

# Guidelines and Procedures for the Assignment of Surrogate Parents

Updated September 2022

## Introduction

Under state and federal law, school districts must assign surrogate parents for students with disabilities who have no parent or legal guardian to participate in special education decision-making.<sup>1</sup> Depending on their circumstances, students in foster care, students in various residential settings, and unaccompanied homeless youth are those most likely to need a surrogate parent to be assigned. The NYC Department of Education (“DOE”) has the duty to ensure that all students’ rights are protected. The DOE must appoint surrogate parents for students when needed for any part of the special education process.

When assigned, a surrogate parent will represent the student’s best interests in all aspects of the special education process. This includes initial referrals, placement, the IEP review process (including initial evaluations, annual and requested review IEP meetings, and requested and three-year reevaluations). The surrogate parent has all the due process rights of a parent. Thus, surrogate parents may request a reevaluation; consent to assessments, placements, and services; attend IEP meetings; file requests for an impartial hearing; seek mediation; and sign resolution agreements, mediation agreements, or stipulations of settlement.

These guidelines explain:

- [Who can act as a student’s parent, for special education purposes;](#)
- [How to determine if a particular student needs a surrogate parent;](#)
- [Who may serve as a surrogate parent;](#)
- [What are the responsibilities of a surrogate parent;](#)
- [When surrogate parents may be reimbursed for expenses;](#) and
- [How to assign a surrogate parent to a student.](#)

The procedures in this document apply to any student who is or may be in need of preschool or school-age special education services.

An [Appendix](#) is included at the back of this document with a series of documents for staff to reference or complete at different stages of the surrogate parent assignment process. Questions should be directed to the appropriate surrogate parent liaison. Additional information on consent and surrogate parent issues is available in the [Standard Operating Procedures Manual \(SOPM\)](#), available on the DOE website.

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<sup>1</sup> Federal regulations governing the identification of parents and the appointment of surrogate parents can be found at 34 C.F.R. §§ 300.30 and 300.519; state regulations are located at 8 NYCRR §§ 200.1(ii) and 200.5(n).

For the purpose of these guidelines, DOE staff includes, but is not limited to school, Committee on Preschool Special Education (CPSE), Committee on Special Education (CSE), District 75, and Superintendents' staff members.

## Determining the Need for a Surrogate Parent

The DOE staff must identify a student's **parent**:

- whenever informed parental consent is needed (i.e., when the student is initially referred for an evaluation, when there is an initial recommendation for special education services, and when a reevaluation is needed, either as a result of a mandated three-year reevaluation or a requested reevaluation); and
- prior to the student's annual review IEP meeting.

In New York, students age 18 and above may **not** sign consent for services. Therefore, even if a student is 18 or older, DOE staff must identify a parent in the above situations.

For students who do not live with their parents, special consideration is needed to properly identify the **parent**.

When students live in foster homes, group homes, residential treatment centers, hospitals, or other congregate facilities, or are homeless and living apart from their parents, DOE staff should contact the appropriate foster care agency, residential or medical facility, or other social service organization involved in the student's care. These agencies – as well as the student's immediate caregiver – can help the DOE staff to identify and contact the student's parents. Agencies also may contact DOE staff first to alert them when a student needs a surrogate parent.

Whenever there is a question about the status of the parent's rights or whereabouts, supporting documentation should be maintained in the student's file and/or SESIS. If official court papers are not available, other substantiating documents, such as a letter from the social services agency or the student's attorney, may be acceptable. Questions about who may assume the role of parent in a particular case should be directed to the designated surrogate parent liaison at the Superintendent's Office or the Committee on Special Education.

DOE staff should refer to the [Flowchart](#) and the [Guide for School Social Workers](#) in the Appendix for assistance during this process. In all circumstances, DOE staff must identify the parent and conduct necessary outreach promptly to ensure that students are evaluated and placed within the timelines.

### Who can act as a **Parent**?

At each of the stages described above, DOE staff must determine if the student has a **parent** – as defined under state and federal law – who can make special education decisions for the student.

"Parent" is defined in New York State to include the following individuals:

- A birth or adoptive parent;
- A legal guardian (but not the state, if the child is a ward of the state);
- A person in parental relation to the child (such as a relative with whom the student lives, stepparent, legally appointed guardian, or custodian);

- An individual designated by the parent as a person in parental relation;
- A foster parent (under certain circumstances);
- A person appointed by a judge to make educational decisions; or
- A surrogate parent.

Each of these categories is described in more detail below.

### Birth or Adoptive Parent

When more than one person meets the definition of parent, the student's birth or adoptive parent acts as the decision maker as long as they maintain parental rights.

### Legal Guardian

If the parent's legal rights have been terminated or surrendered or their educational decision-making rights have been limited by a court order, any of the other parties who fall within the definition of parent above may act as the parent, or the court may appoint a **legal guardian**.

A legal guardian is a person who has been authorized by a court to act as the student's parent. Note that government agencies are never considered a parent for special education decision-making, which means that employees of the NYC Administration for Children's Services (hereinafter "ACS"), foster care agency, or other social service agency may never consent to special education evaluations or services for a child in their care.<sup>2</sup> If a caseworker has questions about this limitation, please direct them to the ACS Office of

## ACS Educational Planning

NYC Administration for Children's Services (ACS) and foster care agencies may not sign consent to evaluations or services and are not considered a child's parent for special education decision making.

However, under FERPA, ACS may request educational records for the purpose of educational planning for children who are in their care and protection, **without parental notice or release**. ACS will send DOE a letter informing DOE staff that the child is in the custody of ACS and will specify the educational records ACS is seeking.

Education Support and Policy Planning at <http://www.nyc.gov/html/acs/education/index.html>. [Person in Parental Relation](#).

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<sup>2</sup> There is an exception to this rule. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be assigned as temporary surrogate parents until another surrogate parent meeting the above requirements can be assigned.

## Custodian

A **person in parental relation** is defined by New York Education Law § 3212 as including the student's parent, stepparent, legal guardian, or **custodian**. Unlike a legal guardian, a student's caregiver or custodian need not be appointed by the court to act as a person in parental relation.

A person can be a student's **custodian** if they have assumed the charge and care of the student if, for example, the parent has died, is imprisoned, is mentally ill, has been committed to an institution, has abandoned/deserted the child, is living outside of the state, or if the parent's whereabouts are unknown<sup>3</sup>. Custodians may be relatives such as grandparents, aunts or uncles, or they may be other individuals caring for a child in the parent's absence. A person caring for a student as their custodian generally qualifies as a person in parental relation.

## Designation by Parent to Act as a Person in Parental Relation

Parents<sup>4</sup> may designate someone else as a "person in parental relation" to the student under Title 15-A of the New York General Obligations Law.

A designation for 30 days or less must:

- be in writing;
- state the names of the parent, designee, and student; and
- be signed by the parent.

If the designation is for more than 30 days, the designation must meet the requirements above and also:

- include contact information for the designee and parent;
- provide the student's name and date of birth;
- include the written consent of the designee to the designation; and
- be signed by the parent and notarized.

Designations are valid for up to 12 months, can be renewed, and may be revoked by the parent at any time. Parents may use the [form in the Appendix](#) to designate a person in parental relation, but the use of this particular form is not required.

## Custodian Documentation

A custodian is not required to provide formal or court-ordered documentation of their status as the child's education decision maker. In most instances, such documentation will not exist. Caregivers who are seeking to act on behalf of the student as a custodian should be prepared to show proof of their role as primary caretaker and will be asked to provide available documentation.

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<sup>3</sup> To determine that the parent's whereabouts are unknown, DOE staff must make "reasonable efforts" to locate the parent. For more information see [What are "reasonable efforts" to locate a student's parent?](#)

<sup>4</sup> Note that if a parent's rights have been surrendered or terminated, or if their educational decision-making rights have been limited by court order, the parent does not have the right to designate someone else under this provision.

## Foster Parent

A child's foster parent may assume the role of parent without being designated as a surrogate parent if:

- the parents' rights have been terminated or surrendered,
- a judge has limited the parents' rights to make educational decisions by a court order, or
- the parents are deceased.

If, however, the parents retain their rights but cannot be located after reasonable efforts have been made, foster parents may be assigned as surrogate parents.

Saying that a child has been "freed for adoption" or that the "custody and guardianship" of a child has been committed to the child welfare agency, means the same thing as saying that the parents' rights have been terminated or surrendered. In these cases, the parent no longer has the authority to make special education decisions for the student.

DOE staff should consult with the foster care or other social service agency involved with the student, if any, when determining the status of the parents' rights, attempting to contact the parents, or selecting a surrogate parent for a student.

## A Person Appointed by a Judge

A Family Court Judge also may assign someone as a “parent” to make educational decisions or may appoint a surrogate parent for a student in a particular case. This person may or may not be a student’s foster parent.

## Special Considerations for Incarcerated or Imprisoned Parents

A parent who is in a correctional facility (e.g., jail or prison) may still have parental rights. If a student’s parent is in jail or prison, DOE staff must first determine if the parent is ***imprisoned*** or ***incarcerated but not yet sentenced***:

- A parent who is ***imprisoned*** has pled guilty or been convicted of a crime and has been sentenced to serve time in a correctional facility. If a student’s parent is imprisoned (sentenced) and the student is in the care of a custodian or legal guardian, you are not required to contact the parent, although you may want to in some cases. If, however, the student is in foster care, and the parent’s rights are intact, outreach efforts to the parent are still required. If a custodian or guardian is not available, a surrogate parent may be necessary.
- A parent who is ***incarcerated but not yet sentenced*** is either awaiting trial or the trial is in progress. If a parent is incarcerated but not yet sentenced, you must contact the parent unless one of the following situations exists: The parent has designated somebody else to serve as a person in parental relation to the child, the parent’s rights have been terminated or surrendered, or their educational decision making rights have been limited by a court order. The DOE should take steps to encourage and facilitate the parent’s participation in social history and IEP meetings. IEP and social history meetings should be scheduled at a time when the parent is available and may be held by telephone. Consent for evaluations and services may be provided by mail, email, or fax and need not be provided in person. See the Tips for Schools Working with Children of Incarcerated Parents at [Step 2](#) for guidance on contacting the parent.

Please see [Tips for Schools Working with Children of Incarcerated Parents](#) for information on how to identify if a parent has been sentenced yet; locate an incarcerated or imprisoned parent; and contact an incarcerated or imprisoned parent.

## When is a surrogate parent required?

When no parent can be identified (using the definition of “[parent](#)” above), the DOE must assign a surrogate parent. Surrogate parents should only be assigned to a student when there is no one else in the student’s life who can assume the role of parent. For example, a student being cared for by her aunt after her parents’ death does not need a surrogate parent; her aunt can assume the role of parent as a [custodian](#).

A surrogate parent may be required when:

- both of the student’s parents are deceased;
- the parents’ identities are unknown;
- after [reasonable efforts](#), the DOE cannot discover the whereabouts of the parents; or
- parental rights have been legally terminated or surrendered, or their educational decision-making rights have been limited by a court order.

**AND** nobody else can assume the role of parent.

In addition, ***unaccompanied homeless youth*** may also require a surrogate parent if there is nobody who meets the definition of [parent](#). A student who lives in any of the following situations is considered homeless:

- A shelter or transitional shelter,
- A motel,
- A car, bus, or train,
- A park or public place, or
- With friends or relatives because they cannot find or afford housing.

An unaccompanied homeless youth is a person, under the age of 18, who lives in one of the situations listed above and is not in the physical custody of a parent or guardian. For unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be assigned as temporary surrogate parents until a surrogate parent with appropriate qualifications can be assigned. Specialists within the DOE are available to assist in responding to questions about whether an unaccompanied homeless youth requires a surrogate parent. For more information, contact the Students in Temporary Housing team regional manager for your district. The list of regional managers is available at <https://www.schools.nyc.gov/school-life/special-situations/students-in-temporary-housing>.

A student living on their own who is not homeless also may require a surrogate parent, depending on the status and whereabouts of the parents. If a homeless or otherwise unaccompanied youth does not know the whereabouts of their parents or does not disclose the information and there is nobody who meets the definition of [parent](#), then a surrogate parent should be assigned.

When a student in foster care needs or may need special education services, the DOE must contact the student's foster care agency caseworker.<sup>5</sup> The agency or caseworker will assist DOE staff in determining the legal status of the student and the rights of their parents. If you have trouble reaching the caseworker, ask to speak with their supervisor.

## What are “reasonable efforts” to locate a student’s parent?

School districts must make reasonable efforts to locate the parent before determining that a parent’s whereabouts are **unknown**. “Reasonableness” depends on the specific circumstances, but the outreach must include the following, at a minimum:

- Two attempts at telephone contact at different times of the day;
- A follow-up letter sent to the parent by mail; and
- If the parent could not be reached by phone and no message could be left, a follow-up letter sent home with the student (“backpacked”) if they attend a DOE public school.

**If a student is in foster care or placed with another social services agency**, outreach also must include contact with the agency responsible for the student’s care. Caseworkers may be able to help locate the parent, as they should be in regular contact with the parent. The parent’s attorney, the student’s Family Court attorney, or other child welfare professionals may also be a resource to the DOE to assist in locating the student’s parent.

Even if social service agencies working with families have already made repeated efforts to contact a student’s parent, DOE staff **must still** make documented outreach efforts to the parent. Parents who do not respond to agency staff may respond to staff from their student’s school. Under no circumstances may the DOE assign a surrogate parent for a student without documenting required outreach initiatives to the student’s parents in the **SEIS Events Log**.

## A parent’s whereabouts are unknown if:

- No one known to the child has the parent’s address or working phone number, or any reliable contact information for the parent.
- The parent maintains intermittent or inconsistent contact with the child via social media or phone calls, but no one known to the child has any knowledge of the parent’s whereabouts.
- The next of kin or foster care agency no longer has contact with the parent, and the prior contact information is no longer valid.
- The agency with whom the child is affiliated has been unable to locate the parent.
- Notices sent home, via backpack or otherwise, or mailed to the parent’s last known address has not yielded a response, or the response has not led to the location of the parent.

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<sup>5</sup> If a student is removed from a parent’s home by ACS, the student may then be placed into foster care through a foster care agency. Going forward, the foster care agency will have primary case planning responsibilities for the student and should have direct and regular contact with both the student’s birth or adoptive parents and foster parents. A student may also voluntarily be placed into foster care by a parent as part of a child welfare proceeding or through a Persons in Need of Supervision (PINS) proceeding.



Every case is different.

Staff should determine, based on the individual circumstances, whether the parent can be located. Surrogate parent liaisons are available to advise staff. A list of liaisons is available on the InfoHub.

For example:

*The student is in foster care, but the parent retains parental rights. The parent has not responded to outreach attempts by the DOE, or by the agency working in conjunction with the DOE. After repeated outreach attempts that are documented, the parent's whereabouts are determined to be unknown. In this situation, reasonable outreach attempts have been made to locate the parent, and the DOE may proceed to assign a surrogate.*

Generally, surrogate parents should not be assigned for children in foster care whose parents are **incarcerated but not yet sentenced, hospitalized, or in temporary housing**, unless their whereabouts are determined to be unknown following outreach efforts to locate them (or their parental rights were terminated or surrendered, or their educational decision-making rights have been limited by court order). In some cases, it may be impossible to reach a parent who is incarcerated or homeless.

For example:

- *There may be no way to contact a parent who is incarcerated (but not yet sentenced) who is incarcerated under an alias. On the other hand, an incarcerated parent may be able to receive mail or at least be reachable by phone. See the [Tips for Schools Working with Children of Incarcerated Parents at Step 2: Contact the Incarcerated Parent](#) for guidance on contacting an incarcerated parent.*
- *There may be no way to contact a parent who is homeless and whose location is unknown or who is living on the street. However, a parent who is homeless but living in a city shelter or with friends may be able to be contacted, participate in meetings and evaluations by phone, and receive correspondence by mail, email, or fax.*

Sometimes parents' whereabouts are known, but they are difficult to reach. For example, they may:

- Have inconsistent contact with their children, the foster care agency, or the school;
- Live far away;
- Be incarcerated but not yet sentenced;
- Live in a residential facility; or
- Have other obligations that prevent them from participating in the special education process.

In these situations, the school **cannot** assign a surrogate parent for the student (unless the parent's parental rights were terminated or surrendered, or their educational decision-making rights have been limited by court order). However, the parent may wish to designate someone else to act on their behalf as a person in parental relation to the student. See [Designation by Parent to Act as a Person in Parental Relation](#) for more information. This can be done pursuant to Title 15-A of the New York General Obligations Law, using the [form included in the Appendix](#).

In the above situations, if the parent is **not** seeking to designate someone else as a person in parental relation to the child, DOE staff should take steps to encourage and facilitate the parent's participation in

social histories and IEP meetings. IEP and social history meetings should be scheduled at a time when the parent is available and may be held by telephone. Consent for evaluations and services may be provided by mail, email, or fax and need not be provided in person.

## Steps to take when a surrogate parent is required

When the DOE determines that a student requires a surrogate parent:

- DOE staff must send a ***notice of the potential need of a surrogate parent*** to the parents' last known address and any social services agency or foster care agency involved in the child's case. This [form letter](#) is included in the appendix – it should be put on the appropriate DOE letterhead, and the bracketed information must be filled in for each individual case. This letter may be sent with other outreach or notices. It should be sent as soon as the DOE determines that a surrogate parent may be required.
- A surrogate parent should be assigned **within 10 business days** of the DOE determining there is a potential need, or as soon as possible. While it is essential that the DOE [makes reasonable efforts to locate a student's parent](#), care must be taken not to delay when the DOE has not been able to ascertain the parent's whereabouts or elicit a response to outreach efforts.
- To assign a surrogate parent, contact your [surrogate parent liaison](#).

# Recruiting and Selecting Surrogate Parents

## Recruitment

The DOE keeps a list of individuals who are eligible and willing to serve as surrogate parents so that a surrogate parent can be assigned promptly to any student who needs one. The list of eligible surrogate parents is maintained by the Special Education Office (SEO) and disseminated to the surrogate parent liaisons at each Superintendent's Office and CSE.

The DOE attempts to recruit volunteers from diverse backgrounds. Potential sources of surrogate parent volunteers include local civic groups, religious institutions, colleges and universities (especially schools of education), support groups for individuals or families of individuals with disabilities, and other community-based organizations.

Anyone interested in becoming a surrogate parent should email [surrogateparent@schools.nyc.gov](mailto:surrogateparent@schools.nyc.gov).

## Eligibility Requirements

To serve as a surrogate parent, an individual must:

- Have no other interest that could conflict with their primary allegiance to the student as a surrogate parent;
- Have the knowledge and skills necessary to ensure adequate representation of the student; and
- Be committed to representing a student's best interests with the strictest confidentiality.

Whenever possible, the DOE should identify a surrogate parent who can communicate with the student in the student's primary language. The DOE must provide interpretation services when necessary.

Employees of the DOE, New York State Education Department, ACS, the student's foster care agency, or any other agency involved in the care or education of the student **may not** serve as surrogate parents, unless they are also the foster parent of the student. Agency caseworkers, supervisors, or other staff cannot serve as the surrogate parent for a child at their agency; however, foster parents typically can serve as surrogate parents if they meet other requirements.<sup>6</sup>

## Parent Members

As part of the normal IEP process, parents can request that a "Parent Member" attend an IEP meeting in order to assist the parent in the IEP process. The role of the Parent Member of an IEP is **not** to serve as the parent to a student. It is to assist the parent in understanding the IEP process from a parent's perspective and to support the parent's participation in and contribution to the process.

However, a person who sometimes serves as an IEP team Parent Member **may** serve as a surrogate parent for a student but they **may not** serve in both roles for the same student. And, to avoid a potential conflict

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<sup>6</sup> The foster parent of a student may serve as the student's parent if the birth or adoptive parents' rights have been terminated or surrendered, if their educational decision-making rights have been limited by a court order, or if they are deceased. In those situations, the foster parent does not need to be identified as the surrogate parent.

of interest, a Parent Member may not serve as a surrogate parent for a student at the same school or CSE where they are also serving as a Parent Member.

## Steps to Being Added to the Surrogate Parent List

Prior to being added to the surrogate parent list, individuals who have met the requirements above must:

- Be fingerprinted (see [Fingerprinting Procedures](#) in the Appendix);
- Pass a DOE security clearance; and
- Complete the [Surrogate Parent Questionnaire](#) (in the Appendix).<sup>7</sup>

The Surrogate Parent Questionnaire provides critical information about the individual to the surrogate parent liaisons, who will use the information to match surrogate parents to students. (For example, a surrogate parent liaison may have special language skills, professional backgrounds, or may request certain geographic limitations. These considerations will be noted on the surrogate parent list.)

There are no formal training requirements for an individual to be placed on the list as a potential surrogate parent. When the DOE has identified the need for a surrogate parent, the surrogate parent liaison or other DOE staff will reach out to a potential volunteer to ascertain their availability. A volunteer signing up to be a surrogate parent will receive guidance and support, including information regarding:

- The IEP process,
- Parental due process rights, and
- Educational disability classifications

In addition, surrogate parents will be:

- Informed of their [rights and responsibilities as surrogate parents](#) and will be told about the reimbursement policy, at the time they sign up;
- Provided with a copy of the [Procedural Safeguards Notice](#), at the time they sign up; and
- Informed regarding the [special education continuum of services](#) when they are assigned to a particular student by the surrogate parent liaison.

During the assignment process, surrogate parents should also be informed of any relevant trainings that the DOE or other agencies are offering to the public that would help them perform their duties.

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<sup>7</sup> Certified foster parents need not go through these steps, as they have already been fingerprinted and cleared by their respective foster care agencies.

## Surrogate Parent Rights and Responsibilities

A surrogate parent represents a student's best interests, with the strictest confidentiality, in all matters pertaining to the identification, evaluation, and placement of a student with respect to special education.

This includes:

- Signing a Surrogate Parent Agreement to act as a surrogate parent for a particular student (see the Appendix for a sample);
- Meeting with the student and communicating with them in their preferred language;
- Reviewing the student's relevant educational records;
- Speaking to the teacher and other appropriate school staff about the student's needs;
- Providing a social history or social history update, if requested;
- Participating in IEP meetings and other school meetings (e.g., suspension meetings, manifestation determination review (MDR) meetings);
- Considering and consenting to proposed evaluations and provision of services, as appropriate;
- Exercising due process rights on behalf of the student; and
- Serving as a surrogate parent for as long as required, but at least through the first IEP and recommendation cycle that follows assignment.

Surrogate parents should meet and become familiar with the student they represent. Depending on the student's age, the surrogate parent may ask the student to discuss their educational experiences and should consider the student's opinions when making decisions. The DOE staff and surrogate parent liaisons should encourage surrogate parents to learn as much as they can about the student they represent by reviewing the student's records and speaking to the student's caseworker, lawyer, teacher, therapists, and other relevant service providers.

Surrogate parents should also become familiar with the special education process and educational options available to the student. This includes reading the [Procedural Safeguards Notice](#), [Family Guide to Special Education Services for School-Age Children](#) or [Family Guide to Preschool Special Education Services](#). These and other sources of information are available on the DOE's special education website. Surrogate parents should be encouraged to reach out to school staff and surrogate parent liaisons if they have questions.

### Reimbursement

Surrogate parents will be reimbursed for expenses incurred when performing duties representing their students.<sup>8</sup> Surrogate Parents are paid up to \$50 per day of service (\$20 for the first 2 hours, \$6 per hour after that, for a maximum of \$50). More information regarding reimbursement, and applicable forms, are available in the [Surrogate Parent Toolkit](#). Please note that reimbursement forms contained in the Appendix should be put on appropriate DOE office or school letterhead.

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<sup>8</sup> Foster parents who are assigned as surrogate parents for their foster children cannot be reimbursed for expenses. Foster parents assigned to represent students who are not their foster children are entitled to reimbursement in the same manner as other surrogate parents.

## Assigning Surrogate Parents

A surrogate parent should be assigned **within 10 business days** of the DOE determining there is a potential need, or as soon as possible. If a surrogate parent has not already been identified for the student, DOE staff should reach out to the foster care or other social service agency, current caregiver, or group home staff, and/or the student, if appropriate, to find out if there is someone in the student's life who would be willing to serve as a surrogate parent. If the student has a foster parent, they may serve as the surrogate parent, when appropriate. A relative, family friend, mentor, coach, or other adult may be an appropriate surrogate parent for a student.

The DOE staff member must contact the appropriate surrogate parent liaison to inform them that a surrogate parent must be assigned. The team should provide the liaison with:

- Documentation of attempts to contact the parent;
- Information about the status of the parent's rights; and
- The name and contact information for the proposed surrogate parent (if identified).

If a proposed surrogate parent has not been identified, the DOE staff member should provide background information about the student so that the surrogate parent liaison can select an appropriate surrogate from the surrogate parent list. At a minimum, this should include the student's age, language, school, and district with the surrogate parent liaison.

### Meeting with the Surrogate Parent

DOE staff should use the [Checklist for Surrogate Parent Assignments](#), included in the Appendix, to ensure that all steps in the assignment process are properly completed.

Once a potential surrogate parent has been identified for the student, an appropriate DOE staff member or surrogate parent liaison must immediately schedule an assignment meeting with the proposed surrogate parent. During this meeting, the DOE staff member will:

- Ensure that the individual meets all eligibility requirements to serve as a surrogate parent;
- Explain [Surrogate Parent Rights and Responsibilities](#);
- Explain (and stress) that the surrogate parent will be receiving confidential student information, which must remain confidential;
- Give the surrogate parent information about their due process rights, the special education continuum, and reimbursement procedures; and
- Complete the Surrogate Parent Questionnaire with the individual and add their name and contact information to the surrogate parent list, when applicable. (If a foster parent is being assigned as a surrogate parent for a child in their care<sup>9</sup>, the foster parent does not need to be added to the surrogate parent list unless they would like to serve as a surrogate parent for other students.)

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<sup>9</sup> A student's foster parent may serve as their parent (without being assigned as surrogate parent) when the birth or adoptive parents' rights have been terminated or surrendered, or the birth or adoptive parents' rights have been limited by a court order, or the parents are deceased. When parents retain their rights but cannot be located, foster parents may be assigned as surrogate parents.

After reviewing the information above with the new surrogate parent, the following steps must be taken:

- The new surrogate parent must complete and sign the [Surrogate Parent Agreement](#), included in the Appendix. Provide a copy of the signed Surrogate Parent Agreement to the new surrogate parent and upload the agreement to SESIS.
- Provide the new surrogate parent with:
  - The [Surrogate Parent Toolkit](#);
  - The student's most recent IEP, if existing, and any assessment reports or other documents that will be discussed at any upcoming IEP meetings;
  - School and agency contact information, as appropriate; and
  - Surrogate parent reimbursement forms (on school/CSE letterhead).<sup>10</sup>
- As soon as the surrogate parent assignment process is complete, the surrogate parent liaison or DOE staff member completing the assignment process must notify the IEP team that a surrogate parent has been assigned and forward the team the surrogate parent's contact information and a signed copy of the Surrogate Parent Agreement. The IEP team must update SESIS with the surrogate parent's contact information.

When a surrogate parent is being assigned during an initial evaluation or reevaluation and a social history meeting is needed, consider scheduling the surrogate parent assignment meeting on the same day as the social history meeting. This may be appropriate when the surrogate parent is someone in the student's life (e.g., foster parent, relative, family friend), as they are already familiar with the student. In all cases, the social history meeting should be scheduled promptly, but far enough out that the surrogate parent has time to review relevant information and meet with the student. If an in-person meeting between the surrogate parent and the student is not possible, the assignment should be scheduled to take place by phone without unnecessary delay.<sup>11</sup> Note that the assignment of a surrogate parent does not extend the normal special education compliance timelines.

### Following the Assignment

Once the surrogate parent assignment process is complete, the surrogate parent's name and contact information will be included in all SESIS notices. All special education notices and appointment letters will be sent to the surrogate parent. The surrogate parent is expected to serve in this role as long as required, but at least through one IEP cycle.

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<sup>10</sup> If the surrogate parent is the foster parent, they are not entitled to reimbursement.

<sup>11</sup> It is understood there are circumstances, such as distance, that could prevent or delay an in-person meeting between the student and surrogate parent. Once it is determined that an in-person meeting is not possible in a timely manner, the social history meeting should proceed promptly after the surrogate parent has had sufficient time to review the relevant records.

## Changing Circumstances

If at any point the surrogate parent can no longer serve as the surrogate parent for the student<sup>12</sup>, the DOE staff member being informed must notify the surrogate parent liaison and appropriate school personnel, and a new surrogate parent will be assigned to the student (unless there is then an adult who can assume the role of parent for the student).

If there is a change in the circumstances that originally led to the assignment of a surrogate parent, the DOE must consider whether a surrogate parent is still needed. In other words, if the student acquires someone in their life who fits the definition of “parent,” the surrogate parent’s services will no longer be needed.

Examples:

- *If a parent’s rights are reinstated by a court, if their identity becomes known, or if their whereabouts become known, decision-making authority will revert to the parent.*
- *If a student was assigned a surrogate parent because they were living in a group home and their parents’ rights had been terminated, and the student is subsequently placed into a foster home, a surrogate parent may no longer be needed because the foster parent could act as the “parent.”*

Upon learning of such a change in status, the surrogate parent liaison or another DOE staff member must inform the assigned surrogate parent that their services are no longer needed. DOE staff should remind the surrogate parent of their confidentiality obligation and request that they return any student records so that they may be shredded to ensure that the confidential information is destroyed. SESIS notices will stop being sent to the surrogate parent and will then be provided to the newly identified “parent.”

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<sup>12</sup> If the student indicates to the DOE that they are no longer interested in having the assigned individual serve as their surrogate parent, the surrogate parent liaison must be notified. The student’s views must be taken into consideration, and a new surrogate parent will be assigned to the student when practicable, unless there is then an adult who can [assume the role of parent](#) for the student.



## Appendix

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## APPENDIX 1

### Common Foster Care Terms & Abbreviations

**Administration for Children's Services (ACS)** – NYC's child welfare/protective agency designated to protect all of NYC's children from abuse and neglect. ACS receives and investigates reports of abuse and neglect and provides intervention, support, and treatment services to families. It contracts with provider agencies to serve children in foster care.

**Bronx Defenders** – Organization that provides free legal representation to parents in the Bronx family court.

**Brooklyn Defender Service (BDS)** – Organization that provides free legal representation to parents in the Brooklyn family court.

**Center for Family Representation (CFR)** – Organization that provides free legal representation to parents in the Queens and Manhattan family courts.

**Court Appointed Special Advocates (CASA)** – Volunteer advocates appointed by a judge to ensure that the needs and interests of a child involved in Family Court proceedings are fully protected.

**Children of Incarcerated Parents Program (CHIPP)** – ACS office that provides services, support, and technical assistance to incarcerated parents so they can maintain contact with their children in foster care; arranges regular visits to Rikers Island and other correctional facilities.

**Children's Center** – Emergency shelter run by ACS. ACS may temporarily place a child at the Children's Center when they enter foster care until ACS can identify an appropriate foster home or other suitable living arrangement for the child.

**Child Protective Specialist (CPS)** – Employee within ACS responsible for investigating allegations of parental abuse and neglect.

**Case Worker/Case Planner** – Employee of ACS or a provider/foster care agency/preventive agency who handles broad case management services for the child and family (e.g., initiates engagement and assessment of a parent, creates and coordinates service plans, facilitates visitation with a child and parent, conducts home and school visits, testifies on behalf of the agency in family court).

**Delinquency** – Term used to refer to behavior of a minor that, if committed by an adult, would be criminal conduct.

**Education Coordinator or Specialist** – Typically an employee of a foster care agency that handles issues related to schools/education/literacy for children in care. Usually conducts school visits, attends school meetings, requests, and reviews school records, etc.

**Family Assessment and Service Plan (FASP)** – A detailed description of a family’s needs and those social services that they are recommended to receive.

**Family Court** – In NYC, this is a court that hears cases about family law issues (e.g. divorce, custody, child abuse and neglect) and also about juvenile delinquency. It is a civil court lacking jurisdiction over criminal matters. A preliminary hearing is the first step in the Family Court process for abuse and neglect cases.

**Family Court Legal Services (FCLS)** – Division within ACS that represents ACS’s Commissioner in family court; files petitions and litigates cases when there are suspicions of abuse and neglect.

**Family Team Conference (FTC)** – A meeting model used by ACS to optimize family strengths in the planning process. It brings the family, extended family, friends, and community members together to make decisions regarding how best to ensure the safety of family members.

**Foster Boarding Home (FBH)** – Term used to describe the private home/residence of a child that is placed into foster care. Also referred to as Family Foster Care (FFC).

**Foster Care Agency** – In NYC, a private agency that contracts with ACS and is authorized by NYS to provide foster care services to children and youth (out-of-home placement).

**Freed** – Term used to indicate that a child is eligible for adoption (biological or adoptive parental rights are no longer intact).

**Group Home** – Facility operated by an authorized foster care agency to house and provide services to 7-12 children ages 5 and older.

**Interstate Compact on the Placement of Children (ICPC)** – A law enacted by all 50 states and the District of Columbia that created a set of uniform guidelines and requirements for situations where a student is being placed with an out-of-state family or at an out-of-state facility. The acronym “ICPC” may be used to describe placements, placement requests, and processes related to this law.

**Independent Living (IL)** – Services provided to youth in foster care aged 14 and over to prepare them for adulthood. This can include classes in life skills, vocational training, and job training, and funds for college scholarships, skills training, and rental assistance. Also referred to as Preparing Youth for Adulthood (PYA) and Youth Development services.

**Juvenile Rights Practice (JRP)** – Division at the Legal Aid Society in NYC that represents the child in abuse, neglect, and delinquency proceedings in family court.

**Kinship care** – Indicates that a child was placed into foster care with a familial resource (up to third-degree relative including grandparent, sibling, aunt, uncle, god-parent, etc.)

**Kinship Guardianship Assistance Program (KinGAP)** – Provides financial support to relatives who assume guardianship of a child after serving as the child’s foster parent for at least 6 months.

**Lawyers for Children (LFC)** – Organization that provides free legal representation and social work services to children in Manhattan family court; generally represents children who have been voluntarily placed in foster care.

**Law Guardian** – Outdated term for the attorney for the child (represents the child’s interests in family court).

**Neighborhood Defender Services of Harlem (NDS)** – Organization that provides free legal representation to parents in the Manhattan family court.

**Office of Children and Family Services (OCFS)** – NYS agency that oversees juvenile justice, child care, and child welfare services, including foster care, adoption, child protective services, and preventive services for children and families.

**Order of Protection** – Order of the court requiring a parent, guardian, or spouse to provide proper care for, or refrain from abusing, the child, spouse, or other family member.

**Parole** – Term used when a child is returned to their parent and no longer in foster care. May occur with or without ACS supervision.

**Permanency Hearing** – Family Court hearing to review the status of the family, child, and disposition (every 6 months) and determine the need to maintain foster care placement or court jurisdiction of a child.

**Person-in-Need-of-Supervision (PINS)** – A child (18 years old or under) who is beyond the lawful control of the parent or other lawful authority and requires supervision or treatment. A judge may order the youth to return home, attend school, undergo drug treatment, or receive counseling.

**Rapid Intervention Center (RIC)** (formerly known as a Diagnostic Reception Center, or DRC) – Short-term residential program for youth with severe behavioral or emotional difficulties, where youth receive psychiatric, social, medical, and educational assessments to determine appropriate programs and services following discharge.

**Remand** – Term used when a child is placed into foster care by a family court order and placed into the care and custody of the Commissioner of ACS while the parent awaits a hearing.

**Residential Treatment Center (RTC)** – Residential facility for youth that monitors psychotropic medication and provides counseling services but does not have psychiatrists on site.

**Residential Treatment Facility (RTF)** – Residential psychiatric facility for youth that monitors psychotropic medication, provides counseling services, and has psychiatric/mental health services on a 24-hours basis.

**Service Plan Review (SPR)** – Conference for children in foster care; ensures that parents and children actively participate in permanency planning and decision making.

**State Central Register (SCR)** – Statewide registration system for allegations of child abuse and neglect reported via hotline telephone number.

**Surrender** –Term used to indicate when a biological or adoptive parent voluntarily relinquishes their rights to a child.

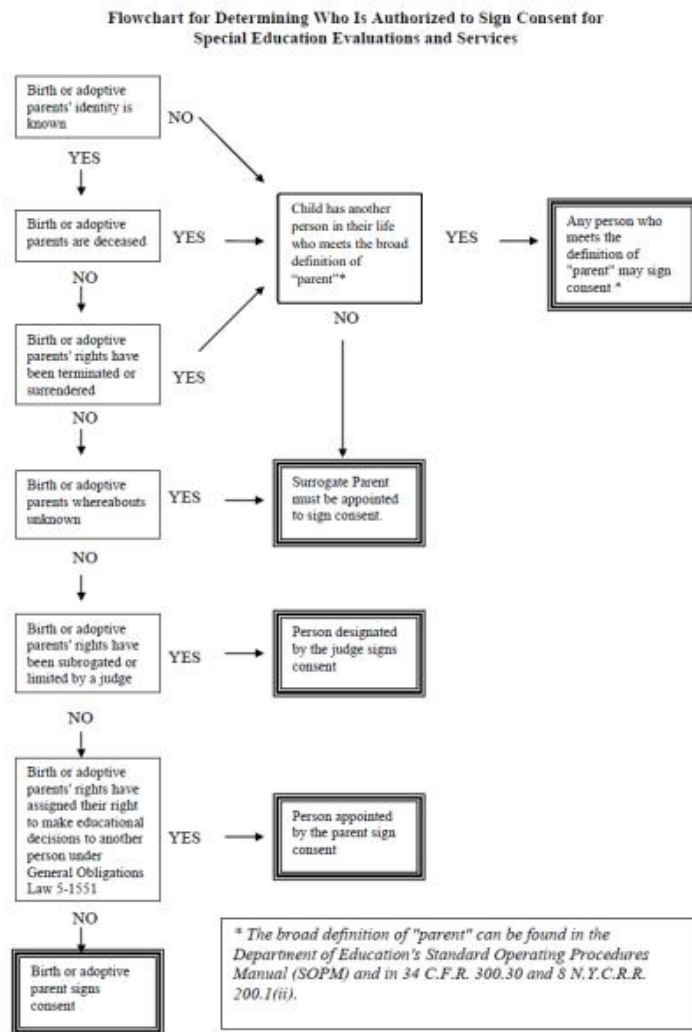
**Treatment Family Foster Care (TFFC)** – Foster care program where the foster parent has additional certification and training to care for children with developmental delays and/or serious emotional health impairments and other behavioral challenges.

**Termination of Parental Rights (TPR)** – If family reunification is not an option, the agency may file a petition seeking termination of the biological or adoptive parents’ rights to the child when allegations of abuse or neglect have been litigated and proven. Once completed, the biological or adoptive parent no longer retains any rights to see or make decisions about their child.

**“18B” Panel Court Appointed Attorney** – Attorney appointed to represent a parent in an abuse or neglect proceeding when a parent cannot afford to hire their own legal representation and an attorney from a parent representation agency is not available; also represent parties in other proceedings.

## APPENDIX 2

### Flowchart for Determining Who is Authorized to Sign Consent for Special Education Evaluations & Services



## APPENDIX 3

### A Guide for School Social Workers<sup>13</sup>:

#### Questions for Caregivers and Foster Care Agency Staff

It is not uncommon for someone other than a student's birth or adoptive parent to request a special education evaluation or services, or to appear at a social history meeting when a special education referral has been initiated. These are sample questions that DOE staff may ask caregivers and professionals to help determine who the legal decision maker is for special education purposes.

If either of the parents is incarcerated, please refer to Appendix 5, [Tips for Working with Children of Incarcerated Parents](#).

#### Questions for Caregivers

- What is your relationship to the student?
  - Are you a relative of the student (e.g., grandparent, stepparent, aunt, brother, cousin)?
  - Are you the child's legal guardian?<sup>14</sup>
  - If not, who is the child's legal guardian?
  - How can I contact them?
- Does the student currently live with you?
  - If so, how long has the student been living with you?
  - How long do you anticipate the student will live with you?
  - If not, with whom does the student live?
  - What is their relationship to the student?
  - How can I contact them?

When students are not living with their birth or adoptive parents, you should inquire if the student is currently in foster care. For students in foster care, you will want to know:

- Are you the student's foster parent?
- If so, how long have you been this student's foster parent?
- What is the name of the foster care agency?
- What is the foster care agency caseworker's name and phone number? What is the supervisor's name and phone number?
- Do you have any contact with the student's birth or adoptive parents? What is the best way to reach them?

#### Questions for Foster Care Agency Staff

In New York City, when the Administration for Children's Services (ACS) removes a child from their home, the child is usually placed under the care of a particular foster care agency. That agency has primary case

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<sup>13</sup> Although the school social worker is preferable, in the event a school social worker is unavailable, another appropriate staff member may be designated.

<sup>14</sup> In New York State, a relative may become a child's legal guardian after serving as the child's foster parent through a program called KinGap. A person who has become a child's legal guardian through KinGap meets the definition of "parent" for special education purposes and has the right to make all educational and medical decisions for the child.

management responsibility for the child and the most direct, regular contact with the birth and foster families. The following are questions you may want to ask the child's foster care agency caseworker or other agency staff for children in foster care:

- How long has the student been in foster care?
- Have the student's birth or adoptive parents' rights been terminated or surrendered? Have their educational decision-making rights have been limited by a court order?
- If the student's birth or adoptive parents' rights were terminated or surrendered or their educational decision-making rights were limited by a court order,
  - Has a judge made any orders that a specific person can make educational decisions for the student?
  - Are you aware of any reason why the student's current foster parent cannot assume the role of parent for special education purposes?
  - If no foster parent is available (e.g., student lives in a group home or other congregate care setting, or the current foster parent is an emergency placement only), are you aware of someone else in the student's life who may be willing to serve as a surrogate parent? How can I contact this person?
- Is there a court order limiting the birth or adoptive parents' access to the school, school records, or DOE personnel?
- If the birth or adoptive parents retain their rights,
  - What is the best way to contact them?
  - Do the birth or adoptive parents have regular contact with the student? With the foster care agency?

## Documentation

If the birth or adoptive parents no longer retain parental rights, or their right to make educational decisions has been limited by court order, request documentation – such as court papers or other substantiating documents – from the foster care agency caseworker for the student's file.

## Additional Information

If appropriate, you may ask the foster care agency caseworker if someone from the agency can participate in the social history meeting or provide other information, as the agency may have the most complete developmental history if a student has been in foster care for an extended time. You should also request additional assistance from the foster care agency caseworker if initial efforts to locate the birth or adoptive parent are not successful. Please keep in mind that some information relating to a student's child welfare case is confidential.

Finally, you may want to obtain additional information from other professionals involved in the student's child welfare case, particularly if you have questions about the legal status or need help locating the parent. Children with abuse and neglect cases in Family Court are represented by attorneys, as are parents, and there are sometimes additional social workers or Court Appointed Special Advocates (CASAs) involved in a child's case. You should be able to obtain contact information for these attorneys and other professionals from the student's foster care agency caseworker or foster parent.



## APPENDIX 4

### Tips for Working with Children of Incarcerated Parents

Many education laws and policies can help support children with incarcerated parents. This handout summarizes several laws and policies and includes information on how you can locate and communicate with parents in correctional facilities to involve them in their child's education.

If you have additional questions about locating or working with incarcerated parents, contact the surrogate parent liaison for your District Office or Committee on Special Education (CSE).

#### Students living in temporary housing

If a student is temporarily living with others because of parental incarceration, they may be eligible for protections under the Every Student Succeeds Act (ESSA)/McKinney-Vento Homeless Assistance Act, which is a federal law that grants important educational rights to students in temporary housing. These protections include:

- The right to enroll in the local school or remain in the student's school of origin;
- The right to immediate enrollment and full participation in school, even without the documents normally required of permanently housed students;
- The right to transportation to/from where the student is currently residing and the school of origin;
- Automatic eligibility for free breakfast and lunch;
- Access to Title I services; and
- Assistance from the DOE Students in Temporary Housing liaison.

If you have questions about a student's eligibility under McKinney-Vento or need help accessing services for a student, contact the [Student in Temporary Housing Regional Manager](#) for your district. You can also call the New York State Technical and Education Assistance Center for Homeless Students (NYS-TEACHS) at 1-800-388-2014.

#### Students with Disabilities

The DOE staff must identify a student's **parent**:

- Whenever informed parental consent is needed (i.e., when the child is initially referred for an evaluation, when there is an initial recommendation for special education services, and when a reevaluation is needed, either as a result of a mandated three-year reevaluation or a requested reevaluation); and
- Prior to the annual review of a student's IEP.

There is an important distinction between a parent who is **imprisoned** (sentenced) and a parent who is **incarcerated but not yet been sentenced**. These differences will be discussed more fully below. Review the section above regarding [Who can act as a Parent?](#) for more information regarding determining who can serve as the student's parent.

STEP 1: If the birth or adoptive parent is in prison, locate the incarcerated parent and determine if they are also “imprisoned”

Legally, a parent is “**imprisoned**” when they have pled guilty to or been convicted of a crime and been sentenced to serve time in a correctional facility. When a student’s birth or adoptive parent has been convicted of a crime and imprisoned, and is in the care of a custodian or legal guardian, you are not required to contact the parent, although you may want to in some cases. The student’s caregiver may be considered the custodian and can serve as the student’s parent for educational purposes. See [Who can act as a Parent?](#) for more information.

However, if the parent is **incarcerated but has not yet been sentenced** – that is, they are awaiting trial, or the trial is in progress – the parent may still have educational decision-making rights. In some cases, the parent will have designated another individual to act as a person in parental relation prior to being incarcerated. In that case, even if the identified individual has authority to act as the student’s parent, it may be in the student’s best interest for you to contact the incarcerated parent to involve them in educational planning for the student. You may want to speak to the person in parental relation to gain a sense of the parent’s involvement.

To determine if an individual is **imprisoned** or **incarcerated but not yet sentenced**, you will need to locate the parent. To do so, you will need the parent’s name, particularly the last name, and their date of birth or year of birth (if known). If a parent has been incarcerated under an alias, it is helpful to know the alias; you may still be able to locate the parent with a date of birth.

Once you have the parent’s name and date of birth, go to <http://www.theinmatelocator.com>. Through this website, you can search the federal, state, and local systems, and can also search for individuals in immigration detention. You may need to check each of these systems to find the parent. Once you locate the parent, you can access the address and phone number for the facility.

#### *Local Correctional Facilities (including New York City & Rikers Island)*

The New York City website will indicate whether the parent has been sentenced (and is therefore **imprisoned**), or if the parent is **incarcerated but not yet sentenced**.

If the parent is in a non-NYC facility that does not have an online locator, call the facility directly.

#### *New York State Correctional Facilities*

If you locate a parent in the New York State system, then the parent has already been sentenced and is considered **imprisoned**.

#### *Federal Correctional Facilities*

To find out if a parent has been sentenced (and is therefore **imprisoned**), call the correctional facility where the parent is located and ask to speak with the parent’s correctional counselor.

**NOTE: If you are unable to locate the parent in any of the correctional facilities, you may need to assign a surrogate parent for the student. Contact the surrogate parent liaison for more information.**

## STEP 2: Contact the incarcerated parent

When **incarcerated parents have not been sentenced**, and for many incarcerated parents whose children are in foster care, you are required to contact the parent to involve them in special education decision making. Attempts should be made to contact the parent by mail and by phone. You may want to contact incarcerated parents in other situations as well.

### *Within Local or New York State Correctional Facilities*

Once you have located the parent, call the facility and ask to speak with the parent's correctional counselor. The correctional counselor should be able to set up a conference call, receive email or faxes, and/or arrange for a notary for the parent. If you are having trouble reaching or working with the correctional counselor, ask to speak with the senior guidance counselor or the Deputy Superintendent of Programs (DSP). To reach the DSP at a state facility, dial the facility's main number, followed by extension 4000.

Parents incarcerated in a New York State correctional facility are given a Department Identification Number (DIN#). Include this number on any correspondence sent to the parent.

Parents incarcerated in New York City correctional facilities are given a New York State Identification (NYSID) number. Include this number on any correspondence sent to the parent.

### *Within Federal Correctional Facilities*

Call the facility and ask to speak with the parent's correctional counselor. Correctional counselors are assigned alphabetically based on the last name of the parent. Explain who you are and why you are trying to reach the parent. The counselor should be able to help facilitate communication with the parent.

There are federal detention centers throughout the state, but parents in the federal system may be placed in an out-of-state facility as well. Once you locate a parent, have their name, commitment number (if available, and date of birth handy when you call.

Parents incarcerated in a federal correctional facility are given a Register Number. Include this number on any correspondence sent to the parent.

NOTE: Communication with a parent in a federal correctional facility can be very difficult, especially outside of New York City. If you are having trouble finding someone to help you work with the parent, contact your [surrogate parent liaison](#) immediately.

For additional support or guidance regarding contacting incarcerated or imprisoned parents, the following organizations may be able to assist:

- [The Osborne Center for Justice Across Generations](#)

- [The Fortune Society](#)

## Designating a person in parental relation

In some cases, an incarcerated parent may want to designate someone else to make educational decisions on their behalf.<sup>15</sup> The parent can revoke the designation at any time. For guidance, see [Designation by Parent to Act as a Person in Parental Relation](#).

Note that a period longer than 180 days (six months) may **not** be specified. Therefore, it may be necessary for an incarcerated parent to complete a designation more than once. Once the designation period expires, the right to make educational decisions will return to the parent. See [Appendix 5: Designation of Person in Parental Relation for Purposes of Educational Decisions](#) for a sample form.

## Access to Records

The Family Educational Rights and Privacy Act (FERPA) grants all parents access to their child's school records unless a court order or other legal document specifically revokes these rights, if the child is under the age of 18 years. The term "parent" means a birth or adoptive parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian. In New York City, all non-custodial parents, **including incarcerated and imprisoned parents**, have the right to review their child's records unless a judge has ruled otherwise. Records can be mailed to the parent (make sure to include the appropriate identification number), or in some circumstances may be faxed to the parent's correctional counselor.

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<sup>15</sup> A parent's right to designate someone as a "person in parental relation" comes from Article 5, Title 15-A of the General Obligations Law. That person (the "designee") would then fit the definition of parent included in Part 200.1(ii) of the regulations of the State Education Department, which are summarized in [Who can act as a Parent?](#)

## APPENDIX 5

### Designation of Person in Parental Relation for Purposes of Educational Decisions

Child's name: \_\_\_\_\_ Child's date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

I, \_\_\_\_\_, am the parent of the above-named child.  
Parent's full name

I understand that I may voluntarily designate another person to act for me as a person in parental relation in order to make decisions regarding my child's education. I understand that I may revoke this designation at any time by notifying, either orally or in writing, the designee or an educational provider at my child's school, or by executing a subsequent designation. To my knowledge, there is no prior order of any court in any jurisdiction currently in effect that would prohibit me from making this designation.

In accordance with Section 5-1551 of the General Obligations Law, I am designating  
\_\_\_\_\_ as a person in parental relation to my child.  
Full name of designee

Designee's address:

Street Apt Number

City State Zip

Designee's telephone number: Home (\_\_\_\_) \_\_\_\_\_  
Work (\_\_\_\_) \_\_\_\_\_  
Cell (\_\_\_\_) \_\_\_\_\_

Parent's address:

Street Apt Number

City State Zip

Parent's telephone number: Home (\_\_\_\_) \_\_\_\_\_  
Work (\_\_\_\_) \_\_\_\_\_  
Cell (\_\_\_\_) \_\_\_\_\_

Date designation begins: \_\_\_\_\_

If not specific date, contingent event which will start designation: \_\_\_\_\_

Length of designation (no more than six months): \_\_\_\_\_

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Notary Public

If designation is for a period of more than 30 days, (1) form must be notarized, and (2) written consent of the designee to such designation must be included.

### Consent of Designee to Act as Person in Parental Relation for the Purposes of Educational Decisions

Student Name: \_\_\_\_\_ Student date of birth: \_\_\_/\_\_\_/\_\_\_

I, \_\_\_\_\_, consent to the designation by \_\_\_\_\_ to  
Name of Designee Name of Parent  
act as a person in parental relation to the student listed above for purposes of educational decisions.

\_\_\_\_\_  
Signature of Designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Notary Public

## APPENDIX 6

### Form Letter – Notice of Potential Need for a Surrogate Parent

Date:

[Birth or Adoptive Parent]

[Birth or Adoptive Parent's Home Address]

Student Name:

DOB:

NYC ID#:

Dear Parent:

This letter is being sent to your last known address to notify you that the NYC Department of Education plans to assign a surrogate parent to make special education decisions for your child,

\_\_\_\_\_.

We have tried to locate you but have been unsuccessful. Under federal and state law, when we are unable to locate the parent of a student who needs or may need special education evaluations or services, a surrogate parent may be assigned.

The surrogate parent will have authority to sign consent for special education evaluations and services for your child. The surrogate parent will be invited to annual Individualized Education Program (IEP) meetings and can request additional IEP meetings should the need arise. The surrogate parent must act in your child's best interest and will have the same due process rights that a birth or adoptive parent would have.

If you feel your child does not need a surrogate parent, please contact the NYC Department of Education immediately by calling \_\_\_\_\_ at \_\_\_\_\_.

Otherwise, we will proceed to assign a surrogate parent for your child. If you contact the NYC Department of Education at any time after a surrogate parent has already been assigned, we will end the services of the surrogate parent if they are no longer required and will involve you once again in decisions regarding the education of your child.

Sincerely,

\_\_\_\_\_

cc: [Representative(s) of the foster care or other agency involved in the care of the student]

## APPENDIX 7

### Surrogate Parent Questionnaire

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Languages Spoken: \_\_\_\_\_

Please describe any experiences you have had with children or adults with disabilities (e.g., developmental disabilities, learning disabilities, mental illness).

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Please describe any experiences you have had with the New York City school system.

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Please share any other information (e.g., professional background, hobbies, skills, life experiences) that you think might make you a good match for a particular student.

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Why do you want to be a surrogate parent?

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Would you be willing to serve as a surrogate parent for any student in the city who may need one? Or, are there geographic or other limitations you would like us to know about?

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## APPENDIX 8 FINGERPRINTING PROCEDURES

Fingerprinting and clearance for surrogate parents will be paid by the NYCDOE through a Pay Memo.

The following format may be used for the pay memo, which should be given to the surrogate parent to hand in to the Fingerprinting Processing Unit.

[DOE Letterhead]

To: Fingerprinting Processing Unit

From: [Supervisor name], Special Education Office

Subject: Fingerprinting Referral Letter with Fingerprinting Fee Payment Information

Date: [Current Date]

The individual noted below should be fingerprinted and processed as part of qualifying as a surrogate parent at an IEP meeting. Payment of the fingerprinting fee should be processed as a Journal Entry (JO) from District 50; Quick Code 034644; Object Code 403; Location M11V; Activity Code: I4F5.

Name: [Name of potential surrogate parent]

Title: Surrogate Parent

Social Security Number: [SSN of potential surrogate parent]

Date of Birth: [DOB of potential surrogate parent]

## APPENDIX 9

### Checklist for Surrogate Parent Assignments

Date:

Name of student:

Student's date of birth:

Name of surrogate parent:

Relationship to the student (if applicable):

Agencies with whom student is involved (if applicable):

Reason for surrogate assignment (check only one box):

- Student's parents are unknown.
- Student's birth or adoptive parents are deceased AND there is no other person in the student's life who meets the definition of "parent."<sup>16</sup>
- Student's birth or adoptive parents' whereabouts are unknown, and reasonable efforts to locate them have been attempted and documented in the SESIS Events Log.
- Student's birth or adoptive parents' rights have been terminated, surrendered, or limited to not include the right to make educational decisions AND there is no other person in the student's life who meets the definition of "parent".
- Student's birth or adoptive parents' right to make education decisions has been limited by a judge, and the judge has ordered that a surrogate parent be appointed.
- Student is an unaccompanied homeless youth.

Eligibility to serve as surrogate parent (all boxes must be checked):

- Surrogate parent is not an officer, employee or agent of the Department of Education, the State Education Department, or any other agency involved in the education or care of the student (unless they are the student's foster parent).
- Surrogate parent does not have any personal or professional interest that conflicts with the interest of the student.
- Surrogate parent has knowledge and skills to ensure adequate representation of the student (see below).

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<sup>16</sup> See "[Who is a parent?](#)" or Definition of a Parent section of the [Special Education Standard Operating Procedures Manual](#).

- Surrogate parent has met all security clearances and fingerprinting requirements (not required of foster parents).

Steps to ensure that the surrogate parent has knowledge and skills for adequate representation (all boxes must be checked):

- Review the rights and responsibilities of surrogate parents. Responsibilities include:
  - Signing a Surrogate Parent Statement of Agreement to act as a surrogate parent for a particular student (see the Appendix for a sample)
  - Meeting with the student and communicating with them in their preferred language
  - Reviewing the student's relevant educational and clinical records
  - Speaking to the teacher and other appropriate school staff about the student's needs
  - Providing a social history or social history update, if requested
  - Participating in IEP meetings and other school meetings
  - Considering and consenting to proposed evaluations and placements, as appropriate
  - Exercising due process rights on behalf of the student
  - Serving as a surrogate parent for as long as required, but at least through the first IEP and recommendation cycle that follows assignment
- Inform the surrogate parent that they will have access to confidential student information, and it is essential that this information remain strictly confidential. Request that, when they have concluded serving as the surrogate parent, they return any student records so that they may be shredded to ensure that confidential information is destroyed.
- Provide the surrogate parent with a copy of the Procedural Safeguards Notice and explain their due process rights.
- Provide the surrogate parent with a copy of the [Family Guide to Special Education Services for School-Age Children](#) or [Family Guide to Preschool Special Education Services](#) (as applicable), or direct the surrogate parent to how to access these materials.
- Describe the special education continuum to the surrogate parent.
- Explain reimbursement policies and procedures (this does not apply to foster parents who are assigned as surrogate parents for their foster children).

Completing the Surrogate Parent Assignment Process (check appropriate boxes):

- Complete the Surrogate Parent Questionnaire (if including on the surrogate parent list)
- If including on the surrogate parent list, add the surrogate parent's name and contact information along with any special considerations such as limitations to particular students, agency affiliation, language skills, etc.
- The new surrogate parent must complete and sign the [Surrogate Parent Agreement](#), included in the Appendix. Provide a copy of the signed Surrogate Parent Agreement to the new surrogate parent and upload the agreement to SESIS.
- Provide the surrogate parent with:
  - The [Surrogate Parent Toolkit](#);
  - The student's most recent IEP, if existing, and any assessment reports that will be discussed at any upcoming IEP meetings;

- School and agency contact information, as appropriate; and
  - Surrogate parent reimbursement forms (on school/CSE letterhead).
- Notify the IEP team in charge of the student's case that a surrogate parent has been assigned; forward the team the surrogate parent's contact information and a signed copy of the Surrogate Parent Agreement; and inform the IEP team that they must update SESIS with the surrogate parent's contact information.
- When applicable, surrogate parents must be contacted to schedule a social history within applicable timelines and must be contacted to schedule IEP meetings.

## APPENDIX 10 Surrogate Parent Agreement

I, \_\_\_\_\_, agree to fulfill the role of surrogate parent on behalf of \_\_\_\_\_ (“the student”) who may be in need of special education services.

Upon assignment as a surrogate parent for the student, I hereby agree:

- To represent the student’s best interest
- To maintain the strictest confidence regarding all issues pertaining to the student
- To be familiar with the educational options available to the student
- To acquaint myself with the student and their educational program
- To fulfill this role on behalf of the student at least until the first annual review that occurs after the date of this Agreement

I will immediately notify the surrogate parent liaison if I become unable to fulfill this role.

I understand that I may not be employed by the Department of Education, State Education Department, the NYC Administration for Children’s Services, or any other agency involved in the education and care of the student, unless I am currently the foster parent of the student named above.

Date: \_\_\_\_\_

\_\_\_\_\_  
Surrogate Parent’s Signature

\_\_\_\_\_  
DOE Representative Name & Title

\_\_\_\_\_  
DOE Representative Signature

# APPENDIX 11

## Non-Parent Custodian Affidavit



### NON-PARENT CUSTODIAN AFFIDAVIT

Date: \_\_\_\_\_

#### STUDENT INFORMATION

LAST NAME		FIRST NAME		MIDDLE NAME	STUDENT ID #
DATE OF BIRTH (mm/dd/yyyy)	AGE	SEX M F	HOME ADDRESS (house number and street)		APT #
BOROUGH	STATE		ZIP CODE	HOME PHONE NUMBER ( )	

#### NON-PARENT CUSTODIAN INFORMATION

LAST NAME		FIRST NAME		RELATIONSHIP TO STUDENT
HOME ADDRESS (house number and street)				
HOME PHONE NUMBER ( )		WORK PHONE NUMBER ( )		CELL PHONE NUMBER ( )

This student is living with me for the following reasons:

Does the student intend to remain at your address? \_\_\_\_\_

For what period of time will he or she be residing with you at the location above? \_\_\_\_\_

#### PARENT/GUARDIAN INFORMATION

LAST NAME		FIRST NAME		RELATIONSHIP TO STUDENT
HOME ADDRESS (house number and street)				
HOME PHONE NUMBER ( )		WORK PHONE NUMBER ( )		CELL PHONE NUMBER ( )

*In the event that this custodial arrangement changes, I agree to contact the student's school immediately.*

*I declare that I have assumed custody and/or control of this child and that he/she is residing with me at the location noted above AND*

*I declare the birth/adoptive/legal guardian has relinquished custody and/or control over to the child to me AND*

*I declare I am financially responsible for the child AND*

*I declare that the information provided above is true and correct.*

Non-Parent Custodian Signature: \_\_\_\_\_

STATE OF NEW YORK )

SS:

COUNTY OF \_\_\_\_\_ )

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ year

\_\_\_\_\_  
Notary Public

## APPENDIX 12

### Surrogate Parent Toolkit

#### Frequently Asked Questions and Answers for Surrogate Parents

##### What is a surrogate parent?

A surrogate parent represents the educational interests of a student whose parents are not available to participate in special education decision making. A surrogate parent makes decisions about special education evaluations, services, and placement to ensure that the student is receiving an appropriate education.

##### When does a student need a surrogate parent?

Federal law requires schools to receive a parent's informed consent before providing special education evaluations or services. A surrogate parent may be assigned when the student does not have another individual who can serve as the "parent." This would typically be when: 1) a student's birth or adoptive parents are deceased; 2) the birth or adoptive parents cannot be located; or 3) parental rights have been terminated or surrendered, or where their educational decision-making rights have been limited by a court order. Certain homeless youth living on their own may also require a surrogate parent.

##### Who assigns a surrogate parent?

A surrogate parent can be assigned by the DOE or appointed by a judge overseeing the child's family court case.

##### Who can be a surrogate parent?

Anyone can serve as a surrogate parent as long as they:

- are not an employee of the student's foster care agency or school district (unless they are also the student's foster parent),
- have no other conflict of interest with the student,
- have the knowledge and skills needed to be a surrogate parent, and
- are committed to representing a student's best interests with the strictest confidentiality.

A relative, family friend, mentor, or foster parent may volunteer to act as a student's surrogate parent.

Individuals who meet these requirements must be fingerprinted and pass a DOE security clearance unless they are the student's foster parent.

##### What are my responsibilities as a surrogate parent?

A surrogate parent represents a student's best interests with the strictest confidentiality. Surrogate parents may request evaluations, attend Individualized Education Program ("IEP") meetings, and, if appropriate, consent to special education placements and services. Surrogate parents may also attend parent-teacher conferences, suspension hearings, and other school meetings. In order to make informed decisions, surrogate parents should review the student's educational records, speak to the student's teachers and school staff, and visit any proposed educational placements.

### Should I consider the student's opinion when making decisions?

Surrogate parents should meet and become familiar with the student whom they represent. Depending on the student's age, the surrogate parent may ask the student to discuss their educational experiences and should consider the student's opinions when making special education decisions. Students age 14 and older must be invited to participate in their IEP meeting, and younger students should be encouraged to attend when appropriate.

### What should I do if I disagree with the school's recommendation?

If you do not agree with the school's recommended program, or if the student is not receiving the services included in their IEP, federal and state law give parents the right to challenge the school district's actions. These same rights apply to surrogate parents. A surrogate parent can request new evaluations, a new IEP meeting, mediation, or a due process hearing. See the [Procedural Safeguards Notice](#) for more information on your due process rights.

### How do I get reimbursed for expenses?

Surrogate parents will be reimbursed for expenses incurred when performing duties representing their students. Surrogate Parents are paid up to \$50 per day of service (\$20 for the first 2 hours, \$6 per hour after that, for a maximum of \$50). Please request using the [SIPP form](#) for all payments.

### Is training available to surrogate parents?

The Department of Education offers an orientation for individuals interested in becoming surrogate parents. Contact [specialeducation@schools.nyc.gov](mailto:specialeducation@schools.nyc.gov) for more information.

### How can I get help if I have questions about what to do for the student I represent?

Each Committee on Special Education (CSE) and District Superintendent's Office in New York City has a designated surrogate parent liaison who is available to identify, train, and support surrogate parents. Surrogate parents should also speak to the student's foster care agency caseworker, lawyer, or teacher if they have specific questions about the student.



