

## Surrogate Parents

### Introduction

Federal regulations require that a surrogate parent be appointed to ensure that a parent is assigned to each child participating in the Infant-Toddler Program who lacks a representative with respect to the provision of Infant-Toddler Program services. Federal regulations require the appointment of a surrogate parent when:

- a parent cannot be identified;
- reasonable efforts to locate a parent are unsuccessful, or
- the child is a ward of the state under the laws of the state.

### Determining the Need for a Surrogate Parent

Before the need for a surrogate parent can be determined, a decision must first be made as to whether a parent exists for the child. The term parent under the Individuals with Disabilities Education Act is more inclusive than just the child's natural or adoptive parent. Parent is defined to mean:

- a natural or adoptive parent of the child (unless there has been legal action that terminates parental rights or there is a judicial order preventing a non-custodial parent from assuming legal responsibilities);
- or in the absence of a natural or adoptive parent, a legal guardian (other than the county Department of Social Services);
- or in the absence of a natural or adoptive parent or a legal guardian, a person acting in the place of a parent or "in loco parentis" (e.g., a grandparent, stepparent, another relative, a friend of the family with whom the child lives),
- or in the absence of any of the above options, a surrogate parent who has been assigned in accordance with Infant-Toddler Program policy.

*(For additional information, see Policy Bulletin #3 - Parents.)*

Because of the definition of "parent" under the Infant-Toddler, there will almost always be someone who can be identified as "acting as a parent" for a child. Therefore, surrogate parents will be appointed most often only for children who are wards of the state.

A surrogate parent must be appointed when a child is a ward of the state. The federal phrase "ward of the state" means in North Carolina that a county Department of Social Services has been given legal custody of the child and therefore has legal responsibility to make decisions concerning the child even if the natural or adoptive parent is known, available, and interested in representing the child. A

surrogate parent is required for any child in the legal custody of the county Department of Social Services whether the child is placed outside of the home, remains in the home, or is at home on a trial basis. It will be necessary to determine what if any decision-making rights the parent has in order to determine whether or not a surrogate parent is needed. This will involve discussions with the county Department of Social Services and may require a search of court records (i.e., the non-secure custody order or a dispositional order). Usually, parents are not given educational decision making authority in these orders, so a surrogate parent most likely will need to be appointed. It is strongly encouraged that, in addition to the surrogate parent, the natural or adoptive parent be involved in planning for the child if the child is legally in the custody of the county Department of Social Services, but the child is physically in the home or the county Department of Social Services' permanent plan for the child is reunification with the parent. If the state is the custodian of the child, but the parent retains the legal right to make decisions, the child is not a ward of the state, and a surrogate parent is not needed.

### **Surrogate Parent Responsibilities**

A surrogate parent assumes all parental responsibilities for the child in all Infant-Toddler Program matters, including but not limited to:

- providing all needed consents (e.g., consent for evaluation or service delivery, authorization for release of information);
- representing the child during evaluations and assessments, including being present and contributing, as appropriate;
- the development, implementation, and signing of the child's Individualized Family Service Plan (including reviews and annual meetings);
- the ongoing provision of early intervention services to the child, and
- pursuit of complaint resolution procedures on behalf of the child.

Because a surrogate parent is considered to be the parent as defined by the Infant-Toddler Program, he is afforded all rights given to parents and their children under the Infant-Toddler Program. He has the same access to the child's record and other written information as does any parent. The Service Coordinator is responsible for ensuring the involvement of the surrogate parent in all aspects of the child's participation in the Infant-Toddler Program, as he would with any other parent. The Children's Developmental Services Agency in collaboration with the Service Coordinator is responsible for ensuring that procedural safeguards are met, including Written Prior Notice of evaluations and meetings, the signing of the Individualized Family Service Plan by the surrogate parent, etc.

The surrogate parent is appointed specifically to protect the rights of the child under the Infant-Toddler Program, but is not legally liable for actions taken in good faith on behalf of the child in protecting these rights. The role of surrogate parent does not require the surrogate parent to be responsible for the care, maintenance, or financial support of the child. The surrogate parent does not have the legal authority to act on behalf of the child outside of the Infant-Toddler Program.

## Qualifications of Surrogate Parents

A person appointed as a surrogate parent must meet certain criteria. These include:

- having no conflicting interest with that of the child, meaning that the surrogate parent cannot benefit personally or professionally from decisions regarding the child;
- having the ability to impartially advocate for the child;
- having no prior history of abuse or neglect (The Children's Developmental Services Agency is responsible for checking references for potential surrogate parents. Criminal records checks may be conducted if the Children's Developmental Services Agency deems this necessary. The cost of any criminal records check is the responsibility of the Children's Developmental Services Agency.);
- being at least eighteen (18) years old;
- not being an employee of any agency involved in the provision of early intervention or other services for the child, including the county Department of Social Services (A person being paid by a public agency to serve as a surrogate parent or foster parent is not considered an employee as long as this is the only service he is providing for that agency.);
- having a commitment to gaining the skills and knowledge of the early intervention system and the child's special needs, and
- having the same ethnic background as the child or having knowledge of and being sensitive to the factors in the child's ethnic background that may be relevant to advocating for the child.

## Surrogate Parent Appointment Procedure

1. The director of the Children's Developmental Services Agency must determine for each child referred to the Infant-Toddler Program if someone meeting the definition of parent exists for the child. If the director determines that the child is without a parent to represent him, he must appoint a surrogate parent to function in this role within seven (7) calendar days of becoming aware of the need. The director is to use **the North Carolina Infant-Toddler Program Surrogate Parent Identification of Need and Appointment** form for documenting this appointment. This form is to be filed in the child's Infant-Toddler Program record held by the Children's Developmental Services Agency.
2. If possible, the director of the Children's Developmental Services Agency must select a surrogate parent who already has close ties to the child. For individuals who meet the requirements to serve as the surrogate parent, the following order of priority should be considered:
  - foster parent

- interested relative;
- friend of the child's family, or
- other individuals, such as local volunteers, guardians ad litem, etc.

If the child is close to age three, the director of the Children's Developmental Services Agency should work with the Local Education Agency to appoint a surrogate parent acceptable to the public school system. Involvement of the county Department of Social Services in the selection of a surrogate parent when this agency is involved with the child is strongly encouraged.

3. The director of the Children's Developmental Services Agency must send the *North Carolina Infant-Toddler Program Surrogate Parent Appointment Letter* to the person selected to serve as the surrogate parent. The surrogate parent is to acknowledge acceptance of this responsibility by signing the appointment letter and returning it to the director of the Children's Developmental Services Agency. A copy of this letter signed by the surrogate parent must be sent to the county Department of Social Services and to the Service Coordinator. The original must be filed in the the Children's Developmental Services Agency's record on the child.
4. If known and there are no circumstances that would preclude his involvement (e.g., safety issue, court order), the natural or adoptive parent must be informed of the appointment of a surrogate parent (verbally, if possible, and in writing) using the *North Carolina Infant-Toddler Program Biological Parent Notification Letter*. The Service Coordinator is responsible for notifying the parent. A copy of this letter must be filed in the Children's Developmental Services Agency's record on the child.

### Training for Surrogate Parents

Anyone serving as a surrogate parent, who is not related to the child, is required to participate in training provided by or approved by the Children's Developmental Services Agency. The training is to include, but not be limited to, the following topics:

- the Infant-Toddler Program of the Individuals with Disabilities Education Act in regards to child and family rights, entitlements, and services offered;
- developmental and emotional needs of eligible infants and toddlers relevant to the developmental level of the child at the time;
- available advocacy services, and
- relevant cultural issues, if the child's culture is different from that of the surrogate parent.

Training may be provided one-on-one, in a group, or through other approaches felt to be appropriate. When the Service Coordinator is working on a regular basis with the surrogate parent, the required training can be accomplished during initial visits with the surrogate parent. Training done in this manner can be individualized, will cover information about the Infant-Toddler Program that would be

shared with the surrogate parent anyway, and does not require additional meetings or training sessions for the surrogate parent. The required training provided to surrogate parents, no matter who conducts it, must be documented. A copy of this documentation must be filed in the Children's Developmental Services Agency's record on the child at the time of the training.

The Children's Developmental Services Agency may receive assistance from the regional Early Intervention Consultants in planning or organizing training for surrogate parents. Contact information for the Regional Early Intervention Consultants may be found at [www.ncei.org](http://www.ncei.org).

### **Termination of a Surrogate Parent**

A surrogate parent may be relieved of his responsibility when:

- the surrogate parent wishes to relinquish this responsibility;
- the surrogate parent is no longer able to advocate effectively for the child;
- the surrogate parent no longer meets the criteria established for being a surrogate parent, or
- the child's circumstances have changed such that a surrogate parent is no longer required.

After determining that the need for a surrogate parent no longer exists or that there is a need for a different surrogate parent to be appointed, the director of the Children's Developmental Services Agency must notify the current surrogate parent using the *North Carolina Infant-Toddler Program Surrogate Parent Termination Letter* of the effective date when his surrogate parent services are no longer needed. A copy of this letter is to be sent to the county Department of Social Services and to the Service Coordinator and filed in the child's Infant-Toddler Program record held by the Children's Developmental Services Agency.