



What Surrogate Parents Need To Know

*A Training Developed for Local Educational Agencies to
Support The Appointment of Surrogate Parents*

Education Law Center
Juvenile Law Center
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Agenda

- Why being a Surrogate Parent matters
- Rights & Responsibilities of Surrogate Parents:
 - Access to records
 - Initial evaluation & independent evaluation
 - IEP: services and placement
 - Updates and re-evaluations
 - School discipline
 - Transition services and graduation
 - Right to remove from special education
 - Challenging school district decisions & due process
- Resources

Education is the Key

A high school drop out is . . .

- Eight times more likely to be incarcerated
- 40% more likely to be on public assistance
- Far more likely to be unemployed
- More likely to become a drug addict
- Estimated cost of a youth who drops out and turns to crime & drugs -- \$1.7 to \$2.3 million

Why A Child Needs A “Parent” In the Special Education Process

- Special education is a parent-driven process. Nothing happens without a “parent” -- an active, involved decisionmaker who can consent to an evaluation, services, placement, and advocate for a child with disabilities.
- The IDEA confers specific rights and obligations on the “IDEA Parent.”

Special Problem: Children In Child Welfare System

- Too often, children in foster care have no active, involved parent. This is a particular problem for children in residential settings – group homes, RTFs, partial hospitalization programs, etc. who do not have a foster parent to serve in this role.
- Without a parent or other authorized adult to drive the process, nothing will move forward for the child. This contributes to poor educational and life outcomes for the child.

Special Problem: Children In Child Welfare System

- It is estimated that between 30-40% of school-age children in the foster care need special education services, compared to 11-15% of their peers.
- Educational outcomes for many children in care are abysmal –
 - Over half drop out (a Philadelphia study: over 70%)
 - Only one third graduate on time
 - More likely to repeat a grade
 - Lower GPA, standardized test scores etc.

Special Problem: Unaccompanied Homeless Youth

- Children who are unaccompanied homeless youth are “on their own.”
- Like youth in foster care, they are often highly mobile and with unidentified special education needs.
- These students often lack any parental involvement and may not have another legally authorized decision maker.

Overview: Rights of Surrogate Parents

- Review education records
- Receive notice of school district proposed actions
- Request and consent to initial evaluation and re-evaluations
- Participate in IEP meetings
- Agree to or reject proposed services and placement
- Participate in school discipline meetings and proceedings
- Challenge school district decisions by filing a complaint or requesting mediation or a hearing

Important...

- Surrogate Parents have the same rights to make special education decisions as any other “parent”!
- BUT, Surrogate Parents do not have any rights outside of the special education system.

A Surrogate Parent's Right to Education Records

- You have a right to see all of the child's education records.
- You have the right to retain the privacy of those records, including preventing the LEA from sending the records to someone else without your written permission (until the youth is 18 or older at which time this right passes to the student).
- The school must give you a free copy of the child's IEP.

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A Walk Through The Special Education Process

Step One: Requesting An Initial Evaluation

- You have the right to ask the school district to evaluate the child to see if he has a disability and needs special education services in school.
- You have the right to a fair, accurate, comprehensive and non-discriminatory evaluation of the child.

Special Education (IEP) Eligibility (2-part test)

Part 1: Child must have a “disability”

- Intellectual disability/mental retardation
- Developmental delays
- Hearing impairments
- Speech or language impairments
- Visual impairments
- Serious emotional disturbance
- Orthopedic impairments
- Autism
- Traumatic brain injury
- Specific learning disabilities
- Multiple disabilities
- Other health impairment

Important Definitions

- “Serious Emotional Disturbance”
 - Exhibits ≥ 1 of following for long time:
 - Inability to learn not explained by intellectual, sensory or health factors
 - Inappropriate relationships with peers/teachers
 - Inappropriate behavior in normal circumstances
 - Pervasive unhappiness or depression
 - Physical symptoms or fears associated with personal or school problems
 - Includes schizophrenia
 - But not: “socially maladjusted”

Important Definitions

- “Other Health Impairment”
 - Having limited strength, vitality or alertness
 - Includes heightened alertness to environmental stimuli that reduces alertness to the educational environment
 - Can include chronic fatigue associated with some medical conditions.
- So ADHD may qualify *BUT*
 - Remember this is a two-part test...
(See next slide)

Special Education Eligibility

Part 2: AND as a result of the disability, the child requires special education & related services *for example:* special instruction methods, modified curriculum, speech therapy

If the child does not meet Part 2 but has a disability that substantially impairs a major life activity, the child is protected by Section 504 / Chapter 15 (Non-discrimination, equal access law)

Different Eligibility Under Section 504 /Chapter 15

- Federal Law prevents discrimination against students with “qualifying disabilities”
- A qualifying disability interferes with daily activities, but may not undermine learning or require specially designed instruction.
- Examples: Child with ADHD needs extra time on tests, preferential seating, help organizing; Child with asthma or diabetes needs access to inhaler/insulin.
- These students are entitled to “reasonable accommodations” and should have a Written Service Agreement (a/k/a 504 plan, Chapter 15 plan, or service agreement)

Timeframe for Evaluations for Special Education Services

- You must request an evaluation in writing
- School District must provide you a “Permission to Evaluation” (PTE) form
- School District has **60 calendar days**, (minus summer vacation) from the day you sign the PTE to complete the evaluation report
- If child moves districts, responsibility shifts to new district to complete in same timeframe

Evaluations for Special Education (Cont'd)

- If you ask for an evaluation orally, school district must give you a Permission To Evaluate form within 10 days. *Same timeline re completion of the evaluation applies.*
- All evaluations must be non-discriminatory, multi-disciplinary and consider all areas of suspected disability.
- If child is an English Language Learner, evaluation must be in native language.

A Surrogate Parent's Right to Consent

- An LEA cannot evaluate a child for the first time without your written permission unless a special education hearing officer has ordered an evaluation, or a judge has authorized another person to consent to the initial evaluation.
- Even if the evaluation team decides that the child is eligible for special education services, the surrogate parent does not have to accept those services for the child and can refuse to consent.
- Surrogate Parent can reject any proposal for a re-evaluation or services at any time.

Your Role In The Evaluation Process

- Surrogate Parent is a member of the evaluation team & must be permitted to provide input in the eligibility decision
- Surrogate Parent may share the child's private evaluations or other useful information as part of this process.

Right to an Independent Evaluation (“IEE”)

- If you think the district’s evaluation was not done properly or sufficiently, you may request an independent educational evaluation (IEE).
- If approved, district will pay for an IEE by an approved certified school psychologist who does NOT work for the district.
- If district refuses, you can challenge that decision through a due process complaint or mediation.
- You can also pay for independent evaluation yourself (& seek reimbursement later which may not be ordered.)
- The district must consider the findings of the IEE as well as any documentation provided by the parent that is related to the child’s disability.

Step Two: Your Role in Developing the IEP

- Once a child is determined to be eligible for special education services, *an IEP Meeting must be held within 30 days.*
- As a surrogate parent, you have the right to participate in developing an education plan (Individualized Education Program or IEP)
- You may invite others to participate that you think might be helpful.

Step Two: Your Role in Developing the IEP

- You are an important part of the team that makes **decisions about the child's education**. You have the right to share information and express your opinion at any team meeting or anytime you feel it will help the child's education. **You may ask for an IEP meeting at any time.**
- The **team** decides how much and what kind of services the child needs and where the child's services will be provided.
- Talking with the other members of the team early on can often prevent problems later. Open, mutual communication between you and members of the IEP team is encouraged in order to provide an appropriate program for the child.

Step Two: Implementing The IEP

- The IEP must be implemented *with 10 school days*.
- The IEP is the contract that must be followed.
- If a school is not following the IEP, talk to the Special Education teacher or Director
- If something in the IEP is not working, consider requesting an IEP meeting to address the issue.

Elements of the IEP

- Current Levels of Achievement
- Measurable Annual Goals & Objective Benchmarks
- Specially designed instruction in academics Phys Ed, travel & vocational training
- Related Services: transportation, speech therapy, physical therapy, counseling, etc.
- Transition Services: starting at age 14
- Assistive Technology: (devices/services): to increase functional capabilities of the child
 - Ex: wheelchair, communication devices, etc.

Your Role in Placement Decision

- When is it made? Who decides?
 - Placement should be decided after IEP written
 - The team, including surrogate parent decides
- What is “LRE”?
 - Children with disabilities should be educated with their non-disabled peers to the maximum extent appropriate
 - Key: **least restrictive environment** in which IEP can be implemented successfully using **supplementary aids/services**
- You must be given **prior written notice of IEP & Placement before it starts**
 - NOREP: Notice of Recommended Educational Placement - Parents can disagree with the IEP and/or placement

The 10-Day Notice Rule

- Important Deadline:
 - Ten-day rule: Prior written notice must be provided within a reasonable period of time – *defined as 10 calendar days.*
 - If the NOREP form re proposed placement or services is NOT completed and parent consent is NOT required (parental consent is required for school to begin *initial services*) a school will proceed as proposed after 10 calendar days!

Making Progress Under IEP

- Ensure that progress is monitored through progress reports, assessments, grades etc.
- IEP must confer “meaningful benefit” based on child’s abilities and aptitude
- If something is not working, consider changes: expand length of time or days per week that child receives services; talk to IEP team about different approaches that have worked for similar students etc.

Step 3: Re-evaluations and Updating the IEP

- Implementing/Revising IEPs

- When and how often?

- Must be implemented w/in **10 school days**
- IEP team must meet at least annually
- **Parents may request IEP meeting at any time**

- Reevaluations

- When?

- Every 3 years (2 years if child with Intell. Disability); or
- If parent requests a reevaluation; or
- If school believes “conditions warrant”

BUT school need not agree to > one evaluation a year

Changing Schools

- Many students who need surrogate parents may also change schools frequently.
- A new school must provide “comparable services” based on the prior IEP until a new IEP is developed or the previous IEP is adopted by the new school.
- The new IEP must be implemented within 10 school days.

Potential Step: School Discipline Process

- The child is expected to follow his or her school's code of conduct.
- However, a child receiving special education services has certain additional rights.
- Prior to disciplining the child, the IEP Team must decide if the child's misconduct was caused by or related to the child's disability or the result of the school's failure to follow the child's IEP. The Surrogate Parent must participate in this process.
- A child cannot be disciplined due to a disability.

Rights in Discipline Process

- The child has a right to a **manifestation determination review** to determine if the conduct in question was a manifestation of the child's disability.
- This decision must be made before the school can:
 - Suspend a student with an IEP for more than 10 school days in a row or 15 total school days in a school year
 - Transfer the student to an alternative school for more than 10 school days in a row
 - Exclude a child with intellectual disabilities for any amount of time

Rights in Discipline Process: Exceptions

- However, if the offense involved drugs, weapons, or serious injury to someone, the school can move the child to a different school for no more than 45 school days without parent permission, even if the behavior was caused by the student's disability. The district must provide an appropriate special education program for the child, although not necessarily in the same school setting
- The rules about discipline of students with disabilities are complicated. You should talk to your school if you have questions about the process. You can also call one of the Disabilities Rights Network or another organization if you want more information about your rights.

Step 4: Transition Services for Older Youth

- **Starting at age 14**, students have the right to “transition services” to support post-secondary goals related to training, education, employment, and independent living
- IEP must contain measurable transition goals based on transition assessments (*e.g.* interests inventory, vocational assessment)
- Student, and representatives from other relevant agencies (*e.g.* Children & Youth, OVR) should participate in IEP meetings in which transition is discussed
- Transition services are provided in least restrictive environment
- For youth in child welfare system, transition plan in IEP should be coordinated with child welfare transition plans.

Step 5: Graduation

- Students with IEPs have the right to attend school until age 21; OR graduation from high school
- Child with IEP can graduate when either:
 - He/she met the academic standards/curriculum requirements established by the state; OR
 - “has satisfactorily completed” the special education program developed by the IEP Team (often called “graduating under the IEP”)
- School district needs surrogate parent’s permission to graduate child under IEP. Early graduation = loss of services, so this is a very important decision.

Potential Step: Right to Disagree

- You may raise disagreements with the school district at the IEP meeting, before the IEP meeting and at anytime.
- You may request an IEP meeting to address these concerns.
- You should document your disagreements with the school district on the NOREP where applicable.
- You should communicate your disagreements and weigh your options for resolving these conflicts.

Right To Keep the Child In the Same Program During A Dispute

- *Right To Keep the Child in the Same Program While You Are Waiting for Mediation or a Hearing to be Completed*
 - If you or the school requests mediation or a hearing, the child must “stay put” in his or her current program until the disagreement is resolved. That means that the school can't change the program until the mediation, hearing, and any court actions have ended.

Right To Keep the Child In the Same Program (Cont'd)

- To make sure the child “stays put,” you **must**:
 - Check the box on the *Notice of Recommended Educational Placement (NOREP)/Prior Written Notice* form that indicates that you will request either mediation or a hearing **within 10 calendar days**;
AND
 - Ask the school for a *Due Process Complaint Notice* form. Fill it out and send it to the Office for Dispute Resolution in Harrisburg, and send a copy to your LEA.
- The child does not have “stay put” protection until you have filled out and “filed” your hearing request.

Dispute Resolution Options: Right to File an Administrative “Division of Compliance” Complaint

- **When:** School isn't following the IEP or violates a clear legal rule (e.g., timelines, procedures, etc.) based on undisputed facts.
- **Who:** Anyone may file a complaint on behalf of a student
- **How:** Call 800-879-2301 or visit http://www.portal.state.pa.us/portal/server.pt/community/special_education/7465
 - Must send a copy of complaint to the school
 - Certain required information must be in the complaint (name, address, facts about the problem, proposed resolution)
 - Limit: only violations in past calendar year
- **Timeline:** The state has 60 days to investigate the complaint and issue a report

Dispute Resolution Options: Right To Mediate A Dispute

- You can also ask for “mediation” to settle a disagreement with the school about the child’s special education program. Mediation:
 - Is overseen by a neutral party
 - Is free
 - Is voluntary on the part of the parents and the school
 - Can be used without requesting a hearing or can be tried after a hearing is requested
 - Can help you and school staff come to agreement
- For more information about mediation and similar options, call the Office for Dispute Resolution, 800-222-3353 or go to the **PATTAN website** - <http://odr-pa.org/>

Right to A Due Process Hearing

- You can ask for a hearing if:
 - You believe that the IEP the LEA has offered does not meet the child's needs
 - You believe the child should be educated in a different place or
 - There is another important point on which you and the LEA disagree (*e.g.*, related to evaluation, identification, services, related services etc.)

Special Education Hearing

- “How To” Rules

- A Surrogate Parent can request a hearing
- How to request a hearing?
 - Request by sending “complaint” letter to school and the Office of Dispute Resolution (ODR):
 - See ELC fact sheet for rules on writing the “complaint”
 - Resolution Session is required to try to work out the disagreement prior to the hearing unless the parties waive
 - Hearing scheduled if no agreement reached
 - Decision within **strict time period**
- After hearing, may appeal to federal court

Potential Step: Right to Remove

- You can unilaterally decide to withdraw the child from special education and related services at any time. You must request this **in writing** to the LEA. The request includes every aspect of special education and related services - “all or nothing”
- In turn, the public agency (LEA):
 - May not challenge your decision by taking you to due process
 - May not continue to provide special education and related services to the child even if they disagree
 - Must provide a *NOREP/Prior Written Notice* within **10 calendar days** after receipt of written revocation before stopping the provision of special education and related services

NOTE: School is not required by federal or state regulation to amend the child's education records or to remove any references to receipt of special education and related services



**HELPFUL INFORMATION
and
RESOURCES**

Special Educational Checklist

- Review the child's education records/history in school.
- How has the child progressed in school?
- Should the child be evaluated or re-evaluated for special education? Does the child need an independent evaluation?
- **Are the child's special education needs being met?** If not, what can be done differently?
- **How is the child's behavior in school?** If this is an issue, consider whether the child needs a "functional behavioral assessment" (FBA) and development of or changes to a behavior plan.
- **Where will the child's educational needs be met?** Is the child in the least restrictive environment to meet his/her needs?
- Does the child need an accommodation plan for disability?
- **Does the child have a strong transition plan which will prepare her to meet his/her post-secondary goals?**
- **How will the child graduate** – by meeting state & district academic requirements or by meeting the child's IEP goals?

Helplines & Websites

- PATTAN (PDE's website for special education information and resources): <http://www.pattan.net/category/Legal/Forms/>
- PDE Basic Education Circulars (helpful summaries of legal requirements with respect to various education issues): http://www.portal.state.pa.us/portal/server.pt/community/basic_education_circulars/7497
- Education Law Center: www.elc-pa.org, 215-238-6970
- Disability Rights Network: <http://drnpa.org/>, Helpline: 1-800-692-7443
- Legal Center for Foster Care and Education: www.fostercareandeducation.org

Pop Quiz

- What is the role of the Surrogate Parent?
- How do you ask for an evaluation?
- What steps do you need to take to change a child's current educational placement?
- How often does an IEP Team meet?
- How can you obtain additional/related services for a child?
- What is a manifestation review and why is it important?
- What is a transition plan and at what age do you need one?
- What can you do to challenge a proposed placement?
- How can a child with special education needs graduate?