

# SURROGATE PARENT GUIDE



Hawaii Department of Education  
Office of Curriculum, Instruction and Student Support  
Special Education Section

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In accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and the Hawaii Administrative Rules (HAR), Chapters 56/53, in certain circumstances, a surrogate parent is assigned to protect a student's right to a free appropriate public education (FAPE).

HAR §8-56-80, §8-53-34

## SURROGATE PARENT

### What is a surrogate parent?

A surrogate parent is an individual who:

- Acts in place of the legal parent to make decisions about the student's education when no parent can be located or identified;
- Makes decisions in all matters relating to the identification, evaluation and educational placement of the student and the provision of a FAPE. HAR §8-56-80, §8-53-34

### When is a surrogate parent needed?

Whether or not a student needs a surrogate parent is determined by the following: *Does the student have a "parent"?*

As defined by Chapters 56/53 "parent" means:

- A natural or adoptive parent of the student;
- A guardian, but not the State if the student is a ward of the State;
- A person acting in place of a parent (such as a grandparent or step-parent with whom the student lives, or a person legally responsible for the student's welfare);
- A surrogate parent who has been assigned in accordance with Chapters 56/53; or
- A foster parent (under certain conditions).

However, the natural or adoptive parent is presumed to be the parent when more than one party is qualified to act as a parent unless the biological or adoptive parent does not have legal authority to make educational decisions. IDEA 2004 §300.30(a)(5)

When a student reaches the age of majority, age 18 in Hawaii, the rights which were accorded to the surrogate parent are transferred to the student, except when the student has a disability and is determined to be incompetent under state law. HAR §8-56-81

If the student does not have a parent, as defined by Chapters 56/53, a surrogate parent must be assigned.

The Department of Education (DOE) must ensure that the rights of a student are protected when:

- No parent can be identified;
- The DOE, after reasonable efforts, cannot discover the whereabouts of a parent ; or
- The student is a ward of the State under the laws of Hawaii. HAR §8-56-80, §8-53-34

### Who is a ward of the State, and how long is a surrogate parent assigned to the ward of the State?

- A ward of the State is a child in the temporary, foster or permanent custody of a state agency--usually the Department of Human Services (DHS).
- A surrogate parent is assigned as long as a state agency retains foster or permanent custody of the child.

### What is the most important factor for a school to consider in requesting a surrogate parent?

- The student's legal status, rather than living arrangements, is the first and most important factor in the decision to appoint a surrogate parent.
- The public school which is considering a surrogate parent appointment must first learn whether the student is a ward of the State or is in the process of becoming a ward of the State.

A surrogate parent is not needed if the student is residing with a person considered to be a parent under Chapters 56/53 (e.g., is willing to make educational decisions) **and** is not in the process of becoming or is not a ward of the State.

The school may use the Determination of An Individual As the Parent checklist tool, which states specific criteria (e.g., a long-term parental relationship of at least six months), for the team to use in determining an individual as a parent.

### What steps must the school take to request a surrogate parent?

- Utilize the Determination of An Individual As the Parent checklist tool to assist in the decision to request a surrogate parent.
- The school submits the DOE Form 051, Request for Assignment of a Surrogate Parent, to the surrogate parent provider, currently the Epic Foundation (Epic).
- The Epic assigns a trained surrogate parent to the student.

### What is the time limit for a surrogate parent to be assigned?

The public school shall make reasonable efforts to request and ensure the assignment of a surrogate parent not more than 30 days after the determination by the school that the student needs a surrogate parent. IDEA 2004 §300.519(h)

### If the parent of a student is unresponsive to meetings related to educational decisions, may a surrogate parent be assigned?

No. Public schools should make reasonable efforts to collaborate and communicate with parents of special needs students and emphasize the importance of parental participation.

### **Who can NOT be a surrogate parent?**

- Adults with a conflict of interest; or
- Adults employed by an agency involved in the education or care of the student. IDEA 2004 §300.519(d)(2)(i)

### **What rights does a surrogate parent have?**

The surrogate parent has the same rights as those of a legal parent with respect to the educational decision-making process.

These include the right to:

- Inspect, review, and obtain copies of all records relating to the student's education and to seek changes with respect to the content in accordance with Chapter 34;
- Give written consent for the initial evaluation, three year re-evaluation, and/or placement of the student in a program providing special education and/or related services;
- Receive written notice prior to any evaluation or change in the student's placement or program;
- Receive notice of and participate in any Individualized Education Program (IEP), Modification Plan (MP) or Individualized Family Service Plan meeting or other conferences which pertain to the student's education, e.g., manifestation determination;
- Be informed of the special education policies, programs and services of the educational agency and all procedural safeguards;
- Exercise parental rights as defined by the procedural safeguards notice; and
- Receive documentation related to the student's progress (e.g., quarterly IEP/MP progress reports or notices of disciplinary actions).

### **What is the role of a surrogate parent at an educational meeting?**

The surrogate parent, acting in place of the legal parent, is part of the IEP/MP team and represents the interests of the student in the educational decision-making process.

### **Does the surrogate parent provide any direct care of the student?**

No. The surrogate parent participates only in decisions regarding the education of the student.

### **Is the surrogate parent responsible to follow the laws regarding confidentiality of student information?**

Yes. Under the regulations of the Family Educational Rights and Privacy Act of 1974, it is the responsibility of the surrogate parent to keep confidential any information that is gathered from the student's records, teachers, and others involved with the student's education. 20 U.S.C. 1232g

### **What happens if a surrogate parent does not agree with the provision of FAPE?**

- Consensus is the goal, but in the absence of team consensus, the principal is required to make an offer for the provision of FAPE.
- If the surrogate parent disagrees with the DOE's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student, the surrogate parent, as well as the team

members, should continue to communicate and work collaboratively with each other on this matter (e.g., monitor the student's educational progress with measurable data and re-assess the issue if needed). The surrogate parent may opt to exercise parental rights as stated in the procedural safeguards notice (i.e., mediation, due process).

### **What happens if there is a concern or a complaint regarding a surrogate parent?**

- The principal of the public school and the surrogate parent should collaborate and dialogue towards reaching a mutual solution. Epic or the state office may be contacted for additional assistance.
- The surrogate parent may be liable for actions that are deemed by a court to be gross misconduct and/or willful negligence.

## **FOSTER PARENTS**

### **What is the main difference between a foster parent and a surrogate parent?**

- Both the foster and surrogate parent are involved in the student's education, and both may participate in the IEP/MP meeting.
- Educational decisions, such as the option to accept or reject the services being proposed and the right to initiate mediation or due process, **are** the responsibility of the surrogate parent. HAR §8-56-80, §8-53-34
- The surrogate parent is authorized to make educational decisions on behalf of the student. The surrogate parent can also sign a consent for the release of educational records, i.e., IEP/MP, as well as information pertaining to mental health as a related service.

### **What is the role of a foster parent?**

Upon the first day of placement, foster parents may provide consent for the routine educational and recreational needs and activities of the foster children placed in their care, except for purposes regulated under Title 8, Chapters 56/53, of the HAR.

An important role of the foster parent is to assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities. Hawaii Revised Statutes (HRS) §587-82.5

### **Can a foster parent be a surrogate parent to his/her child?**

No. Currently, in the State of Hawaii, by contract with the DOE, only Epic may designate an individual as a surrogate parent.

### **Can an individual, such as a foster parent, act as the parent?**

Yes. An individual, such as a foster parent, may act as a parent of the child if the specific conditions under IDEA 2004 and Chapters 56/53 are met. A public school should refer to the form, titled Determination of an Individual as the Parent, for the specific criteria. HAR §88-56-2 and §8-53-4

### **What kind of assistance can a foster parent receive from a DHS social worker?**

A foster parent can expect the DHS social worker to assist the family in developing a case plan for needed services. This may also include assisting the foster parent with the enrollment or withdrawal of the student from school.

**Does the DHS notify the school of foster care involvement?**

Yes. The DHS informs the school of a student’s foster care placement and, if applicable, the student’s special education status via DHS form 1607.

**GUARDIAN AD LITEM**

**Must there be a guardian ad litem in order to have a surrogate parent assigned?**

No. A surrogate parent may be assigned without a guardian ad litem. A guardian ad litem is appointed by the court to protect and promote the needs and interests of the child or party in legal proceedings. Thus, a guardian ad litem is an advocate who speaks for the child, a reporter who presents, in written form, information to the court, and one who ensures that court orders are carried out, all in the best interests of the child. HRS §587-34

A guardian ad litem is not authorized to make educational decisions. However, in order to assure that the student receives the educational and legal supports that allow the student to succeed, ongoing communication among the school, surrogate parent and guardian ad litem is vital.

**HOMELESS YOUTH**

**What is the surrogate parent requirement for unaccompanied homeless youth?**

According to the McKinney-Vento Act, if an unaccompanied homeless youth enrolls in a school, the state education agency must make reasonable efforts to ensure that a surrogate parent is appointed within a 30-day timeline. IDEA 2004 §300.519(h)

<b>Contact Information</b>			
Public schools may contact their respective district offices:			
<b>OAHU</b>		<b>HAWAII</b>	
Central	622-6432	East	974-4535
Honolulu	733-4977	West	323-0015
Leeward	675-0384	North	775-8895
Windward	233-5710	South	982-4252
<b>KAUAI</b>		<b>MAUI</b>	
274-3504		873-3527	
<b>MOLOKAI / LANAI</b>			
553-1724			
All interested parties may contact:			
Epic Foundation			
2535 South King Street. Room 304			
Honolulu, Hawaii, 96826			
Phone (808) 941-7070 FAX (808) 941-7077			
or			
Hawaii Department of Education - Special Education Section			
637 18th Avenue Room C102			
Honolulu, Hawaii 96816			
Phone (808) 733-4400 FAX (808) 733-4841			

**SURROGATE PARENT FRAMEWORK TERMS**

**Family Supervision**

This is a legal status created in accordance with a court order or DHS authorization (HRS §587-21) after it has been determined that the child is presently in the legal or permanent custody of a family which is willing and able to provide a safe family home.

**Foster Custody**

This is a legal status created in accordance with a court order or DHS authorization (HRS §587-21) after it has been determined that the child’s family is not presently willing and able to provide a safe family home, even with the assistance of a service plan. The responsibilities of the foster custodian include: monitoring the provision of an appropriate education, providing consents which are required for the child’s health or welfare, including but not limited to, ordinary medical, dental, psychiatric, psychological, educational, employment, recreational or social needs.

**Joint Permanent Custody**

In cases of joint permanent custody, a caregiver and DHS have custody. The joint permanent custodians are vested with the duties and rights of a legal custodian.

**Permanent Custody**

This is a legal status created in accordance with a court order after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate permanent plan concerning the child. Parental rights are terminated.

**Temporary Foster Custody**

Under Chapter 587, with or without order of the court, DHS assumes the duties and rights of a foster custodian over a child. Custody is temporary, usually until the next jurisdictional hearing.

In cases of temporary foster custody, DHS is given custody although parental rights may not have been terminated. When given custody, DHS is vested with the duty and right to determine where the child is to be placed, see to the adequate provision of food and shelter, monitor the education, and provide consents which are required for the child’s physical or psychological health or welfare.

**Voluntary Foster Custody**

Voluntary foster custody is a legal status in which a child’s parents or legal guardian sign an agreement to transfer the care and custody of their child to DHS. DHS works with the parents to identify the services needed in order to ensure the safety of the home before the child is returned. Intended to be a temporary safety measure, parents do not give up rights to their child in this situation.

Additional special education information may be found at the following website:

<http://doe.k12.hi.us/specialeducation/index.htm>

## Surrogate Parent Framework: Overview

