

# North Carolina Infant-Toddler Program Procedural Guidance

Reference: Procedural Safeguards Policy

## *Surrogate Parent*

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### Introduction

Federal regulations and state policy require that a surrogate parent be appointed to ensure that a parent is assigned to each child participating in the NC Infant-Toddler Program (NC ITP) who lacks a representative with respect to the provision of Infant-Toddler Program services. Federal regulations require the appointment of a surrogate parent when:

- A parent cannot be identified;
- Reasonable efforts to locate a parent are unsuccessful, or
- The child is a ward of the state under the laws of the state.

### Definitions

**Ward of the state** is defined as a child who is in the custody of the state (county Department of Social Services). (See Section 303.37 Ward of the State of the Federal Register, Vol. 176, No. 188, September 28, 2011)

**The term “parent”** under the Individuals with Disabilities Education Act (IDEA) is defined more broadly than just the child’s natural or adoptive parent (See Section 303.27 Parent of the Federal Register, Vol. 176, No. 188, September 28, 2011). For the purposes of the North Carolina Infant-Toddler Program, **Parent** is generally defined as:

- a biological or adoptive parent of the 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 (unless there is a conflict of interest);
- an authorized guardian (other than the county Department of Social Services);
- an individual with whom the child lives that is acting in place of the biological or adoptive parent (e.g., grandparent, step parent or other relative); or
- a surrogate parent who has been assigned in accordance with Infant-Toddler Program Policy.

A **surrogate parent** is an individual appointed to serve as the parent in all matters related to the child’s participation in the NC ITP, including making early intervention decisions for a child. The IDEA and NC ITP policy require that a surrogate parent be appointed when a parent (as previously defined) cannot be located or identified and the child is a ward of the state (See Section 303.422 Surrogate of the Federal Register, Vol. 176, No. 188, September 28, 2011).

## **Surrogate Parent Rights and Responsibilities**

The surrogate parent is appointed specifically to protect the rights of the child under the Infant-Toddler Program, but is not legally liable for actions taken in good faith on behalf of the child in protecting these rights. The role of 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, unless otherwise legally appointed to do so.

A surrogate parent assumes all parental rights and responsibilities for the child in all Infant-Toddler Program matters, including but not limited to:

- Providing all needed consents (e.g., consent for evaluation 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 (including reviews and annual meetings);
- The ongoing provision of early intervention services to the child, and
- Pursuit of complaint resolution procedures on behalf of the child.

## **Qualifications of Surrogate Parents**

A surrogate parent must meet certain criteria. These include:

- Not being an employee of the CDSA or any other public agency or provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
- 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 gaining the knowledge and skills of the early intervention system and the child's special needs;
- Having no prior history of abuse or neglect. The Children's Developmental Services Agency is responsible for checking references for potential surrogate parents. Criminal records checks may be conducted if the Children's Developmental Services Agency deems this necessary. The cost of any criminal records check is the responsibility of the Children's Developmental Services Agency;
- Having knowledge of and being sensitive to the factors in the child's ethnic background that may be relevant to advocating for the child;
- Having the ability to impartially advocate for the child; and
- Being at least eighteen (18) years old.

## **Procedure**

### **Identifying the Need for a Surrogate Parent**

When the county Department of Social Services has legal custody of a child, it will be necessary for the CDSA to identify the decision-making authority held by the biological or adoptive parent. If the biological or adoptive parent's authority has been restricted or removed for making decisions about education or for carrying out activities required by the program, the CDSA will need to determine if there is another person currently acting as the parent within the defined specifications in order to decide if a surrogate parent is needed. The identification process involves discussions with the

county Department of Social Services because every family situation is unique and may include nuances that need to be considered when identifying the need for a surrogate. These discussions must be guided by the definition of parent under the NC ITP and the responsibilities and qualifications of an NC ITP surrogate parent in order to appropriately complete the identification process. Once the need for a surrogate parent is identified, the CDSA must document the need using the ***NC ITP Surrogate Parent Identification of Need*** form.

## **Appointing a Surrogate Parent**

The CDSA should follow the steps below when appointing a surrogate parent:

1. The CDSA director or designee is responsible for appointing a surrogate parent within **30 calendar days of the identification of need**. The appointment of a surrogate parent must happen in consultation with the county Department of Social Services to assure that the person selected qualifies as a surrogate for the child under the requirements of the NC ITP. A surrogate may be appointed by the judge overseeing the child's case when the child is a ward of the state. This person may serve as the NC ITP surrogate parent, provided he/she meets the qualifications.
2. Once a surrogate parent has been selected, the CDSA director or designee must document the appointment of the surrogate parent using the ***NC ITP Surrogate Parent Identification of Need*** form. The original of the completed form is maintained in the child's NC ITP record.
3. The CDSA director or designee completes the ***NC Infant-Toddler Program Surrogate Parent Appointment Letter*** form and provides the letter to the appointed surrogate. The surrogate should sign and return the letter acknowledging his or her acceptance of the role and responsibilities. A copy of this signed letter must be sent to the county DSS and the EISC. The original must be filed in the child's NC ITP record.
4. If known and there are no circumstances that would preclude involvement (e.g., safety issue, court order), the natural or adoptive parent must be informed of the appointment of a surrogate parent (verbally, if possible, as well as in writing) using the ***NC Infant-Toddler Biological Parent Notification Letter***. The service coordinator is responsible for notifying the parent. A copy of this letter must be filed in the child's NC ITP record on the child.

## **Training a Surrogate Parent**

Anyone serving as a surrogate parent is required to participate in training provided by or approved by the Children's Developmental Services Agency. The training is to include, but not limited to, the following topics:

- The Infant-Toddler Program of the Individuals with Disabilities Education Act in regards to child and family rights, entitlements, and services offered;
- Developmental and emotional needs of eligible infants and toddlers relevant to the developmental level of the child at the time;
- Available advocacy services, and
- Relevant cultural issues, if the child's culture is different from that of the surrogate parent.

Training may be provided one-on-one, in a group, or through other approaches felt to be appropriate. When the Service Coordinator is working on a regular basis with the surrogate parent, the required training can be accomplished during initial visits with the surrogate parent. Training done in this manner can be individualized, will cover information about the Infant-Toddler Program, and does not require additional meetings or training sessions for the surrogate parent. **The**

**required training provided to surrogate parents, no matter who conducts it, must be documented.** A progress note should be used to document the completion of training and be filed in the NC ITP Record.

### **Terminating the Appointment of Surrogate Parent**

A surrogate parent may be relieved of his or her responsibility when:

- The surrogate parent wishes to relinquish this responsibility;
- The surrogate parent is no longer able to advocate effectively for the child;
- The surrogate parent no longer meets the criteria established for being a surrogate parent, or
- The child's circumstances have changed and a surrogate parent is no longer required.

After determining that the need for a surrogate parent no longer exists or that there is a need for a different surrogate parent to be appointed, the CDSA director or designee must notify the current surrogate parent of the effective date when his or her surrogate parent services are no longer needed using the ***NC Infant-Toddler Program Surrogate Parent Termination Letter***. A copy of this letter is to be sent to the county Department of Social Services and to the assigned service coordinator and filed in the child's NC ITP record.