

Surrogate Parents

It is the duty of Idaho's Part C lead agency to ensure the assignment of an individual to act as a surrogate parent to meet the needs of infants and toddlers whose parent(s) are unknown or unavailable [34 CFR 303.422]. The Infant Toddler Program ensures that all eligible infants and toddlers have a child advocate representing them in critical decisions involving Part C services.

A surrogate parent needs to be identified when:

- A parent/guardian cannot be identified; **OR**
- The whereabouts of a parent/guardian are unknown after reasonable attempts have been made to locate them* ; **OR**
- The child is a ward of the State of Idaho under the laws of the state and parental rights have been terminated.

*Reasonable Attempts for a New Referral – There must be at least three documented attempts to make contact with the parent/guardian. All attempts to contact the parent/guardian must be documented. The last attempt must be in writing using ITP's PWN form. The initial contact must be made no later than five business days from the referral date and there must be at least three business days between any of the attempts to contact the parent/guardian.

*Reasonable Attempts for an Enrolled Child - There must be at least three documented attempts to make contact with the parent/guardian. All attempts to contact the parent/guardian must be documented in a CSR. The last attempt must be in writing using ITP's PWN form. There must be at least three business days between any of the attempts to contact the parent/guardian.

Definitions

Parent - Under the Individuals with Disabilities Education Act (IDEA), the term parent is defined more broadly than just the child's natural or adoptive parent. For the purposes of the Idaho Infant Toddler Program, a parent is defined as one of the following:

- A biological or adoptive parent(s) of a child (unless there has been legal action that terminates parental rights or there is a judicial order preventing a non-custodial parent from assuming legal responsibilities);
- A foster parent if the foster parent is appointed by the Department to be a surrogate parent. See "Surrogate Parent" below.
- A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decision for the child (the term does not include the State if a child is a ward of the State);

NOTE: Under Idaho law, a "guardian" means a legal guardianship authorized by a court order. As a result, once a court signs an order authorizing guardianship, the guardian has the same rights as a parent, regardless of whether parental rights have been terminated or not. If a guardianship is court ordered, a court will sign an "order" granting guardianship. Courts will typically sign "Letters of Guardianship" which proves that the guardianship exists and is legal.

NOTE: If questions arise regarding any other documentation provided by the family, please review with your supervisor.

- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives*, **OR** an individual who is legally responsible for the child's welfare**;
- A surrogate parent who has been assigned in accordance with §303.422.

*Acting In The Place Of a Biological or Adoptive Parent

Idaho law does not address the phrase "acting in the place of a biological or adoptive parent." Additionally, there is no requirement in the Part C Regulations that a grandparent, stepparent, etc. have any legal documentation. Idaho law does allow for parents or guardians to be able to delegate some or all of their parental rights via a power of attorney. It is preferable for the person "acting in the place of a parent" to have such documentation, but not required.

NOTE: If no documentation is provided, the service coordinator must contact the biological/adoptive parent to confirm the requesting individual has permission to act in place of the biological/adoptive parent.

A person "acting in the place of a parent" does NOT have the same rights as a parent. They only have those powers granted under 34 CFR §303 – i.e., consent to assessments, early intervention services, individualized family service plan, etc. For someone to gain full parental rights to custody and decision-making for a child would require that a person be a parent, be a guardian (in Idaho means a court-ordered guardian), or have full written power of attorney delegating full parental rights.

**An Individual Who Is Legally Responsible for the Child's Welfare

Idaho law does not address the phrase "an individual who is legally responsible for the child's welfare." However, the language of the definition requires that a person be legally responsible. To be legally responsible, there must be a legally enforceable duty, such as a duty mandated by court order or statute.

Ward of the State - Defined as a child who is in the custody of the state. For Idaho, this means that the child is in foster care and the court has given the Department of Health and Welfare legal custody of the child.

Surrogate Parent Rights and Responsibilities

The surrogate parent is assigned by the Department specifically to protect the rights of the child under the Idaho Infant Toddler Program and make early intervention service decisions for the child. The role of the surrogate parent does not require the surrogate parent to be responsible for the care, maintenance, or financial support of the child. The surrogate parent does not have the legal authority to act on behalf of the child outside of the Infant Toddler Program.

A surrogate parent assumes the same rights and responsibilities under the Infant Toddler Program as a parent for the child including but not limited to:

- Providing all needed consents (e.g., consent for screening, evaluation, assessment, or service delivery, authorization for release of information);
- Representing the child during evaluations and assessments, including being present and contributing as appropriate;

- The development, implementation, and signing of the child's Individualized Family Service Plan (IFSP), including reviews and annual meetings;
- The ongoing provision of early intervention services to the child;
- Pursuit of complaint resolution procedures on behalf of the child; and
- Any other rights established under Part C of IDEA.

Qualifications of Surrogate Parents

The Infant Toddler Program must ensure that the person selected as a surrogate parent meets certain criteria. These include:

- Having no personal or professional interest that conflicts with the interest of the child, meaning that the surrogate parent cannot benefit personally or professionally from decisions regarding the child;
- Having knowledge and skills that ensure adequate representation of the child or having a commitment to gain the knowledge and skills of the early intervention system and the child's special needs;
- Employees of the Infant Toddler Program, Child Welfare Program or any other public agency, or early intervention provider that delivers services to the child or the child's family may **NOT** serve as the Surrogate Parent or "Person acting in the place of a parent;" and
- Being at least eighteen (18) years of age.

Determining the Need for a Surrogate Parent

The following steps must be completed to determine whether a child needs a surrogate parent:

- The Infant Toddler Program must ascertain the legal relationship between the adult caregiver and child prior to screening, evaluation, and assessment.
- The Service Coordinator and their supervisor must meet to determine the need to assign a surrogate parent to a child if any of the following conditions are met:
 - No parent (as defined above) can be identified; **OR**
 - The whereabouts of a parent, after reasonable efforts, cannot be determined; **OR**
 - The child is a ward of the State of Idaho under the laws of the state.

NOTE: If parental rights have not been terminated, and the bio or adoptive parent's whereabouts are known, ITP **MUST** obtain any required IDEA, Part C signatures from the bio or adoptive parents.

Assigning a Surrogate Parent

When the Service Coordinator and their supervisor identify the need for a surrogate parent, reasonable efforts to assign the surrogate parent must be made no more than 30 days after the need is determined. The following steps must be taken to assign a surrogate parent to a child:

- If a child is involved with CFS, the Service Coordinator **MUST** work with the Child Welfare case worker to identify any potential surrogate parents;

NOTE: There may be a variety of unknown circumstances encountered when identifying a surrogate parent for a child involved in CFS (i.e. foster parent, pre-adoptive parent, biological parent, termination of parental rights, etc.). These circumstances make it vitally important for Service Coordinators to work closely with the Child Welfare case worker to ensure the appropriate surrogate parent is identified.

- Contact potential surrogate parent to confirm agreement of assignment;
- The Service Coordinator and their supervisor complete the Surrogate Parent Determination Process Form and attach in ITPKIDS, and record Surrogate Parent information in the Associated Person node in ITPKIDS;
- Notify the Child Welfare case worker of the surrogate parent assignment by sending a copy of the Surrogate Parent Determination Process Form to the Child Welfare case worker; and
- Notify the multidisciplinary team of the surrogate parent assignment.

NOTE: A judge who oversees the child's case can assign a surrogate parent for that child in accordance with a Judicial Decree or Order. In this instance, it is not necessary for ITP to assign a surrogate parent. Documentation of the judicial decree or court order must be attached in ITPKIDS.

Ending the Assignment of a Surrogate Parent

There may be instances in which the need for a surrogate parent no longer exists. Additionally, there may be instances in which a change needs to be made to a surrogate parent assignment. In either instance, the Service Coordinator must meet with their supervisor to determine the need to end or assign a new surrogate parent.

NOTE: If ITP has determined there is no longer a need for a Surrogate Parent and the child is involved in Child Welfare, the Service Coordinator must work with the Child Welfare case worker to ensure they are involved with the decision to end the surrogate parent assignment.

A surrogate parent assignment may be ended when:

- The conclusions of the initial evaluation and assessment indicate that the child does not meet the eligibility criteria to qualify for early intervention services;
- The surrogate parent wishes to relinquish this responsibility;
- The surrogate parent no longer meets the qualifications for being a surrogate parent;
- The child's circumstances have changed and a surrogate parent is no longer needed (i.e., child is no longer eligible for ITP, biological parents whereabouts are known, etc.); or
- The Infant Toddler Program determined it is in the child's best interested for the surrogate parent assignment to end.

NOTE: The Infant Toddler Program reserves the right to end a surrogate parent assignment at any point in time. A surrogate parent decision is not subject to appeal.

Once the determination to end a surrogate parent has been made, the Service Coordinator must complete the following steps:

- Notify the current surrogate parent of the effective end date and the reason for ending their assignment;
- Document the effective end date and reason for ending their assignment on the Surrogate Parent Determination Process Form, attach in ITPKIDS, and update the Surrogate Parent status in the Associated Person node in ITPKIDS;
- If the child is involved with CFS, notify the Child Welfare case worker of the surrogate parent effective end date and the reason for ending their assignment;
- Notify the multidisciplinary team of ending the surrogate parent assignment; and
- If a new surrogate parent needs to be assigned, follow the steps in the Determining the Need and Assigning a Surrogate Parent in the sections above.

Surrogate Parent Process When Child Exits at Age Three

- If a child exiting the program has a Surrogate Parent, record an end date for the Surrogate Parent in the Associated Persons node in ITPKIDS.
- If a child exiting the program has a Surrogate Parent, the exit Prior Written Notice must be sent to the Surrogate Parent along with a copy to the Child Welfare case worker.
- Once a child exits the Infant Toddler Program, a Surrogate Parent does **NOT** have the right to request records for that child.

NOTE: If a Surrogate Parent obtains legal custody (adoption, etc.) of a child after they exit the Infant Toddler Program, they would have the right to request records for that individual child.