SPECIAL EDUCATION IN NORTH DAKOTA

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Guidelines: Educational Surrogate Parent

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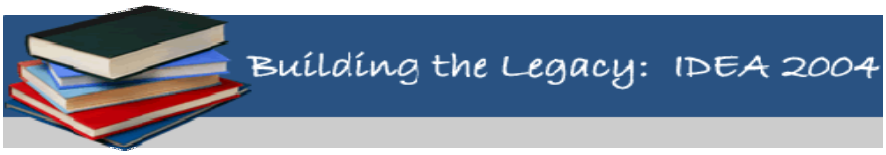

United States Department of Education, Office of Special Education Programs (OSEP)

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Introduction

The North Dakota Department of Public Instruction (NDDPI), Office of Special Education, is responsible for ensuring that the rights of students with disabilities are protected. The Individuals with Disabilities Education Improvement Act, 2004 (IDEA, 2004) requires each public agency to guarantee that the rights of the student with a disability are protected whenever the parent(s) or guardian(s) of the student with a disability is not known, unavailable, or the student is a ward of the state. This requirement is addressed through the assignment of an individual to act as an educational surrogate parent for the student. North Dakota school districts are responsible for safeguarding these rights (see Appendices A and B).

The IDEA 2004 includes two specific provisions to ensure that all children with disabilities have a "parent" to act on their behalf. A "parent" is defined as:

- A biological or adoptive parent of a child;
- 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;
- 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);
- 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
- A surrogate parent who has been appointed in accordance with 300.519 or section 639(a)(5) of the Act. This mandate appoints a surrogate parent to protect the rights of a child if:
  - No parent (as defined above) can be identified;
  - After reasonable efforts the whereabouts of the parent cannot be discovered; or
  - The child is a ward of the State under North Dakota state law.

The *Educational Surrogate Parent Guidelines* (2007) provides information to assist school districts in developing and implementing a comprehensive educational surrogate parent program. Each section provides a description of the several components to be included in school district policies and procedures regarding educational surrogate parents for students with disabilities.

Development of Policies and Procedures

North Dakota school districts must establish policies and procedures for determining whether a student with a disability requires an educational surrogate parent and for identifying, training, and assigning a surrogate parent for the student. These policies are based on IDEA 2004, Section 300.519 (Appendix A).

District policies and procedures must contain:

- criteria used to identify when a student requires a surrogate parent;
- criteria for the selection of appropriate surrogate parents;
- a process within the unit for referring students in need of a surrogate parent;
- a list of qualified persons to serve as surrogate parents;
- provisions for training surrogate parents; and
- criteria for the continuation and/or termination of the services of the surrogate parent.

Identification of Students in Need of an Educational Surrogate Parent

The four circumstances in which an educational surrogate parent may be needed for a student with a disability are as follows:.

- A parent or guardian of a student is unknown. The parent or guardian is unknown when the district has no record of the parent or of the appointment of a legal guardian. IDEA defines “parent” as a parent, foster parent, a guardian authorized to act as the child’s parent, a person authorized to act in the place of the biological or adoptive parent such as a grandparent, stepparents with whom the student lives (see Appendix B). This includes persons who are legally responsible for the student’s welfare or a surrogate appointed by a judge.
- The parent or guardian cannot be located. Unavailable might mean a parent or guardian who is incarcerated or otherwise unable to act as the student’s advocate in the educational decision making process due to circumstances beyond his or her immediate control.
- The student is a ward of the state and parental rights have been terminated. “Ward of the state” is defined as a “person for whom a guardian has been appointed.”
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (see Appendix C).`

Criteria for Selection of Educational Surrogate Parents

Each school district will ensure that a person selected as an educational surrogate parent has no interests that conflict with the interests of the student whom he or she represents and that the surrogate parent has the knowledge and skills that ensure adequate representation of the student. Sample forms can be found in Appendix D.

The NDDPI must ensure that local policy and procedures include a statement of reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the public agency determines that the child needs a surrogate parent.

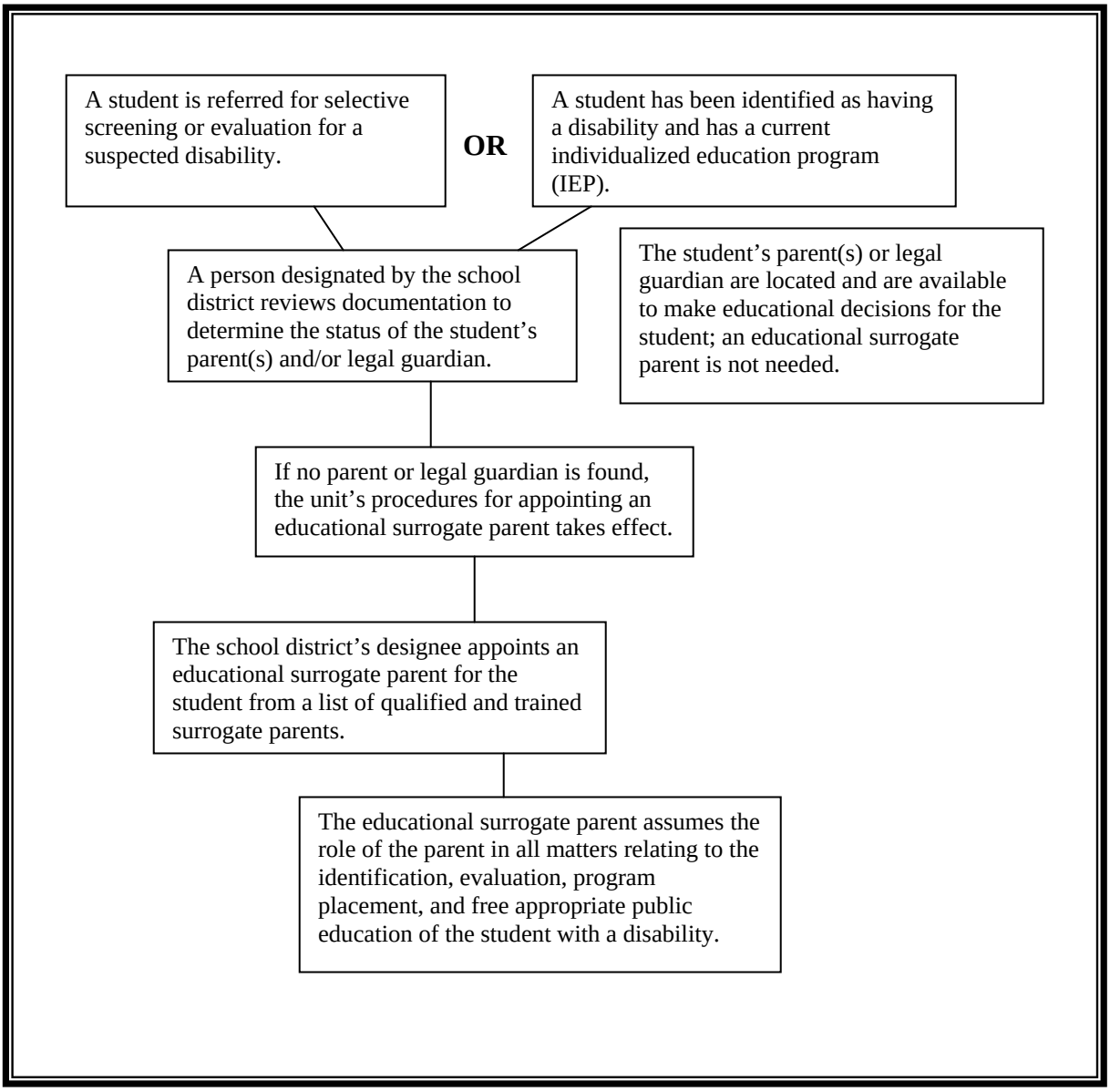
An educational surrogate parent will:

- be at least 18 years of age and a resident of the state of North Dakota;
- have no personal or professional interests that conflict with the interest of the student being represented;
- have sufficient knowledge and skills that ensure adequate representation of the student; and
- not be an employee of a public or private agency involved in the education or care of the student.

Additional criteria that should be considered when selecting an educational surrogate parent are:

- a cultural and ethnic background similar to that of the student;
- the possibility and appropriateness of the student's participation in the selection of his or her surrogate parent;
- the place of residence of a surrogate parent;
- the surrogate parent's commitment to the education of a student with a disability; and
- knowledge/familiarity with the primary language used by the student.

Process for Appointment of an Educational Surrogate Parent



Foster Parents as Educational Surrogate Parents

There are many factors to consider when determining whether the appointment of an educational surrogate parent is warranted for a student with a disability who is in foster care. The determination whether a surrogate parent is needed for the student and if the foster parent could serve as the student's surrogate parent depends on careful analysis of all the facts and circumstances involved.

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.

According to the IDEA 2004, a State may allow a foster parent to act as a parent if:

- The natural parents' authority to make educational decisions on the child's behalf has 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 interests of the child.

Major factors that need to be considered are:

Does the compensation received by the individual for serving as a foster parent, represent his/her sole source of income?
The school district must determine whether the receipt of compensation for being a foster parent would constitute a conflict of interest or would render the individual an employee of a public agency involved in the education or care of the child.

What is the status of the rights of the natural parents?
There are a variety of possibilities surrounding the rights of the natural parents. The person designated by the school district to appoint educational surrogate parents must be aware of the status of the rights of the natural parents before appointing a surrogate parent.

How long has this individual been a foster parent for the child?
IDEA 2004 has no time limits on the length of time for determining when a "long-term" foster parent relationship exists. The longer a student has been involved with a foster parent (i.e., six months or more) the better understanding that foster parent will have of the student with a disability. Again, this must be decided on a case by case basis and only when all the criteria for being an education surrogate parent have been met and the status of the rights of the natural parent have been determined.

Recruitment of Educational Surrogate Parents

The school district is responsible for maintaining a list of qualified persons who have agreed to serve as educational surrogate parents. Identifying persons who are willing to assume the role of a surrogate parent involves a concerted effort by the district. It is suggested that the school district designate individuals within the school who will manage recruitment efforts.

School districts may wish to contact their local Parent Teacher Association (PTA), Parent Teacher Organization (PTO), Family-Educator Enhancement Team (FEET), or other parent advisory groups to assist in the process. Local service organizations, such as Kiwanis or Lions, may also provide a forum for recruitment. Some districts may choose to make an announcement on the radio, television, or in the newspaper regarding the opportunity for volunteers to serve as an educational surrogate parent.

Local interagency networks are ideal sources for disseminating information and recruiting surrogate parents. Other sources of volunteers could include parents of students who have recently graduated from school, a local senior citizen volunteer program, or civic volunteer organizations. Local youth services organizations, retired school employees, church groups, and other community groups, are all excellent sources for possible volunteers.

Suggestions for Training Educational Surrogate Parents

School districts are responsible for providing training for educational surrogate parents to ensure they have the knowledge and skills that guarantee adequate representation of the student.

It is important that the school district provide information to the educational surrogate parent on the procedural safeguards available to him or her. When developing training for a surrogate parent, the district should include information on parental rights and the explanation of those rights. It is appropriate to utilize the ***Parental Rights for Public School Students Receiving Special Education Services Notice of Procedural Safeguards*** and the ***Parent Guide to Special Educatio****n* when providing notice of procedural safeguards. These are available through the North Dakota Department of Public Instruction.

In addition to the topics included in the *Educational Surrogate Parent Guidelines*, the educational surrogate parent should receive an overview of school district policies and procedures, with emphasis on those which relate to special education, and an overview of school district resources and parent groups.

Additional training resources include:

- North Dakota Special Education Guidelines;
- ND Paraeducator Modules; and
- North Dakota Special Education guidelines in specific disability areas, such as mental retardation and specific learning disabilities.

Rights of the Educational Surrogate Parent

Upon appointment, an educational surrogate parent has the same rights afforded the natural parent throughout the educational decision making process. When working with a surrogate parent, the same procedures and processes must be followed by the school district with regard to identification, evaluation, educational placement, and the provision of a free appropriate public education to the student.

An educational surrogate parent cannot be held liable for actions taken on behalf of the student in protecting the special education rights of the student. A surrogate parent has no authority or responsibility for the care, maintenance, or financial support of the student whom he or she represents and cannot approve a placement in a group home or foster home unless the placement is made for educational reasons.

Continuation as an Educational Surrogate Parent

An educational surrogate parent may remain in that capacity as long as:

- he or she meets the eligibility criteria for an educational surrogate parent;
- the student remains eligible for special education services;
- the surrogate parent continues to represent the best interest of the child;
- the student remains a resident of the school district in which he or she is served; and
- the student does not have a legal parent or guardian who is able to represent him/her in the educational decision making process.

When a student with a disability becomes 18 years of age, he or she may assume responsibility for his/her educational decision-making and a surrogate parent may no longer be required.

Compensation

Educational surrogate parents are volunteers who should be reimbursed for those expenses allowed other parents under similar circumstances. The school district may choose to provide compensation to the educational surrogate parent. This compensation would not render the individual an employee of a public agency involved with the education or care of the student.

Termination

A request for a change or termination of the services of an educational surrogate parent could be made by the student, the surrogate parent, or the school district acting on behalf of the student. District procedures should include a method of requesting and documenting this process and for identifying the designee responsible for determining whether the change in or termination of assignment is warranted.

QUESTIONS AND ANSWERS

1. **How many students may be served by one educational surrogate parent?**
There are no legal limitations on the number of students who may be served by each educational surrogate parent. In appointing multiple students to a person, the school district should consider whether the demands on the surrogate parent will allow him or her the time to perform the required duties.

2. **Who is responsible for monitoring the services of the educational surrogate parent?**
The person designated by the school district to appoint educational surrogate parents is responsible for monitoring the services provided by the surrogate parent.

3. **Can an employee, such as a social worker or case worker, serve as an educational surrogate parent?**
The non-employee requirement of IDEA (see Appendix A) prohibits only those employees involved in the education or care of the child from serving as an educational surrogate parent. Therefore, if the employee is not involved with the care or education of the child, he or she would be able to serve as a surrogate parent, provided all the requirements for surrogacy are met. This includes having the knowledge and skills to be a surrogate parent, and having no other interests that conflict with the interests of the student being represented.

4. **When is a student a ward of the state vs. in the custody of the state?**
A student is a ward of the state when a guardian has been appointed. The state has assumed the legal responsibility to make decisions concerning the student's educational and financial needs, and parental rights have been terminated. However, if the parent retains the rights to make decisions concerning education, the student is not a ward of the state, but rather in the custody of the state. Both procedures require court action. A copy of the court order will provide the necessary documentation to make the final decision.

5. **If a child is a ward of the state and has a guardian appointed for him or her, is an educational surrogate parent appointment required?**
If a child, who is a ward of the state, has a guardian who holds that position by virtue of his or her employment by the state, that guardian may not represent the child as a parent under federal law. Those children would require an educational surrogate parent under IDEA regulations (see Appendix A).

6. **Can an official of a facility, such as the director of a juvenile detention center, serve as an educational surrogate parent for a student who is placed in the facility?**
Officials of such facilities cannot act as an educational surrogate parent because of the conflict of interest requirements of IDEA regulations (see Appendix A). However, he or she could be a surrogate parent for a child placed at another facility where he/she is not employed or involved in the education or care of the child.

7. **Does IDEA address the roles of foster parents?**
IDEA does not expressly address the role of foster parents. The willingness of the foster parent to participate in the process of making educational decisions on the child's behalf is not sufficient to establish that individual's right to be an educational surrogate parent. The decision for a foster parent to become the educational surrogate parent for a student with a disability must be made on a case by case basis and is based on length of relationship (i.e., six month or more), the status of the rights of the natural parents, and only when all criteria for being an educational surrogate parent have been meet.

8. **Does an educational surrogate parent need to be appointed when a student has someone "acting" in the parental role?**
According to IDEA regulations (see Appendix B), the term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom the child lives, as well as persons who are legally responsible for the student's welfare. In such instances, the appointment of an educational surrogate parent may not be necessary. In the ND Supreme Court Case, Anderson vs. Breithbarth, it was determined for residency purposes that if a child is taken into a home other than the home of his or her natural parent "to be reared and educated as a member of a home" then that student is a resident of that school district. Again, the school district must determine the need for the appointment of an educational surrogate parent on a case by case basis, keeping in mind the rights of the natural parent.

9. **Should an educational surrogate parent be appointed if the natural parent(s) are uncooperative?**
Under present federal regulations, "uncooperative" should not be construed as "unavailable". An educational surrogate parent should not be appointed for a student in situations where the natural parents or guardians, when known, do not respond to communications, or are uncooperative, or do not act to protect the interests of their child.

10. **What is considered a "reasonable effort" in discovering the whereabouts of the parent?**
The IDEA 2004 does not define what constitutes a reasonable effort. Determination of what is reasonable must be made on a case by case basis. The school district responsible for the education of the child must make and document attempts to locate the child's parent(s) or guardians.

11. **Does a child with a disability who is voluntarily placed in a residential facility need an educational surrogate parent?**
The school district of residence must determine the status of the rights of the parent. If the parent rights have not been terminated, the school district responsible for the child's education must make a reasonable effort to discover the whereabouts of the parents. If these efforts fail to locate the parent, the school district of residence will appoint a surrogate parent for the child.

12. **Who is responsible for appointing an educational surrogate parent?**
The school district responsible for the student's education is responsible for determining if the student needs the services of an educational surrogate parent, and for identifying, assigning, and training the surrogate parent. If a student is placed out of district and/or in a residential facility, it is suggested that the agency in which the student has been placed and the responsible school district work together in this process.

Definitions

Conservator: A person who is appointed by a court to manage the estate of a protected person.

Guardian: A person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

- Full guardianship authorizes a guardian to make all decisions in all areas.
- Limited guardianship authorizes specific responsibilities in identified areas.
- Corporate guardianship is an agency that serves individuals with disabilities who need guardianship protection.
- Temporary guardianship may be obtained for medical or emergency situations.

Guardian Ad Litem: In civil cases generally, an adult who is appointed by the court to act in the minor's behalf ad litem (in a lawsuit), because minors lack the legal capacity to sue or defend against suit.

Minor: A person who is under eighteen years of age.

Ward of the State: A "ward" is the person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

Residency Defined - ND Supreme Court Case, Anderson Vs. Breithbarth
"The term 'residing in the district' means what it says - a child who makes its home in that particular district, whether with its parents, or with other persons, when that place is the only home it has, a place to which she comes and where she remains when not called elsewhere for labor or special or temporary purposes."

Appendices

APPENDIX A - Individuals with Disabilities Education Act 2004 300.519 Surrogate Parents

APPENDIX B - Individuals with Disabilities Education Act 2004 300.30 Parents

APPENDIX C - McKinney-Vento Homeless Assistance Act Section 725(6) Definitions

APPENDIX D - Sample Forms
Request for an Educational Surrogate Parent
Application Form: Educational Surrogate Parent
Surrogate Parent Agreement

Appendix A

Individuals with Disabilities Education Act 2004
300.519 Surrogate Parents

§300.519 Surrogate parents.

(a) **General.** Each public agency must ensure that the rights of a child are protected when-

(1) No parent (as identified in 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:

(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 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.

Appendix B

Individuals with Disabilities Education Act 2004
300.30 Parents

§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 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 the 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 the behalf of a child, then such a person or persons shall be determined to be the "parent" for the purposes of this section.

Appendix C

McKinney-Vento Homeless Assistance Act
Section 725(6) Definitions

Section 725 of the McKinney-Vento Act defines the following terms:

(a) Homeless children and youth means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes--

(1) Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) Migratory children (as defined in section 1309 of the Elementary and Secondary Education Act of 1965, as amended) who qualify as homeless because they are living in circumstances described in this definition.

(b) Enroll and enrollment include attending classes and participating fully in school activities.

(c) Unaccompanied youth includes a youth not in the physical custody of a parent or guardian.

Appendix D

Sample Forms
Request for an Educational Surrogate Parent
Application Form: Educational Surrogate Parent
Surrogate Parent Agreement

Form A – Request for an Educational Surrogate Parent

Requested by	Date

Student Name	Birthdate	Grade
Student's Current Special Education Services		
Name of School		

Name/Relationship of Student's Caregiver		
Address	Home Telephone Number	Work Telephone Number

Reasons for Application (Check appropriate box):

- ☐ The student's parents or legal guardians are not known. Attach written documentation.
- ☐ The student's parents or legal guardians have not been located after reasonable efforts on the part of the school district. Attach documentation of attempts to contact parents/guardians.
- ☐ The student is a ward of the state and parental rights have been terminated.
- ☐ The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.
- ☐ Other (specify) _____

Identify all private and public social service agencies now involved with this student.

Agency	Caseworker

DO NOT WRITE BELOW THIS LINE

Based on these findings, an educational surrogate parent:

☐ Must be appointed. ☐ Does not need to be appointed.

Assigned Educational Surrogate Parent

Name	Address
Home Telephone Number	Work Telephone Number

Authorized Signature/Title (designee)	Date

Form B – Application Form- Educational Surrogate Parent

Name	Date
Address	
Home Telephone Number	Work Telephone Number
Employed By	Position

Answer the following questions by checking Yes or No:

☐ Yes ☐ No 1. Does your employment involve the education of students? If YES, please describe.

☐ Yes ☐ No 2. Does your employment involve the care of students? If YES, please describe.

List your educational and community experiences with children and youth.

1.
2.
3.

List two personal references.

Name	Relationship
Address	Telephone Number
Name	Relationship
Address	Telephone Number

I give permission for _____ (school district) to contact the above names references.

Signature	Date

Form C –Surrogate Parent Agreement

It has been determined that _____ (student with a disability of _____ (school district) is in need of an educational surrogate parent because

Training was provided by	Date

List the resources used in the training.

1.
2.
3.

I have received information relative to the procedural safeguards guaranteed under P.L. 101-476, Individuals with Disabilities Education Act (IDEA). I agree to act in the role of an educational surrogate parent for (student's name)_____in all matters relating to identification, evaluation, educational placement, and the provision of a free and appropriate public education.

Educational Surrogate Parent's Signature	Date