

Appointing of Surrogate Parents		
Who needs a surrogate parent?	34 CFR § 300.519 (a)(1)-(4)	A student needs a surrogate parent if: (1) no parent can be identified; (2) the public agency, even after reasonable efforts, cannot locate a parent; (3) the child is a ward of the State; or (4) the child is an unaccompanied homeless youth.
Are there special requirements for unaccompanied homeless youth?	34 CFR § 300.519 (f)	Appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents (even though they are employees of an agency involved in the education or care of the child) until a “permanent” surrogate parent can be appointed who meets the requirements under 34 CFR § 300.519 (d).
Who can appoint a surrogate parent?	34 CFR § 300.519 (b) – (c)	(1) The public agency or (2) for a student who is a ward of the State, the judge overseeing the case may choose to appoint a surrogate parent
What is the criteria for selection of a surrogate parent?	34 CFR § 300.519 (d)	The individual (1) cannot be an employee of the SEA, the LEA, or any other agency involved in the education or care of the child (2) has no personal or professional interest that conflicts with the interest of the child (3) has knowledge and skills that ensure adequate representation of the child
Can surrogate parents be paid?	34 CFR § 300.519 (e)	Yes. Payment solely for service as surrogate parent does not constitute employment by the paying agency.
What are the responsibilities of a surrogate parent?	34 CFR § 300.519 (g)	<ul style="list-style-type: none"> represent the child in all matters relating to identification, evaluation, and educational placement of the child.
	TEC § 29.011 (10)	<ul style="list-style-type: none"> Complete a training program; Visit the child and the child’s school; Consult with person’s involved in the child’s education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, foster parents, and caretakers; Review the child’s educational records; Attend ARD meetings; Exercise independent judgment in pursuing the child’s interests; and Exercise the child’s due process rights.
What are the timelines for appointment of a surrogate parent?	34 CFR § 300.519 (h)	Not more than 30 days after identification of the need for a surrogate parent.



<p>Is there a limit to the number of students a surrogate parent can be assigned to represent?</p>		<p>No. There is no state or federal law, rule, or regulation limiting the number of students a surrogate parent may represent. However, for students who are placed in a residential facility and assigned a surrogate parent, this is addressed in the Investigatory Considerations in the 2006-2007 Residential Facility (RF) Monitoring Manual on page 22. (See section on RF Monitoring on page 4.)</p>
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Surrogate Parent Training		
What does the training program for surrogate have to include?	TAC § 89.1047 (a)(1)(A) – (H)	State and federal laws, rules and regulations relating to: <ul style="list-style-type: none"> • Identification of a student with a disability; • Collection of evaluation and re-evaluation data; • ARD process; • Development of an IEP, including transition services; • Determination of LRE; • Implementation of an IEP; • Procedural rights and safeguards available; and • Sources to contact for additional assistance.
Are there other requirements for the training program?	TAC § 89.1047 (a)(2)	must be provided in native language or other mode of communication of the surrogate parent
When must the training program be completed?	TAC § 89.1047 (a)(3) – (4)	Generally, within 90 calendar days after the date of initial assignment as a surrogate parent For foster parents, LEAs should provide or arrange for provision of training prior to assigning a foster parent to act as a parent, but no later than 90 days after assignment.
How often must the training be provided?	TAC § 89.1047 (a)(3); TAC § 89.1047 (b)(1)	<ul style="list-style-type: none"> • Training only has to be provided once. • If an individual has already completed a training, the school district cannot require additional training in order to continue to serve as a surrogate or to represent additional students as a surrogate. • However, LEAs may choose to offer additional training, but cannot require the individual attend the additional training in order for to continue to serve as a surrogate parent or to represent other students as a surrogate parent. • The above is true also of foster parents who are serving as a parent or as a surrogate parent.
Who must provide the training?	TAC § 89.1047 (a)(3)	Training may be provided by or through: <ul style="list-style-type: none"> • Texas Department of Family and Protective Services (TDFPS); • A school district; • An education service center; or • Any other entity that receives federal funds to provide IDEA training to parents
Who creates the training?		The Texas Statewide Parent Coordination Network creates and distributes surrogate parent training materials. There is no requirement that LEAs (or other entities) use these specific training materials, as long as the materials that are used cover all of the required training pieces under TAC § 89.1047 (a)(1)(A) – (H) (see above).



Foster Parents		
Does a foster parent meet the definition of parent?	34 CFR § 300.30 (a) – (b)	The biological or adoptive parent has priority in acting as the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. A parent is defined as being: (1) a natural or adoptive parent of the child; (2) a foster parent (unless prohibited by law or contractual obligations); (3) a guardian (but not the State if a 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. If a judicial decision exists naming a particular person above to act as a parent, then that person must be determined to be the “parent” for the child.
	TEC § 29.015 (b)	A foster parent may act as a parent if: (1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child; (2) the child has been placed with the foster parent for at least 60 days; (3) the foster parent agrees to: (A) participate in making educational decisions on the child’s behalf; and (B) complete a training program for surrogate parents; and (4) the foster parent has no interest that conflicts with the child’s interests.
Can a foster parent be assigned as a surrogate parent?	TEC § 29.015 (a)	Yes. The school district must give preferential information to the foster parent when assigning a surrogate parent.
	TAC § 89.1047 (b)	The foster parent must comply with all surrogate parent requirements, including completion of a training program.
How do we determine if a foster parent (or other potential surrogate parent) has interests that conflict with the interests of the child?	TAC § 89.1047 (c)	<ul style="list-style-type: none"> • The LEA or SSA must develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of the child. • A foster parent shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in a home verified by TDFPS or a child-placing agency (including basic, habilitative, primary medical, or therapeutic foster or foster group homes). • Issues concerning quality of care do not constitute a conflict of interest (but must be reported, as required to TDFPS).
What if the LEA	TEC § 29.015 (c)	If the foster parent is denied the right to act as surrogate parent, he/she can file a complaint with TEA.



<p>chooses not to assign the foster parent as a parent or as a surrogate parent?</p>	<p>TAC § 89.1047 (d)</p>	<p>The LEA must provide the foster parent with prior written notice of denial within seven calendar days after the date on which the decision is made. The notice shall: (1) specify the reason(s) for denial (specifically explain the interests of the foster parent that conflict with the interests of the child); and (2) inform the foster parent of his/her right to file a complaint with TEA.</p>
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RF Monitoring – Additional Requirements?		
Can employees of a residential facility be assigned as a surrogate parent?	2006 – 2007 Residential Facility (RF) Monitoring Manual (page 21) – Investigatory Considerations	“An LEA may select as a surrogate parent 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 [34 CFR §300.519 (d)(2)-(3)]. However, if in their role, the person has an interest that conflicts with the interests of the student or does not have the knowledge or skills necessary to ensure adequate representation of the student, the person may not be selected as a surrogate parent. For example, a conflict of interest would exist in the appointment of a person who is employed by a care facility if the ARD decisions made for a student would impact staffing decisions and/or costs incurred by the facility.”
What documentation must be kept?	2006 – 2007 Residential Facility (RF) Monitoring Manual (page 22) – Investigatory Considerations	“If documentation [of surrogate parents exercising their responsibilities under TEC §29.011 (10)] is not available, TEA personnel may be required to interview the individual assigned to serve as the surrogate parent to determine if responsibilities have been implemented.”
Is there a limit to the number of students in a residential facility that one surrogate parent can represent?	2006 – 2007 Residential Facility (RF) Monitoring Manual (page 22) – Investigatory Questions	“If the number of students assigned to an individual surrogate parent impacts the ability of the surrogate to adequately represent the interests of the student...”
	2006 – 2007 Residential Facility (RF) Monitoring Manual (page 22) – Investigatory Considerations	“If an individual assigned to act as a surrogate parent represents four (4) or more RF students with disabilities at the same time, TEA personnel must interview the individual and determine the extent to which the individual has fulfilled their required responsibilities before determining compliance...”



<p>Is there anything additional in the training program that must be included for students in RF monitoring?</p>	<p>2006 – 2007 Residential Facility (RF) Monitoring Manual (page 23) – Investigatory Considerations</p>	<p>“...It is expected that the training program will provide an opportunity for interaction between the LEA and the person trained to serve in the role.”</p>
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Surrogate Parent-Related Excerpts from the Federal Register

dated August 14, 2006; 34 CFR Parts 300 and 301
(numbers on comments added)

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 Sec. 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))

USDE's Analysis of Comments, Discussion and Changes

Subpart A – General Definitions Used in the Part

[Definition of] Parent (Sec. 300.30)

- (1) **Comment:** Several commenters objected to the term "natural parent" in the definition of parent because "natural parent" presumes there are "unnatural parents." The commenters recommended using "birth parent" or "biological parent" throughout the regulations.
Discussion: We understand that many people find the term "natural parent" offensive. We will, therefore, use the term "biological parent" to refer to a non-adoptive parent.
Changes: We have replaced the term "natural parent" with "biological parent" in the definition of parent and throughout these regulations.
- (2) **Comment:** A significant number of commenters recommended retaining the language in current Sec. 300.20(b), which states that a foster parent can act as a parent if the biological parent's authority to make educational decisions on the child's behalf have been extinguished under State law, and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under the Act; and has no interest that would conflict with the interest of the child.
A few commenters stated that current Sec. 300.20(b) better protects children's interests and should not be removed. Another commenter stated that removing current Sec. 300.20 will have unintended consequences for the many foster children who move frequently to new homes because there will be confusion as to who has parental rights under the Act. A few commenters stated that short-term foster parents may not have the knowledge of the child or the willingness to



actively participate in the special education process, which will effectively leave the child without a parent.

One commenter stated that Sec. 300.30 needs to be changed to protect biological and adoptive parents from arbitrary decisions by educational officials who lack the legal authority to make educational decisions for the child and to ensure that when no biological or adoptive parent is available, a person with a long-term relationship with, and commitment to, the child has decision-making authority.

Discussion: Congress changed the definition of parent in the Act. The definition of parent in these regulations reflects the revised statutory definition of parent in section 602(23) of the Act. The Department understands the concerns expressed by the commenters, but believes that the changes requested would not be consistent with the intent of the statutory changes. In changing the definition of parent in the Act, Congress incorporated some of the wording from the current regulations and did not incorporate in the new definition of parent, the current foster parent language referenced by the commenters.

Changes: None.

- (3) **Comment:** One commenter recommended allowing a foster parent who does not have a long-term relationship to be the parent, if a court, after notifying all interested parties, determines that it is in the best interest of the child.

Discussion: Section 300.30(b)(2) clearly states that if a person is specified in a judicial order or decree to act as the parent for purposes of Sec. 300.30, that person would be considered the parent under Part B of the Act.

Changes: None.

- (4) **Comment:** One commenter stated that Sec. 300.30(a)(2) withdraws the rights of biological parents under the Act without due process of law.

Discussion: We do not agree with the commenter. If more than one person is attempting to act as a parent, Sec. 300.30(b)(1) provides that the biological or adoptive parent is presumed to be the parent if that person is attempting to act as the parent under Sec. 300.30, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child, or there is a judicial order or decree specifying some other person to act as a parent under Part B of the Act. We do not believe that provisions regarding lack of legal authority or judicial orders or decrees would apply unless there has already been a determination, through appropriate legal processes, that the biological parent should not make educational decisions for the child or that another person has been ordered to serve as the parent.

Changes: None.

- (5) **Comment:** One commenter stated that Sec. 300.30(a)(2) is unwieldy and difficult to implement because it requires extensive fact finding by the LEA to determine whether any contractual obligations would prohibit the foster parent from acting as a parent.

Discussion: The statutory language concerning the definition of parent was changed to permit foster parents to be considered a child's parent, unless State law prohibits a foster parent from serving as a parent. The language in the regulations also recognizes that similar restrictions may exist in State regulations or in contractual agreements between a State or local entity and a foster parent, and should be accorded similar deference. We believe it is essential for LEAs to have knowledge of State laws, regulations, and any contractual agreements between a State or local entity and a foster parent to ensure that the requirements in Sec. 300.30(a)(2) are properly implemented. States and LEAs should develop procedures to make this information more readily and easily available so that LEAs do not have to engage in extensive fact finding each time a child with a foster parent enrolls in a school.

Changes: None.

- (6) **Comment:** One commenter stated that the regulations need to clarify that guardians ad litem do not meet the definition of a parent except for wards of the State where consent for the initial



evaluation has been given by an individual appointed by the judge to represent the child in the educational decisions concerning the child.

Discussion: We agree that guardians with limited appointments that do not qualify them to act as a parent of the child generally, or do not authorize them to make educational decisions for the child, should not be considered to be a parent within the meaning of these regulations. What is important is the legal authority granted to individuals appointed by a court, and not the term used to identify them. Whether a person appointed as a guardian ad litem has the requisite authority to be considered a parent under this section depends on State law and the nature of the person's appointment. We will revise Sec. 300.30(a)(3) to clarify that a guardian must be authorized to act as the child's parent generally or must be authorized to make educational decisions for the child in order to fall within the definition of parent.

Changes: We have added language in Sec. 300.30(a)(3) to clarify when a guardian can be considered a parent under the Act.

- (7) **Comment:** One commenter requested adding a "temporary parent" appointed in accordance with sections 615(b)(2) or 639(a)(5) of the Act to the definition of parent.

Discussion: There is nothing in the Act that would prevent a temporary surrogate parent from having all the rights of a parent. Note 89 of the Conf. Rpt., p. 35810, provides that appropriate staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs would not be considered to be employees of agencies involved in the education or care of unaccompanied youth (and thus prohibited from serving as a surrogate parent), provided that such a role is temporary until a surrogate parent can be appointed who meets the requirements for a surrogate parent in Sec. 300.519(d). This provision is included in Sec. 300.519(f), regarding surrogate parents. Therefore, we do not believe it is necessary to add "temporary parent" to the definition of parent in Sec. 300.30.

Changes: None.

- (8) **Comment:** A few commenters stated that the definition of parent is confusing, especially in light of the definition of ward of the State in new Sec. 300.45 (proposed Sec. 300.44) and the LEA's obligation to appoint a surrogate parent. These commenters stated that Sec. 300.30 should cross-reference the definition of ward of the State in new Sec. 300.45 (proposed Sec. 300.44) and state that the appointed surrogate parent for a child who is a ward of the State is the parent.

Discussion: Section 615(b)(2) of the Act does not require the automatic appointment of a surrogate parent for every child with a disability who is a ward of the State. States and LEAs must ensure that the rights of these children are protected and that a surrogate parent is appointed, if necessary, as provided in Sec. 300.519(b)(1). If a child who is a ward of the State already has a person who meets the definition of parent in Sec. 300.30, and that person is willing and able to assume the responsibilities of a parent under the Act, a surrogate parent might not be needed. Accordingly, we do not believe it is necessary to make the changes suggested by the commenters.

Changes: None.

- (9) **Comment:** One commenter expressed concern that public agencies will require biological or adoptive parents to affirmatively assert their rights or to take action in order to be presumed to be the parent. The commenter requested clarifying in Sec. 300.30(b)(1) that biological or adoptive parents do not have to take affirmative steps in order for the presumption to apply.

Discussion: The biological or adoptive parent would be presumed to be the parent under these regulations, unless a question was raised about their legal authority. There is nothing in the Act that requires the biological or adoptive parent to affirmatively assert their rights to be presumed to be the parent. We continue to believe that Sec. 300.30(b)(1) is clear and, therefore, will not make the changes requested by the commenters.

Changes: None.



(10)

Comment: Some commenters recommended removing “when attempting to act as a parent under this part” in Sec. 300.30(b)(1). A few commenters stated that there is no explanation of what it means for a biological parent to “attempt to act as a parent.” Another commenter stated that the regulations do not set any guidelines for determining how a public agency decides if a biological or adoptive parent is attempting to act as a parent.

One commenter stated “attempting to act” would require LEAs to make determinations about a biological parent's decision-making authority and this should be left up to courts to determine. One commenter stated that the regulations permit multiple persons to act as a child's parent and do not adequately set forth a process to determine who should be identified as the actual parent for decision-making purposes. The commenter further stated that the regulations do not set out a procedure or a timeframe by which public agency officials should determine if a biological parent has retained the right to make educational decisions for his or her child.

One commenter stated that the definition of parent gives school districts excessive power; for example a school could appoint a surrogate parent if the foster parent was excessively demanding. The commenter further stated that a clearer order of priority and selection mechanism with judicial oversight needs to be in place so that school districts cannot “parent shop” for the least assertive individual, and so that relatives, foster parents, social workers, and others involved with the child will know who has educational decision making authority.

One commenter questioned whether Sec. 300.30(b) helps identify parents or confuses situations in which the person to be designated the parent is in dispute. Another commenter stated that the requirements in Sec. 300.30(b) place the responsibility of determining who serves as the parent of a child in foster care directly on the shoulders of school administrators who are not child welfare experts. The commenter recommended that a foster parent automatically qualify as a parent when the rights of the child's biological parents have been extinguished and the foster parent has a long-term relationship with the child, no conflict of interest, and is willing to make educational decisions.

Discussion: Section 300.30(b) was added to assist schools and public agencies in determining the appropriate person to serve as the parent under Part B of the Act in those difficult situations in which more than one individual is “attempting to act as a parent” and make educational decisions for a child. It recognizes the priority of the biological or adoptive parent and the authority of the courts to make decisions, and does not leave these decisions to school administrators.

The phrase “attempting to act as a parent” is generally meant to refer to situations in which an individual attempts to assume the responsibilities of a parent under the Act. An individual may “attempt to act as a parent” under the Act in many situations; for example, if an individual provides consent for an evaluation or reevaluation, or attends an IEP Team meeting as the child's parent. We do not believe it is necessary or possible to include in these regulations the numerous situations in which an individual may “attempt to act as a parent.”

Section 300.30(b)(1) provides that the biological or adoptive parent is presumed to be the parent if that person is attempting to act as the parent under Sec. 300.30, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child, or there is a judicial order or decree specifying some other person to act as a parent under Part B of the Act. Section 300.30(b)(2) provides that if a person (or persons) is specified in a judicial order or decree to act as the parent for purposes of Sec. 300.30, that person would be the parent under Part B of the Act. We do not believe that it is necessary for these regulations to establish procedures or a timeline for a public agency to determine whether a biological parent has retained the right to make educational decisions for a child. Such procedures and timelines will vary depending on how judicial orders or decrees are routinely handled in a State or locality, and are best left to State and local officials to determine.

Changes: None.

(11)

Comment: A few commenters recommended modifying Sec. 300.30(b)(2) to clarify that a court has the discretion to decide who has the right to make educational decisions for a child. One commenter recommended clarifying that the judicial decree referred to in Sec. 300.30(b)(2)



relates specifically to divorce situations, rather than situations involving children who are wards of the State. Another commenter stated that Sec. 300.30(b)(2) appears to be aimed at situations where the court has designated a parent, such as in a custody decree, and that it is not clear what the provision adds.

Discussion: Section 300.30(b)(2) specifically states that if a judicial decree or order identifies a person or persons to act as the parent of a child or to make educational decisions on behalf of a child, then that person would be determined to be the parent. It was intended to add clarity about who would be designated a parent when there are competing individuals under Sec. 300.30(a)(1) through (4) who could be considered a parent for purposes of this part. It is not necessary to specify or limit this language to provide that the judicial decree or order applies to specific situations, such as divorce or custody cases. However, it should not authorize courts to appoint individuals other than those identified in Sec. 300.30(a)(1) through (4) to act as parents under this part. Specific authority for court appointment of individuals to provide consent for initial evaluations in limited circumstances is in Sec. 300.300(a)(2)(c). Authority for court appointment of a surrogate parent in certain situations is in Sec. 300.519(c).

Changes: We have revised Sec. 300.30(b)(2) to limit its application to individuals identified under Sec. 300.30(a)(1) through (4) and have deleted the phrase "except that a public agency that provides education or care for the child may not act as the parent" as unnecessary.

- (12) **Comment:** One commenter recommended allowing foster parents to act as parents only when the birth parent's rights have been extinguished or terminated. A few commenters requested that the regulations clarify the circumstances under which a foster parent can take over educational decision making. One commenter stated that allowing a foster parent to act as a parent would disrupt the special education process.

Discussion: Under Sec. 300.30(a)(2), a foster parent can be considered a parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent. However, in cases where a foster parent and a biological or adoptive parent attempt to act as the parent, Sec. 300.30(b)(1) clarifies that the biological or adoptive parent is presumed to be the parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. Section 300.30(b)(2) further clarifies that if a person or persons such as a foster parent or foster parents is specified in a judicial order or decree to act as the parent for purposes of Sec. 300.30, that person would be the parent under Part B of the Act. We do not believe that further clarification is necessary.

Changes: None.

- (13) **Comment:** A few commenters recommended that "extinguished under State law" be defined to mean both temporary and permanent termination of parental rights to make educational decisions because this would allow courts to make more timely decisions regarding the role of a parent and not feel bound to wait for a full termination of parental rights.

Discussion: The phrase "extinguished under State law" is not used in the Act or these regulations. The phrase was used in the definition of parent in current Sec. 300.20(b)(1). The comparable provision in these regulations is in Sec. 300.30(b)(1), which refers to situations in which the "biological or adoptive parent does not have legal authority to make educational decisions for the child." We do not believe that either of these phrases affects the timeliness of decision making by courts regarding parental rights.

Changes: None.

- (14) **Comment:** Some commenters stated that "consistent with State law" should be included in Sec. 300.30(b)(2) in order to honor local laws already in place to protect these children.

Discussion: We do not believe the change recommended by the commenters is necessary. Courts issue decrees and orders consistent with applicable laws.

Changes: None.



- (15) **Comment:** One commenter stated that it would not be wise to completely exclude an agency involved in the education or care of the child from serving as a parent because situations in which an LEA acts as a parent are very rare and only occur under very unusual circumstances.
Discussion: The exclusion of an agency involved in the education or care of the child from serving as a parent is consistent with the statutory prohibition that applies to surrogate parents in sections 615(b)(2) and 639(a)(5) of the Act.
Changes: None.
- (16) **Comment:** One commenter recommended that the regulations clarify the responsibilities of the LEA when a biological or adoptive parent and a foster parent attempt to act as the parent. Although the regulations state that the biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent has been divested of this authority by a court, the commenter stated that the regulations are not clear as to whether the LEA has the duty to notify the biological or adoptive parent, accommodate his or her schedule, or otherwise take steps to facilitate the biological or adoptive parent's participation.
One commenter recommended clarifying the relative rights of a biological or adoptive parent and a foster parent when a child is in foster care and the foster parent is not prohibited by the State from acting as a parent.
Discussion: Section 300.30(b)(1) states that when more than one party is qualified under Sec. 300.30(a) to act as the parent, the biological or adoptive parent is presumed to be the parent (unless a judicial decree or order identifies a specific person or persons to act as the parent of a child). The biological or adoptive parent has all the rights and responsibilities of a parent under the Act, and the LEA must provide notice to the parent, accommodate his or her schedule when arranging meetings, and involve the biological or adoptive parent in the education of the child with a disability. Thus, if a child is in foster care (and the foster parent is not prohibited by the State from acting as a parent) and the biological or adoptive parent is attempting to act as a parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child or a judicial decree or order identifies a specific person or persons to act as the parent of a child.
Changes: None.
- (17) **Comment:** A few commenters stated that it is unclear when or under what circumstances a biological or adoptive parent ceases or surrenders their rights to a foster parent to make educational decisions for a child. One commenter stated that the regulations should define clearly the situations when this would occur and the level of proof that must be shown by the party seeking to make educational decisions on behalf of a child. The commenter stated that only under the most extreme and compelling circumstances should a court be able to appoint another individual to take the place of a biological or adoptive parent.
Discussion: It would be inappropriate and beyond the authority of the Department to regulate on the termination of parental rights to make educational decisions. It is the responsibility of a court to decide whether to appoint another person or persons to act as a parent of a child or to make educational decisions on behalf of a child.
Changes: None.
- (18) **Comment:** One commenter requested clarifying to whom LEAs must provide notice, or obtain consent in situations where there are disputes between biological or adoptive parents (e.g., when parents separate or divorce).
Discussion: In situations where the parents of a child are divorced, the parental rights established by the Act apply to both parents, unless a court order or State law specifies otherwise.
Changes: None.

- (19) **Comment:** A few commenters recommended clarifying in the regulations that a private agency that contracts with a public agency for the education or care of the child may not act as a parent.
Discussion: A private agency that contracts with a public agency for the education or care of the child, in essence, works for the public agency, and therefore, could not act as a parent under the Act. We do not believe it is necessary to regulate on this matter.
Changes: None.



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))

USDE's Analysis of Comments, Discussion and Changes

Subpart E – Procedural Safeguards

Due Process Procedures for Parents and Children

Surrogate Parents (Sec. 300.519)

(20)

Comment: A few commenters asked whether a student in the penal system has a right to a surrogate parent.



Discussion: Students with disabilities in State correctional facilities do not have an automatic right to a surrogate parent solely by reason of their confinement at a correctional facility. Public agencies must make case-by-case determinations in accordance with the requirements in Sec. 300.519, regarding whether a student with a disability in a State correctional facility needs a surrogate parent. Whether a student with a disability confined in a State correctional facility is considered a ward of the State, as defined in new Sec. 300.45 (proposed Sec. 300.44) whose rights must be protected through the appointment of a surrogate parent, is a matter that must be determined under State law.

Changes: None.

- (21) **Comment:** One commenter recommended defining the term “locate” as used in Sec. 300.519. **Discussion:** “Locate,” as used in Sec. 300.519(a)(2), regarding a public agency's efforts to locate a child's parent, means that a public agency makes reasonable efforts to discover the whereabouts of a parent, as defined in Sec. 300.30, before assigning a surrogate parent. We do not believe that it is necessary to define “locate” in these regulations because it has the same meaning as the common meaning of the term. **Changes:** None.

(22) **Duties of Public Agency (Sec. 300.519(b))**

Comment: A number of comments were received regarding the procedures for assigning surrogate parents. One commenter recommended requiring LEAs to appoint a surrogate parent unless the juvenile court has already appointed one. The commenter stated that this would avoid situations in which the LEA and juvenile court each believe that the other is assuming this responsibility and a surrogate parent is never appointed.

A few commenters recommended that the process for assigning surrogate parents within the 30-day timeframe be developed in collaboration with judges and other child advocates. Some commenters recommended that the regulations require the involvement of child welfare agencies, homeless liaisons, and any other party who has knowledge about the needs of homeless children or children in foster care in determining whether a surrogate parent is needed.

Discussion: It is not necessary to amend the regulations in the manner recommended by the commenters. To ensure that the rights of children with disabilities are protected, Sec. 300.519(b) requires public agencies to have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to a child. Such methods would include determining whether a court has already appointed a surrogate parent, as provided under Sec. 300.519(c). Therefore, it is unnecessary to add language requiring LEAs to appoint a surrogate parent unless the juvenile court has already appointed one, as requested by a commenter. Section 300.519(d)(1) allows a public agency to select a surrogate parent in any way permitted under State law, and Sec. 300.519(h) requires the SEA to 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.

We believe that the determination of whether public agencies collaborate with other parties, such as child welfare agencies or homeless liaisons, in appointing surrogate parents is best left to State discretion. There is nothing in the Act that would prohibit a public agency from collaborating with judges and child advocates in establishing a process for assigning surrogate parents, as recommended by the commenter. However, in situations where a public agency involves other parties in determining whether a surrogate parent is needed, the public agency must ensure that the confidentiality of personally identifiable data, information, and records collected or maintained by SEAs and LEAs is protected in accordance with Sec. Sec. 300.610 through 300.627, and that the privacy of education records is protected under FERPA and its implementing regulations in 34 CFR part 99.

Changes: None.

- (23) **Comment:** One commenter recommended retaining current Sec. 300.370(b)(2), which specifically mentions the recruitment and training of surrogate parents as a State-level activity for



which funds provided under Part B of the Act may be used. One commenter requested clarification as to who should provide training for surrogate parents. A few commenters recommended that PTIs in each State be responsible for training surrogate parents.

Discussion: It is not necessary to retain current Sec. 300.370(b)(2) in order to permit the continued use of funds provided under Part B of the Act for the recruitment and training of surrogate parents. Section 300.704(b) and section 611(e)(2)(C)(i) of the Act provide that funds reserved for other State-level activities may be used for support and direct services, including technical assistance, personnel preparation, and professional development and training. This would include the recruitment and training of surrogate parents.

Determinations regarding who should conduct the training for surrogate parents are best left to the discretion of State and local officials. There is nothing in the Act or these regulations that requires or prohibits surrogate parent training to be conducted by PTIs.

Changes: None.

- (24) Comment:** A few commenters recommended that a child have the same surrogate parent for each IEP Team meeting, eligibility meeting, and other meetings in which a parent's presence is requested by the public agency.

Discussion: The Act and these regulations do not address the length of time that a surrogate parent must serve. Nor do we believe that it would be appropriate to impose a uniform rule in light of the wide variety of circumstances that might arise related to a child's need for a surrogate parent. Even so, to minimize disruption for the child, public agencies should take steps to ensure that the individual appointed as a surrogate parent can serve in that capacity over the period of time that the child needs a surrogate.

Changes: None.

Wards of the State (Sec. 300.519(c))

- (25) Comment:** Many commenters stated that the requirements for a surrogate parent for public wards of the State (when a judge overseeing a case appoints a surrogate parent) are less stringent than the requirements for surrogate parents for other children. The commenters stated that the requirements that surrogate parents have no personal or professional interest that conflicts with the interest of the child, and have knowledge and skills that ensure adequate representation of the child, as required in Sec. 300.519(d)(2)(ii) and (iii), respectively, should be required for surrogate parents for children who are wards of the State. One commenter recommended that court-appointed surrogate parents should have to meet Federal requirements for surrogate parents, not the requirements promulgated by LEAs. The commenter stated that courts may have jurisdiction over cases from more than one school district and should not have to apply different standards depending on which school district is involved.

Discussion: The criteria for selecting surrogate parents in Sec. 300.519(d)(2)(ii) and (iii), which apply to surrogate parents appointed by a public agency for children with disabilities under Part B of the Act, do not apply to the selection of surrogate parents for children who are wards of the State under the laws of the State. Section 615(b)(2)(A)(i) of the Act provides that, in the case of a child who is a ward of the State, a surrogate parent may alternatively be appointed by the judge overseeing the child's care, provided that the surrogate parent is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child. We decline to impose additional requirements for surrogate parents for children who are wards of the State beyond what is required in the Act, so as to interfere as little as possible with State practice in appointing individuals to act for the child. However, we would expect that in most situations, the court-appointed individuals will not have personal or professional interests that conflict with the interests of the child and will have the knowledge and skills to adequately represent the interests of the child.

Changes: None.

- (26) Comment:** One commenter recommended that the regulations clarify that if a parent under Sec. 300.30 is known and the child is a ward of the State, the public agency must appoint a surrogate



parent only if the public agency determines that a surrogate parent is needed to protect the educational interests of the child. The commenter stated that the public agency should not appoint a surrogate parent without approval of a court of competent jurisdiction if the parent is the biological or adoptive parent whose rights to make educational decisions for the child have not been terminated, suspended, or limited.

Discussion: The commenters' concern is already addressed in the regulations. Section 300.30(b)(1) provides that when there is more than one party attempting to act as a parent, the biological or adoptive parent must be presumed to be the parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

Changes: None.

- (27) **Comment:** Some commenters noted that the regulations do not protect a child who is a ward of the tribe in the same manner as a child who is a ward of the State. The commenters stated that this means that American Indian children have less protection than children of other ethnicities and recommended that the regulations clarify that wards of the State include children who are wards of a tribe of competent jurisdiction.

Discussion: The definition of State in new Sec. 300.40 (proposed Sec. 300.39) is based on section 602(31) of the Act, which does not include an Indian tribe or tribal governing body. Therefore, the Department does not have the authority to interpret ward of the State to include children who are wards of a tribe of competent jurisdiction. However this does not relieve States or the BIA of their responsibility to ensure that the rights of a child who is a ward of a tribe are protected through the appointment of a surrogate parent under Sec. 300.519 when no parent can be identified; when the agency cannot, after reasonable efforts, locate a parent; or when the child is an unaccompanied homeless youth.

Changes: None.

(28) **Criteria for Selection of Surrogates (Sec. 300.519(d))**

Comment: Many commenters recommended that the regulations require public agencies to develop procedures to terminate the appointment of a surrogate parent if the person does not perform the duties of a surrogate parent. The commenters stated that such procedures should be developed in collaboration with the child welfare agency, as well as any other party knowledgeable about a child's need for surrogate assignments, including homeless liaisons, court-appointed special advocates, guardians ad litem, attorneys, or judges.

Discussion: If a public agency learns that an individual appointed as a surrogate parent is not carrying out the responsibilities of a surrogate parent in Sec. 300.519(g), the public agency, consistent with its obligation to protect the rights of children with disabilities under the circumstances set out in Sec. 300.519(a), would need to take steps to terminate the appointment of a surrogate parent. It is up to each State to determine whether procedures to terminate surrogate parents are needed and whether to collaborate with other agencies as part of any procedures they may choose to develop.

Changes: None.

- (29) **Comment:** A few commenters stated that the regulations should specify that an LEA cannot replace a surrogate parent simply because the surrogate parent disagrees with an LEA.

Discussion: As noted in the response to the prior comment, public agencies have a responsibility to ensure that a surrogate parent is carrying out their responsibilities, so there are some circumstances when removal may be appropriate. A mere disagreement with the decisions of a surrogate parent about appropriate services or placements for the child, however, generally would not be sufficient to give rise to a removal, as the role of the surrogate parent is to represent the interests of the child, which may not be the same as the interests of the public agency. We do not think a regulation is necessary, however, as we believe that the rights of the child with a disability are adequately protected under Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (Title II), which prohibit retaliation or coercion against any individual who exercises their rights under Federal law for the purpose of assisting children

with disabilities by protecting rights protected under those statutes. See, 34 CFR 104.61, referencing 34 CFR 100.7(e); 28 CFR 35.134. These statutes generally prohibit discrimination against individuals on the basis of disability by recipients of Federal financial assistance (Section 504) and prohibit discrimination against individuals on the basis of disability by State and local governments (Title II).

Changes: None.

- (30) Non-Employee Requirement; Compensation (Sec. 300.519(e))**
Comment: A few commenters recommended that the regulations state that a foster parent is not prohibited from serving as a surrogate parent for a child solely because the foster parent is an employee of the SEA, LEA, or other agency that is involved in the education or care of the child.

Discussion: A child with a foster parent who is considered a parent, as defined in Sec. 300.30(a), does not need a surrogate parent unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent, consistent with Sec. 300.30(a)(2). Therefore, there is no need to change the regulations in the manner suggested by the commenters.

Changes: None.

- (31) Unaccompanied Homeless Youth (Sec. 300.519(f))**
Comment: A few commenters requested clarification on how long the appointment should be for a temporary surrogate for an unaccompanied homeless youth. A few commenters also requested clarification on how the conflict of interest, and knowledge and skills requirements for surrogate parents apply to temporary surrogate parents for unaccompanied homeless youth.

Discussion: Section 300.519(f) allows LEAs to appoint a temporary surrogate parent for a child who is an unaccompanied homeless youth, without regard to the requirement in Sec. 300.519(d)(2)(i) that a surrogate parent not be an employee of any agency involved in the education or care of the child. Thus, a temporary surrogate parent for an unaccompanied homeless youth may include State, LEA, or agency staff that is involved in the education or care of the child.

The Act does not specify how long a temporary surrogate parent can represent the child. Nor do we believe it is necessary or appropriate to specify a time limit for a temporary surrogate parent, as the need for a temporary surrogate parent will vary depending on the specific circumstances and unique problems faced by each unaccompanied homeless youth.

Section 300.519(f) specifically allows the appointment of a temporary surrogate parent without regard to the non-employee requirements in Sec. 300.519(d)(2)(i). There are no similar exceptions for the requirements in Sec. 300.519(d)(2)(ii) and (iii). Therefore, temporary surrogate parents for unaccompanied homeless youth must not have a personal or professional interest that conflicts with the interest of the child the surrogate parent represents, and must have the knowledge and skills that ensure adequate representation of the child, consistent with Sec. 300.519(d)(2)(ii) and (iii), respectively.

Changes: None.

- (32) Surrogate Parent Responsibilities (Sec. 300.519(g))**
Comment: A few commenters requested a definition of "surrogate parent." Some commenters stated that Sec. 300.519(g) provides only general parameters regarding the responsibilities of surrogate parents and does not provide guidance on specific duties or responsibilities of surrogate parents. The commenters stated that, at a minimum, the regulations should require that States develop duties and responsibilities for surrogate parents, such as meeting with the child, participating in meetings, and reviewing the child's education record.

Discussion: We do not believe that it is necessary to define "surrogate parent" because Sec. 300.519(g), consistent with section 615(b)(2) of the Act, clarifies that a surrogate parent is an individual who represents the child in all matters related to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. This is a longstanding



provision and is intended to describe the areas in which a surrogate parent may represent the child.

We believe that the provisions in Sec. 300.519 are sufficient to ensure that public agencies fulfill their obligation to ensure that the rights of children are protected in the circumstances in Sec. 300.519(a). Therefore, we believe it is unnecessary, and would be over regulating, to specify in these regulations requirements for surrogate parents to meet and get to know the child prior to meetings, as recommended by one commenter. Likewise, we do not believe that it is necessary to require public agencies to develop specific duties and responsibilities for surrogate parents because public agencies already must ensure that a surrogate parent has the knowledge and skills that ensure adequate representation of the child, consistent with Sec. 300.519(d). However, if a public agency determined there was a need to specify the duties and responsibilities for surrogate parents, there is nothing in the Act or these regulations that would prohibit them from doing so.

Changes: None.

(33) SEA Responsibility (Sec. 300.519(h))

Comment: Some commenters recommended requiring LEAs to report to the SEA when a child needs a surrogate parent so that the SEA can fulfill its obligation to ensure that surrogate parents are assigned within the 30-day timeframe required in Sec. 300.519(h). Some commenters requested clarification regarding what it means for the SEA to make "reasonable efforts" to appoint surrogate parents within the 30-day timeframe. The commenters recommended that SEAs track whether LEAs or courts appoint surrogate parents in a timely manner and provide technical assistance to LEAs and courts that fail to meet the 30-day timeframe.

Some commenters stated that LEAs spend too much time determining that a surrogate parent is needed and prolong the decision that a surrogate parent is needed until the LEA is ready to appoint the surrogate parent. One commenter stated that children in residential care facilities often have an immediate need for a surrogate parent and waiting 30 days to appoint a surrogate parent could cause lasting damage to a child.

Discussion: It would be over-regulating to specify the specific "reasonable efforts" that a State must take to ensure that a surrogate parent is appointed within the 30-day timeframe required in Sec. 300.519(h), because what is considered a "reasonable effort" will vary on a case-by-case basis. We do not believe we should require LEAs to report to the State when a child in their district needs a surrogate parent or to require SEAs to track how long it takes LEAs and courts to appoint surrogate parents because to do so would be unnecessarily burdensome. States have the discretion to determine how best to monitor the timely appointment of surrogate parents by their LEAs. States also have discretion to use funds reserved for other State-level activities to provide technical assistance to LEAs and courts that fail to meet the 30-day timeframe, as requested by the commenters.

Under their general supervisory authority, States have responsibility for ensuring that LEAs appoint surrogate parents for children who need them, consistent with the requirements in Sec. 300.519 and section 615(b)(2) of the Act. Therefore, if an LEA consistently fails to meet the 30-day timeframe or unnecessarily delays the appointment of a surrogate parent, the State is responsible for ensuring that measures are taken to remedy the situation.

Changes: None



Texas Education Code § 29.001. STATEWIDE PLAN.

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;
- (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;
- (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;
- (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;
- (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;
- (6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;
- (7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;
- (8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;
- (9) ensure that each student with a disability is provided necessary related services; and
- (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
 - (A) complete a training program that complies with minimum standards established by agency rule;
 - (B) visit the child and the child's school;
 - (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
 - (D) review the child's educational records;
 - (E) attend meetings of the child's admission, review, and dismissal committee;
 - (F) exercise independent judgment in pursuing the child's interests; and
 - (G) exercise the child's due process rights under applicable state and federal law.

*Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.
Amended by Acts 1999, 76th Leg., ch. 430, § 1, eff. Sept. 1, 1999.*



Texas Education Code § 29.015. FOSTER PARENTS.

(a) The school district shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.

(b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

(1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child;

(2) the child has been placed with the foster parent for at least 60 days;

(3) the foster parent agrees to:

(A) participate in making educational decisions on the child's behalf; and

(B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and

(4) the foster parent has no interest that conflicts with the child's interests.

(c) A foster parent who is denied the right to act as a surrogate parent or a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

Added by Acts 1999, 76th Leg., ch. 430, § 2, eff. Sept. 1, 1999.



Texas Administrative Code § 89.1047. Procedures for Surrogate and Foster Parents.

(a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), § 29.001(10).

(1) Pursuant to TEC, §29.001 (10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

- (A) the identification of a student with a disability;
- (B) the collection of evaluation and re-evaluation data relating to a student with a disability;
- (C) the admission, review, and dismissal (ARD) committee process;
- (D) the development of an individual education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;
- (E) the determination of least restrictive environment;
- (F) the implementation of an IEP;

(G) the procedural rights and safeguards available under 34 CFR §§300.148, 300.151 – 300.153, 300.229, 300.300, 300.500 – 300.520, 300.530 – 300.537, and 300.610 – 300.627, relating to the issues described in 34 CFR §300.504(c); and

(H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.

(2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.

(3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as a surrogate parent. Once an individual has completed a training program or provided through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as a surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.

(4) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.

(b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of a parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.

(1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the initial assignment as the parent. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a parent on the grounds that the individual has not been trained.

(2) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.



Texas Administrative Code § 89.1047. Procedures for Surrogate and Foster Parents.

(c) Each school district or share services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.

(d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:

(1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and

(2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151 – 300.153, relating to complaint procedures.

