



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

**MAR 27 2013**

K. Dean Shatley  
Campbell Shatley, PLLC  
674 Merrimon Avenue  
Suite 210  
Asheville, North Carolina 28804

Dear Mr. Shatley:

This is in response to your September 28, 2012 correspondence to me. On October 22, 2012, Melissa Turner, State Contact, held a conference call with you to clarify the questions posed in your letter. In your letter, you request that the United States Department of Education's Office of Special Education Programs provide guidance on who may serve as a "parent" under 34 CFR §300.30 of the regulations implementing the Individuals with Disabilities Education Act (IDEA) and conversely who may serve as a court-appointed surrogate parent. As context, you describe a practice whereby a State court, through judicial order, assigns a designee of a legal aid organization to act as a surrogate parent. You indicate that this organization and its designees represent children and their parents in both education-related and other matters, and therefore are concerned whether members of this organization can be appointed by the court as surrogate parents consistent with the requirements of the IDEA.

For children who are eligible to receive special education and related services under the IDEA, the regulations at 34 CFR §300.30(a)(5) state that the term "parent" may include "a surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act." In the examples you provided, the surrogates were appointed for children who were wards of the State. See 34 CFR §300.45 for the IDEA definition of "ward of the State." 34 CFR §300.519(a)(3) specifies that each public agency must ensure that the rights of a child are protected when "the child is a ward of the State." The public agency must have a method for appointing a surrogate parent for a child who is a ward of the State pursuant to its duty under 34 CFR §300.519(b). Further, according to 34 CFR §300.519(c), "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 outlined in 34 CFR §300.519(d)(2)(i), and (e)."

Based on 34 CFR §300.519(d)(2)(i), a person selected as a surrogate parent may not be an employee of the State educational agency (SEA), the local educational agency (LEA) or any other agency that is involved in the education or care of the child. The regulation at 34 CFR §300.519(e) explains that, "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." Note that when a public agency appoints a surrogate parent, rather than a judge, IDEA also requires the public agency to ensure that the person selected as surrogate parent has no personal or professional interest that conflicts with the

interest of the child, and that the surrogate parent possesses the knowledge and skills that ensure adequate representation of the child. 34 CFR §300.519(d)(2)(ii)-(iii).

The crux of your inquiry is whether it is inconsistent with the IDEA for a State court judge to appoint members of the legal aid organization to be surrogate parents under the IDEA because these individuals also advocate for these same children in both education-related and noneducation-related matters. As noted above, where a judge appoints the surrogate parent, the applicable IDEA requirements are only those in 34 CFR §300.519(c) and not those in 34 CFR §300.519(d)(2)(ii)-(iii). That is, it is consistent with IDEA for members of a legal aid organization who also represent these children in other matters to be judicially appointed to act as the surrogate parent for IDEA purposes. The judge would be responsible for ensuring that the selected designee meets the requirements for a surrogate parent, as outlined in 34 CFR §300.519(d)(2)(i) and (e).

You also ask whether 34 CFR §300.30(b) would have any bearing on the practice that is the subject of your inquiry. This provision (34 CFR §300.30(b)) does not expand the meaning of “parent” beyond the criteria provided for in 34 CFR §300.30(a) and would not have direct bearing on the practice. As previously explained in the *Analysis of Comments and Changes* section of the August 14, 2006 final IDEA, Part B regulations, 34 CFR §300.30(b) is “intended to add clarity about who would be designated a parent when there are competing individuals under §300.30(a)(1) through (4)...Specific authority for court appointment of a surrogate in certain situations is in §300.519(c).” 71 FR 46540, 46567 (Aug. 14, 2006).<sup>1</sup>

Finally, the *Analysis of Comments and Changes* also provides the following pertinent explanation regarding criteria for court-appointed surrogate parents for children who are wards of the State. In response to a request to incorporate the requirements of 34 CFR §300.519(d)(2)(ii)-(iii) for court-appointed surrogate parents, the Department responded:

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[s] 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.

71 FR 46711 (Aug. 14, 2006).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

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<sup>1</sup> Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Regulations, Analysis of Comments and Changes, 71 Federal Register 46540, 46547-46753 (Aug. 14, 2006).

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If you have any further questions, please do not hesitate to contact Melissa Turner, of my staff, at 202-245-6415 or by email at [Melissa.Turner@ed.gov](mailto:Melissa.Turner@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs