

**Students with Disabilities and Special Education; Surrogate Parents  
Sec. 39.0016(3), F.S. and Federal IDEA**

**1. Who is a student with a disability?**

Not defined in Chapter 39; need to look to the federal law.

**Statute: TITLE IA Sec. 602 (3)**

**(3) Child with a disability.--**

**(A) In general.--The term `child with a disability' means a child--**

**(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as `emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and**

**(ii) who, by reason thereof, needs special education and related services.**

**(B) Child aged 3 through 9.--The term `child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--**

**(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and**

**(ii) who, by reason thereof, needs special education and related services.**

It is clear from the above that the child must both (a) have a disability and must also (b) require special education because of that disability.

**1a) What is meant by a child who is suspected of having a disability?**

**2. What is a surrogate parent?** The surrogate parent is a substitute for the child's parent as to educational matters, and is a trained, interested, and consistent educational decisionmaker for the child. The surrogate parent makes educational decisions for (and with) the child, and functions as an advocate for the child. A very important function of the surrogate parent is to work with the schools to determine the content of the child's Individualized Education Plan (IEP) and to sign that. (This is an active function that goes far beyond attending IEP meetings and signing whatever the schools have prepared.)

### 3. When does a student require the appointment of a surrogate parent?

39.0016(3)(a)2.c.

- a) when the child's parent is determined to be legally unavailable or
- b) when the foster parent is unwilling, has no significant relationship with the child, or is not trained in the exceptional student education process.

This language indicates that the child's parent is not automatically removed from serving as the child's educational advocate when the child's custody is removed from the parent and placed into DCF's temporary custody. When the child still has a parent who is willing and able to be involved, that parent will continue to function as the child's educational decisionmaker, and the child does not need a surrogate parent. However, if the parent is unable or unwilling, or it is not in the child's best interest for the parent to remain involved in the child's education, the court must make a finding that the parent is legally "unavailable" to the child.

Since this language then goes on to speak about the child's foster parent, who has the general authority to act as the child's educational decisionmaker under IDEA, acting as the substitute parent. If a foster parent is willing and able to serve, the foster parent technically does not need any judicial action to serve in stead of the child's parent. However, many of our children live in group homes, or live with foster parents who do not desire to become the decisionmaker. In these situations, we should seek the appointment of a surrogate parent.

#### **a) Is there anyone who may *not* be appointed as a surrogate?**

Yes, the following individuals are prohibited from appointment as a surrogate:

Employees of

- \* the Department of Education
- \* the local school district
- \* a community-based care provider
- \* the Department of Children and Family Services
- \* or any other public or private agency involved in the education or

care of the child. This prohibition includes group home staff and therapeutic foster parents.

However, any person who acts in a parental role to a child, such as a foster parent or relative caregiver, is not prohibited from serving as a surrogate parent if he or she is employed by such agency, willing to serve, and knowledgeable about the child and the exceptional student education process.

Pursuant to Florida statute, the Guardian ad Litem, if one has been appointed by the court for the child, must be considered for appointment as the surrogate parent.

#### **4. How is a surrogate parent appointed?**

For a child known to the department, the responsibility to appoint a surrogate parent resides with both the district school superintendent and the court with jurisdiction over the child. If the court elects to appoint a surrogate parent, notice shall be provided as soon as practicable to the child's school. At any time the court determines that it is in the best interests of a child to remove a surrogate parent, the court may appoint a new surrogate parent for educational decisionmaking purposes for that child.

**a)** What does a case manager do if the child needs a surrogate and none has been appointed?

Speak with the CLS attorney on the case.

#### **Useful websites concerning special education laws and programs:**

<http://idea.ed.gov/explore/home> Federal Government website concerning IDEA – federal law for education of children with disabilities.

<http://www.nichcy.org/Pages/Home.aspx> Resource for all aspects of resources for children with disabilities. This includes IDEA, and more.

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