



Book	Board of Trustees Policy
Section	200 Pupils
Title	Surrogate Parent
Code	237
Status	Active
Last Revised	October 6, 2022

Agora Cyber Charter School

Board of Trustees Policy

SURROGATE PARENT POLICY

The Board of Trustees of the Agora Cyber Charter School (“Charter School”) must ensure that an individual is assigned to act as a surrogate of a child when no parent or person acting as the parent can be identified, or Charter School, after reasonable efforts, cannot locate the parent, or the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11434 a(6).

20 U.S.C. § 1401 Definitions:

The term “Parent” means –

- a. a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by state law from serving as a parent);
- b. a guardian (but not the State if the child is a ward of the State);
- c. an individual acting in the place of a natural 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; or
- d. except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

42 U.S.C. § 11434A McKinney-Vento Homeless Assistance Act, Education for Homeless Children and Youths – Definitions:

The term “homeless children and youths” means –

- a. individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

b. includes:

- i. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or, are awaiting foster care placement;
- ii. children and youths who have a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title;
- iii. children and youths who are living in cars, parks, public spaces, abandoned buildings, sub-standard housing, bus or train stations, or similar settings; and,
- iv. migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

The Charter School must have a method of determining whether or not a child needs a surrogate parent, and for assigning a surrogate parent to the child as well as ensuring that surrogates are trained and have adequate knowledge to serve in this capacity.

The Charter School may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of the State Educational Agency ("SEA"), Charter School or any other agency that is involved in the education or care of the child, such as the child welfare agency, adoption agency, etc. This means that a "house parent," or other employee of a public child welfare agency or private child welfare provider agency, school district, charter school, state educational agency, or a facility where the child lives is not eligible. Whenever possible, a surrogate parent should be someone who already knows and has a trusting relationship with the youth and must have knowledge and skills that ensure that the surrogate parent will adequately represent the child.

For a child who is a ward of the State (in Pennsylvania this would be a foster child or a child in the custody of a public child welfare agency, as Pennsylvania does not have a definition of a "ward of the state"), a surrogate may be appointed by a judge overseeing the child's care or by Charter School. The surrogate must have no personal or professional interest that conflicts with the interest of the child the surrogate parent represents. The surrogate parent must have knowledge and skills that ensure adequate representation of the child. The surrogate parent may represent the child in all matters relating to the identification, evaluation, educational placement and provisions of FAPE to the child.

When Does the Charter School need to appoint a surrogate?

1) No parent, guardian, current foster parent, or relative caregiver (relative acting in place of the parents with whom the child lives) can be located

2) Parent's right to make educational decisions for the child have been terminated by the court, and no guardian, current foster parent, or relative caregiver (relative with whom the child lives) can be located and the child does not have a court-appointed education decision maker or surrogate parent.

3) The child is an unaccompanied homeless youth under 42 U.S.C. § 11434A.

If a child is or may be eligible for special education or early intervention services, the IDEA requires the child's school district, charter school, cyber charter school or early intervention agency to ensure that the child has an active birth or adoptive parent or other person authorized by the IDEA or a court to make decisions for the child. The person who is designated to act as the "parent" under the IDEA is entitled to participate in all of the meetings and make all relevant decisions. If the charter school cannot locate a biological or adoptive parent or other IDEA Parent from the list below, then it must appoint a "surrogate parent" within 30 calendar days. In some cases, a child may appear to have more than one IDEA parent from the list below and the Charter School will need to determine which person is the legally-authorized decision maker.

Under the IDEA, potential IDEA Parents include:

- A biological or adoptive parent;
- A foster parent;
- An individual who has the authority to act as the child's parent or who has the authority to make education decisions for the child (such as an Educational Decision Maker "EDM");
- A family member with whom the child lives who is acting as a parent (such as a grandparent or stepparent);
- A guardian who is legally responsible for the child's welfare (but not any employee of a child welfare agency); or
- A surrogate parent assigned by the local educational agency (such as the school district or charter school).

If a court has not limited the biological/adoptive parent's authority to make education decisions, the Charter School must recognize that parent as the person authorized to make education decisions for the child so long as the parent is "attempting to act as the parent." If the parent is not "attempting to act as the parent" (for example, is not responding to notices or attending meetings), and the child has a foster parent or one of the other potential "IDEA parents" listed above, the Charter School must then treat that person as the child's IDEA Parent and allow that person to participate in meetings, give or deny consent, and make early intervention or special education decisions for the child. The "IDEA Parent" can challenge the Charter School's proposals through the mediation and due process hearing procedures.

If the child has a "parent" under the IDEA (see list above), the Charter School does not need to "appoint" that person as the child's surrogate parent. Unlike a juvenile court judge, who can appoint another person as EDM to act in the best interest of the child even if the child has a parent, a Charter School cannot appoint another person to make decisions for the child if the child has a "parent." If, however, a court has appointed an EDM, the EDM makes educational decisions for the child regardless of whether the biological/adoptive parent wants to serve in that role or whether there are other potential "parents" under the IDEA who are ready to serve that role. *If a court has appointed an EDM, that person trumps all other potential "parents" under the IDEA.*

The Charter School must take steps to ensure that the child's rights are protected if:

- 1) The Charter School does not know who the parent is;
- 2) The Charter School cannot locate the parent after making reasonable efforts to get in touch with them, such as calling and sending letters on multiple occasions;
- 3) The child has no "parent" under the IDEA (see above); or
- 4) The child is an "unaccompanied homeless youth" as defined by 42 U.S.C. § 11434A

Once a Charter school has determined that an enrolled child needs a surrogate parent, it must assign a surrogate parent within 30 calendar days. To meet its 30-day obligation, a Charter School should try to maintain a pool of trained surrogate parents who are available for children in need. Charter Schools may enter into interagency agreements with its local child welfare agency to identify children in need of surrogate parents and potential candidates to fill this role.

Exceptions to General Rule Prohibiting Caseworker/Employee of Agency to be Surrogate:

There are two exceptions to the general rule that an EDM or surrogate parent cannot be an employee of an agency involved in the care or education of the child for children aged 3 or older:

- 1) A caseworker or other agency employee can consent to an initial evaluation in very limited circumstances. Written consent of a parent is required before a child can first be evaluated to determine eligibility for special education services. However, the IDEA permits a school to start the initial evaluation without obtaining parent permission if the child is in the custody of the child welfare agency, is not living with the parent or with a foster parent, and one of the following applies:
 - The school documents that it has made repeated attempts but cannot locate the parents;
 - The parents' rights have been terminated; or
 - The birth parents' rights to make education decisions have been suspended by a judge and the judge has appointed an individual to consent to the initial evaluation.

NOTE: In this limited circumstance only, the judge can appoint a person to give this consent who is an employee of an agency involved in the education or care of the child, such as the county or a private provider child welfare agency. However, if the child is ultimately determined to be eligible, that person cannot consent to starting special education services. Therefore the Charter School or the court must immediately begin the process of appointing an EDM or surrogate parent who can consent to the provision of special education services while determining if the child is eligible.

- 2) A temporary surrogate parent can be appointed for an "unaccompanied homeless youth." These are youth who are not in the physical custody of a parent or guardian and who do not have a fixed, regular, and adequate nighttime residence. For such youth, the staff of an emergency shelter, transitional shelter, independent living program, or street outreach program

may be appointed as a “*temporary surrogate parent*” (even if that person is an employee of an agency involved in the care or education of the youth) *until such time as a surrogate parent who meets the usual requirements can be appointed.*

Who can be a Surrogate Parent?

- 1) A person of good character;
- 2) a person at least 18 years of age;
- 3) a person who possesses reasonable abilities to make decisions regarding a student’s educational needs;
- 4) a person committed to acquainting with a student’s educational needs, the student’s rights under the Individuals with Disabilities Education Act, and the Pennsylvania educational system;
- 5) a person committed to advocating a free appropriate public education for the child in the least restrictive environment and agree to fulfill the responsibilities listed below;
- 6) a person who has no vested interest that would conflict with the interests of the student;
- 7) a person is not an employee of any agency responsible for the education of care of the child; and
- 8) a person who lives within geographic proximity to the student, which will enable that person to discharge the person’s obligations as a surrogate parent.

Responsibilities of a Surrogate Parent:

- 1) Participate in the surrogate training session(s);
- 2) Request and participate in all applicable meetings relating to the provision of services and educational placement of the child (including individualized education program (IEP) meetings, evaluation reviews and manifestation determinations, etc.);
- 3) Approve or disapprove of the student’s IEP;
- 4) Engage in ongoing communication, verbally or in writing with the student, the student’s teacher and the student’s school;
- 5) Assert student’s rights to due process and to compliance with the IEP as appropriate;
- 6) Contact the surrogate parent trainer if further assistance is required or if surrogate parent no longer wishes to assume the educational responsibility for the child;
- 7) Ensure the child receives a free appropriate public education in the least restrictive environment.

The CEO or designee is directed to develop procedures that may be necessary to implement this policy.

TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH THE SCHOOL'S CHARTER OR APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS AND/OR CHARTER CONTROL.