifies the agency in writing that he or she no longer wishes to serve.
2. When the surrogate is no longer eligible (e.g., the surrogate parent has become an employee of the agency responsible for providing services to the child).
3. When the agency has reason to believe that a surrogate parent is not effectively representing the child. The agency must be able to justify such removal through documentation of impropriety, failure to respond to notices of meetings or other correspondence, in attendance at mutually scheduled meetings, failure to learn about the child's needs, etc. Disagreement with agency recommendations or procedures is not a justifiable cause for removal.
4. When the natural parents resume participation.

All reasons cited for termination shall be documented.

Recruitment of Surrogate Parents

Candidates for the role of surrogate parent may be solicited through:

1. Other family members.
2. Foster family.
3. Parent or professional organizations, or councils concerned with the education of persons with disabilities.
4. Court Appointed Special Advocates (CASA).
5. Other volunteer organizations, such as Junior League, the League of Women Voters; fraternal and other organizations, such as Kiwanis, church groups, senior citizens, Jaycees, Associations for Retarded Citizens, retired teachers, clergy, etc.

6. News media (radio, television, newspaper).
7. Parent Training and Information Center, such as Nevada PEP.

Responsibilities of the Appointing Agency

The agency providing early intervention or special education shall be responsible for:

1. Determining the need for a surrogate parent (see Decision Tree).
2. Recruiting volunteers as surrogate parents.
3. Consulting with agency or caseworker (when student is ward of the state) regarding appropriate surrogate.
4. Selecting and appointing a surrogate parent with ten (10) working days of the confirmation of need, including sending a letter of appointment (see sample at end of this document).
5. Arranging for training the appointed surrogate parent.
6. Affording the surrogate parent all the procedural safeguards accorded to the natural parent as specified in state and federal law.
7. Giving the surrogate parent the cooperation afforded to a natural parent in matters relating to the provision of special education to the child.
8. When necessary, reimbursing the surrogate parent for expenses incurred while participating in activities pertaining to compliance with his or her responsibility as a surrogate parent.
9. Informing the surrogate parent when the student has been withdrawn or re-enrolled in the agency's program.

Note: Smaller counties may join with other counties or may request the assistance of the Nevada Department of Education or the Nevada Department of Human Resources in locating, appointing, and/or training surrogate parents.

The appointing agency shall assign no more than three (3) children to any one surrogate parent. Exceptions to this limit must be requested in writing and approved by the Nevada Department of Education or the Nevada Department of Human Resources.

The appointing agency shall annually review the assignment of each surrogate parent assuring that he or she has:

1. Become acquainted with the child's educational or early intervention needs.

2. Reviewed the child's educational, psychological, and medical records.
3. Participated in the decision to evaluate the child.
4. Participated in development of an IEP or an IFSP.
5. Participated in the decision to reevaluate.
6. Participated in the review of the IEP or an IFSP.
7. Participated in placement and natural environment decisions.
8. Represented the child in all matters of disagreement with the agency providing early intervention or special education.

The appointing agency shall retain the following annual data which may be provided to the Department of Education or the Department of Human Resources upon request:

1. Number of children requiring the assignment of a surrogate parent.
2. Names of surrogate parents trained.
3. Names of surrogate parents assigned to serve individual children.

Written surrogate parent appointment procedures and the above data will be maintained in the appointing agency for inspection by Department of Education or the Department of Human Resources during compliance reviews.

Rights and Responsibilities of the Surrogate Parent

- A. The surrogate parent has the same rights as the natural parent throughout the educational decision-making process. The surrogate parent has the right:
 1. To inspect, review, and to obtain copies of all records relating to the student's education and to disagree with the content;
 2. To provide written consent prior to the:
 - a. pre-placement evaluation or three-year reevaluation, and
 - b. placement of the student in a program providing special education and/or related services;
 3. To receive written notice prior to any evaluation or change in the student's placement or program;

4. To participate in any IEP or IFSP meeting or other conference regarding the student's education;
5. To question the appropriateness of the child's educational or early intervention program and placement;
6. To be informed of the special education policies, programs, and services of the educational or early intervention agency; and
7. To all procedural safeguards including the right to seek an independent educational evaluation, the right to a due process hearing, the right to request mediation and the right to initiate a complaint.

B. The surrogate parent shall:

1. Become acquainted with the eligible child/student, including disability, educational records and needs, and cultural and language background;
2. Represent the child/student in all IFSP/IEP meetings and other meetings relating to the identification, evaluation, and placement of the child, and the provision of services in the least restrictive educational or natural environment;
3. Ensure the confidentiality of information and records concerning the student;
4. Be able to make sufficient time available to carry out the duties of surrogate parent;
5. Have sufficient knowledge and skills to execute these responsibilities and to seek additional consultation and training as needed;
6. Maintain a file containing the student's records and a record of the surrogate parent's activity. The surrogate parent will forward the file upon the termination of his or her appointment as surrogate parent to the appointing agency;
7. Notify the appointing agency whenever the surrogate parent has reason to believe that a conflict of interest exists with respect to his or her appointment; and
8. Review the appointing agency's Surrogate Parent Orientation Manual or attend training provided by the appointing agency or provide evidence of other relevant training and/or experience that is acceptable to the appointing agency.

Reimbursement

Although NAC 388.283(2) states that a surrogate **may** be paid by the public agency, it is expected that most surrogate parents will serve as volunteers. However, travel and other expenses may be reimbursed if a surrogate from outside the county is appointed or if extensive travel is necessary.

Training of Surrogate Parents

It is the responsibility of the appointing agency to ensure that surrogate parents have adequate knowledge and/or experience to fulfill their responsibilities. Knowledge should include, as a minimum, the following topics:

1. Introduction to special education and disabilities.
2. State and federal statutes and regulations.
3. Rights and responsibilities of surrogate parents.
4. The educational decision-making process.
5. Procedural safeguards.
6. A review of the student's educational records.

The appointing agency may develop training materials such as a Surrogate Parent Orientation Manual or video that can be reviewed on an individual basis by the surrogate parent before beginning services as a surrogate.

Experience in lieu of training may include two or more of the following:

1. Valid certification in an area of special education.
2. Completion of at least six (6) hours of college level courses in special education.
3. Attendance at a minimum of three (3) hours of parent training/in-service training workshops on special education and parent's rights.
4. A minimum of one year of experience as a participant in the IFSP/IEP process.
5. Other appropriate training or experiences as determined on an individual basis.

Sample Letter of Appointment

Dear _____,
(Surrogate's Name)

This agency has appointed you to serve as surrogate parent for _____
(Name of Child/Student)

As a surrogate parent you will:

- Become acquainted with the eligible child/student, including the disability, educational records and needs, and the cultural and language background.
- Represent the child/student in all IFSP/IEP meetings and other meetings relating to the identification, evaluation, placement of the child, and the provision of FAPE in the least restrictive environment.
- Ensure the confidentiality of information and records concerning the child/student.
- Be able to make sufficient time available to carry out the duties of surrogate parent.
- Have sufficient knowledge and skills to execute these responsibilities and to seek additional consultation and training as needed.
- Maintain a file containing the child's/student's records and a record of the surrogate parent's activity. The surrogate parent will forward the file upon the termination of his or her appointment as surrogate parent to the appointing agency.
- Notify the appointing agency whenever the surrogate parent has reason to believe that a conflict of interest exists with respect to his or her appointment.
- Review the Surrogate Parent Orientation Manual developed by the appointing agency or other training provided by the appointing agency or provide evidence of other relevant training and/or experience that is acceptable to the appointing agency.

This appointment will automatically terminate if a guardian is appointed by a court of competent jurisdiction, or if the child no longer requires early intervention or special education services. You may terminate this appointment by notifying us in writing that you no longer wish to serve.

Yours truly,

(Authorized Signature)