



**COLORADO**  
Department of Education

**SPECIAL EDUCATION  
AND  
EDUCATIONAL SURROGATE PARENTS  
Technical Assistance and Training Manual**



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## Introduction

Colorado's Administrative Units (AUs) have an ongoing need for community members willing to serve as educational surrogate parents (ESPs) for students with disabilities who do not have a parent or guardian to protect their interests in the special education process. The purpose of this handbook is to assist school districts with their responsibilities under the Individuals with Disabilities Education Act (IDEA) and the Exceptional Children's Educational Act (ECEA) to identify, assign and train ESPs for students in need of this service.

ESPs serve a very important role in the special education process. They protect the child's educational rights, help the child navigate their educational experience, and assist the school/district to fulfill their legal obligation in providing a free appropriate public education (FAPE) to the child. ESPs may need assistance from administrators and educators to enable them to become effective advocates for students with disabilities.

## The Educational Surrogate Parent Mandate

The IDEA requires Administrative Units to ensure that the rights of an IDEA-eligible child are protected when no parent can be identified, the parent cannot be located after reasonable efforts, the student is a ward of the State, or the child is an unaccompanied homeless youth. 34 CFR §300.519. Each Administrative Unit must implement policies, procedures, and practices that are consistent with state and federal law for safeguarding the rights of children with disabilities who do not have a parent as defined by IDEA. The Colorado Department of Education, adhering to the requirements of the IDEA, addresses the need and assignment of ESPs in its Rules for the Administration of the Exceptional Children's Educational Act, 1 CCR 301-8, 2220-R-6.02(8).

Regulations at the Federal and State level specify that an ESP has the same rights as a parent with regard to educational decisions in the identification, evaluation, educational placement, and the provision of FAPE for a child with a disability. Included in these all rights outlined in the procedural safeguards, including: the right to receive notice of meetings, provide or refuse consent for evaluation and initial provision of services, and review records. They must be provided with the same information provided to any parent, including letters, forms, and handbooks. Importantly, an ESP is a member of the IEP team and should fully participate in the educational decision-making process.

This manual is intended to provide technical assistance for effectively implementing state and federal requirements regarding the assignment of ESPs to:

- Administrative Units (AUs), a term which includes school districts, board of cooperative services (BOCES), multi-district administrative units, or the Charter School Institute.
- State-operated programs;
- Approved facility schools, social service agencies; and,
- AU Special Education Directors or Coordinators who assign ESPs or implement ESP training programs in their areas.



## What does the CDE do?

- Develop policies and procedures regarding ESPs.
- Provide guidance to the AUs and support effective training for ESPs.
- Provide technical assistance to AUs on issues related to ESPs.
- Ensure that ESP assignments occur within 30 days of the AU determination of need for an ESP. The CDE has the authority to monitor ESP assignments through its responsibility for general supervision under IDEA.
- Maintain a registry of each child with a disability determined to be in need of an ESP and the ESP assigned to the child.

## Administrative Unit Responsibilities

The IDEA requires AUs to assign an ESP for any child who does not have a parent or guardian to represent their educational interests. This means that the AU has two primary responsibilities: 1) determine whether a child needs to have an ESP assigned, and 2) assign a qualified ESP to any child in need of one.

The AU of attendance is responsible for assigning an ESP unless the student is placed in an approved facility school or state-operated program. If a student is enrolled in an approved facility school, the AU of residence is responsible for assigning the ESP. If the approved facility school is not located within the boundaries of the AU of residence, the AU in which the facility school is located shall cooperate in locating an ESP to serve.

The AU must assign a qualified ESP within 30 days of determining that a student is in need.

Prior to making the assignment, the special education director or designee must contact the Department to confirm that the child does not have an existing ESP assignment. The assignment of an ESP must be completed by the special education director or designee and provided to both the assigned ESP and the Department.

More specifically, the AU is responsible for the following:

- Recruiting volunteers to serve as ESPs.
- Providing ESPs with training regarding their roles and responsibilities.
- Maintaining a list of trained ESPs for their area.
- Developing a method for determining whether a child needs an ESP;
- Assigning qualified ESPs for a child within 30 days of determining a child is in need of an ESP. This includes verifying with the CDE whether an ESP has already been assigned to a student in need or whether the student is still in need of an ESP.
- Ensuring that the assigned ESP meets federal and state qualification requirements consistent with 34 C.F.R. § 300.519(d) and ECEA Rule 6.02(8)(e).
- Reporting ESP assignments to the CDE no later than three days after the assignment has been made. (This is a required form and can be obtained here: [CDE ESP Assignment Form](#). A copy of the written assignment provided to the ESP must accompany the report to the Department.)
- Ensuring that individuals can only serve as ESPs for students when the need has been identified under 34 CFR §300.519 **and** a written, valid ESP assignment from the AU has been provided to the ESP assigned to that student.



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## Students Who Need an Educational Surrogate Parent

The following situations may require the assignment of an ESP for a student suspected of having a disability or who is presently eligible for special education:

- 1) Parental rights have been terminated by a court.
- 2) Parent's educational decision-making authority has been revoked by a court.
- 3) Parents or guardians of a student with a disability are unknown or cannot be located after reasonable efforts.
- 4) Student has been committed to the Division of Youth Services and the parents are unknown or cannot be located.
- 5) Student has a GAL and requirement 1, 2, and/or 3 has been met, but the court orders do not include responsibility for educational decision making.
- 6) Student has a CFY and requirement 1, 2, and/or 3 has been met, but the court orders do not include responsibility for educational decision making.
- 7) A student who has been determined unaccompanied homeless under the McKinney Vento Act, C.R.S. 22-1-1202.5 and requirement 1, 2, and/or 3 has been met.

The need for an ESP can be recommended by the AU, social service agencies, approved facility schools, advocacy groups, juvenile justice, and child placement agencies. An educational surrogate parent may also be appointed by a judge who is overseeing the child's care. A judge may also appoint a guardian ad litem (GAL) or a Counsel For Youth (CFY) to serve as an ESP or issue an order providing the GAL/CFY with educational decision making authority.

### Determining the Need for an Educational Surrogate Parent

If the AU suspects the need for an ESP, the following steps should be taken:

- 1) Multiple attempts must be made to initiate contact with the student's parent. A variety of methods should be utilized, including but not limited to telephone, email, letter, and certified mail. Each attempt should be documented. According to section 2.33, the parent progression is as follows:
  - a. A biological or adoptive parent of a child;
  - b. A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent. A foster parent should only be used as the IDEA parent if parental rights have been terminated or the parent cannot be located;
  - c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
  - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
- 2) If student has a GAL or CFY, confirm that parent rights or educational decision-making have been terminated by the court.
- 3) If an ESP has previously been assigned, contact that ESP, determine whether the ESP will continue to serve the student, and engage the ESP in the process



(i.e., provide notice of meeting, etc.).

- 4) If an ESP has not already been assigned, or if the current ESP no longer wishes to continue to serve as ESP for the student, then the AU Special Education Director must assign a qualified ESP from their list of trained candidates.
- 5) The AU must report the assignment of an ESP to the CDE on the required form, within three days of the assignment of an ESP. Instructions for submission are provided on the form.
- 6) The AU has no more than 30 days to assign an ESP. 34 CFR § 300.519(h)
- 7) **IMPORTANT TO NOTE:** An ESP cannot be assigned in situations where a parent chooses not to participate in the special education process. *Letter to Perryman*, 211 IDELR 438. OSEP (1987).
- 8) **IMPORTANT TO NOTE:** A CFY should not serve as a student's ESP unless there is a court order appointing them as ESP or giving them educational decision-making.

### **Qualifications of an Educational Surrogate Parent**

An ESP is qualified if the person meets these criteria:

- 1) Is an adult at least 18 years of age and a resident of Colorado.
- 2) Has no interest that conflicts with the interests of the student whom the ESP represents.
- 3) Is not an employee of the CDE, the Administrative Unit, approved facility school, or any agency involved in the education or care of the student.
- 4) Has knowledge and skills that ensure adequate representation of the child in the special education process. This may be obtained through the ESP training provided by the Administrative Unit. Adequate training provides awareness and knowledge of state and federal regulations, special education process, individualized education program (IEP) for students with disabilities, and the procedural safeguards.
- 5) ESPs must provide information about themselves including current employment history, previous school experience history, references, and any information regarding possible conflict of interest in serving as an ESP. (A technical assistance form titled "Colorado Application for Educational Surrogate Parent" can be utilized to help document this information.) (See Appendix)

### **Potential ESPs**

The following individuals may be considered as a possible ESP for a student:

- 1) Adult relatives (not living with the student);
- 2) Court appointed special advocates (CASA);
- 3) The student's Guardian Ad Litem;
- 4) Another adult who possesses the knowledge and skills to serve as an ESP for the student.
- 5) For unaccompanied homeless youth, appropriate staff in emergency shelters, transitional programs, and ILCs may serve as temporary ESPs.

A GAL/CFY may be given educational decision-making authority or designated as the student's



ESP by a State Court. Alternatively, a Director of Special Education can also assign a GAL to serve as ESP if the Court has not already done so – keeping in mind that the same requirements of an ESP must be maintained, and the Director must assure that the GAL maintains the knowledge and skills to represent the child in special education matters.

If a child is represented by a CFY and does not have a parent as defined by ECEA, the Special Education Director must assign a qualified ESP to represent and protect the child's educational interests.

## Recruitment

Each AU must maintain a list of qualified persons available to serve as ESPs for the students in their AU. The AU ESP list must include only those individuals who have successfully completed ESP training or those individuals that a Director can assure already possess the knowledge and skills required of an ESP. AUs should consider recruitment of ESP volunteers through marketing and advertisements with agencies or individuals such as:

- 1) Various civic organizations having an interest in students with disabilities.
- 2) Colorado parent organizations.
- 3) Community volunteer organizations.
- 4) Retired teachers and administrators.
- 5) Family services organizations.
- 6) Special education graduate students.
- 7) GALS.
- 8) Juvenile Court Systems.

All Nominees must be qualified and meet criteria set forth in the qualification section.

## Training

Candidates who register for the training should be sent an introductory letter and Surrogate Parent Application that will need to be completed and sent in prior to the training. AUs will need to determine if the applicant meets the qualifications of an ESP prior to confirming that they may attend the training. The AU process may include additional requirements (i.e., background check). Follow up with the approved potential candidate with an acceptance letter to the training.

ESP training may be conducted by the AU or PEAK Parent Center. The training should include instruction in, and an explanation of the materials contained in the Colorado Educational Surrogate Parent Manual (or content equivalent), which outlines the special education process and how an ESP is involved in the process. A copy of the manual (or content equivalent) should be provided to each participant who attends and completes the training.

Follow-up training may be coordinated by the Special Education Director or designee. It is recommended that re-training or updated training of ESPs be conducted every few years. The



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Director should monitor all ESPs and provide encouragement and support whenever necessary.

### **Assignment of an Educational Surrogate Parent**

Once it has been determined that a student needs an ESP, the AU Special Education Director or their designee must contact the CDE in order to determine if an ESP has already been assigned to the student. The CDE maintains a registry of all ESP assignments in Colorado. The CDE only has authority to speak directly with the Special Education Director or their authorized designee regarding specific students due to confidentiality requirements. Please submit a contact authorization form (See Appendix) to the CDE if the Special Education Director grants this authorization to a designee in their AU.

If the registry indicates an existing assignment, the AU should continue to contact and involve the ESP assigned to the student. If there is no record of a previous assignment, the AU will need to assign an ESP for the student within 30 days of the determination that the student needs one.

The Special Education Director or designee should contact a qualified person from the ESP list to determine their availability to serve. Upon confirmation of availability, a written assignment from the Special Education Director must be sent to the assigned ESP, providing necessary information, including the student's name, grade level, school, etc. and AU personnel contact information. Follow any privacy requirements when sending this information. A copy of this assignment must be placed in the student's special education file and a copy of this assignment must also accompany the required form and be submitted via approved secure method to the CDE.

ESPs must be made aware that they are only able to serve as an ESP for those students for whom they have officially been assigned. Verbal assignments are not adequate prior to service – a written assignment must be made by the Director of the AU and received by the ESP. If an individual who has not been validly assigned were to sign written consent to evaluate or consent for initial provision of services, consent would not be considered valid. If they were to attend an IEP meeting, this would violate IDEA and FERPA. Directors of Special Education are certifying, by signing the required form, that the ESP assigned has no conflict of interest and has the knowledge and skills to adequately represent the student.

Whenever possible, the person selected should reside no further than 75 miles from the location where special education services are provided. An ESP may participate in a meeting remotely if they are unable to attend in person.

### **Responsibilities, Tenure, Compensation, and Liability**

#### *Responsibilities of Educational Surrogate Parents*

- Participate in ESP training and any follow-up sessions provided by the AU.
- Represent the student in all educational decision-making and matters relating to the identification, evaluation, placement, and provision of FAPE.
- Attend IEP meetings and other meetings regarding the student's special education program.
- Become acquainted with the student and knowledgeable about their educational needs as it relates to their disability.
- Comply with confidentiality laws (FERPA).





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- Grant or deny consent for initial evaluation and initial provision of special education services.
  - Participate meaningfully in developing and monitoring the student's IEP, which includes being familiar with the special education services the student receives and progress towards meeting their IEP goals.
  - When necessary, discuss or initiate dispute resolution options available under the IDEA to protect the student's educational rights.

#### *Tenure*

- The length of time is contingent on the person. ESPs are encouraged to serve the student for as long as possible.
- Tenure is contingent on the student's need for a surrogate and may be terminated if:
  - the student is determined to no longer be eligible for special education services;
  - the legal guardian of the student is able to carry out the role of the parent;
  - a parent who was previously unknown becomes known, or the whereabouts of the parent, which were previously unknown, are discovered;
  - the assigned ESP no longer wishes to represent or is unable to represent the student;
  - the Director of Special Education determines that the ESP no longer adequately represents the student;
  - the student moves to a geographic location that is not reasonably accessible to the ESP; and/or
  - the court appointed surrogate is no longer responsible for that student.
- If a Court orders *educational decision-making authority* to a GAL or assigns an ESP to a student, then the court's authority supersedes any previous ESP assignment made for that student. The Director of Special Education must notify the previously assigned ESP of this change and notify the CDE of the order as well.
- A person may fill the role as long as the ESP fulfills qualifications and is representing the student in educational matters. If the ESP is not fulfilling their responsibilities or has developed a conflict of interest, the Director of Special Education, with cause, should terminate the assignment of the ESP. This termination must be documented and provided to the Department.
- Alternatively, an ESP can resign their services by writing a letter to the Director of Special Education of the AU in which the student receives special education services. When possible, this should occur at least fifteen (15) days prior to resignation as the ESP, allowing the Director time to find a new ESP to serve.

#### *Compensation*

This is a voluntary position. However, AUs may consider providing reimbursement for mileage.



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## Rights of the Educational Surrogate Parent

An ESP maintains all the same rights of a parent or guardian related to the student's special education services. The AU assures that the surrogate parent receives and has available to them all applicable procedural safeguards. An ESP is afforded the same procedural safeguards afforded to a parent of a student with a disability with respect to identification, evaluation, placement and the provision of FAPE as described in the IDEA and ECEA.). These rights include, but are not limited to: receiving notices, participating in IEP meetings and decision making, giving or refusing consent, being provided a copy of the procedural safeguards, being authorized to request an independent educational evaluation, having access to all dispute resolution options including mediation, due process or state complaint procedures. Additionally, the ESP also has the right to inspect or review records, receive a copy of the record, or ask to make a change to the record.



## Questions and Answers

1. Q. *How many students can be served by one ESP?*

A. There are no formal limits on the number of students who may be served by each ESP. In assigning multiple students to a person, the school district should consider whether or not the ESP's total "load" will allow them the time to perform the required duties.

2. Q. *Can you describe some of the persons who are not eligible to serve as ESPs?*

A. The categories excluded by federal and state rules and regulations are those persons who receive public funds to care for the student, who have any interest that may be in conflict with the interests of the student represented, or who are employed by a public agency involved in the education or care of a student. This would include Social Services Case Workers, Directors of Special Education for any AU, any AU employee, and any CDE employee.

3. Q. *When is a student "a ward of the State" and thus eligible for an ESP?*

A. A student is a "ward of the State" when the parent rights have been terminated and the State or county has assumed the legal responsibility for the student. However, if the State or county is a custodian of the student, but the parent retains the rights to make decisions concerning education, the student is not a "ward of the State" and no ESP is needed.

4. Q. *What is "reasonable effort"?*

A. The term comes from "reasonable effort to locate a student's parents" as stated in federal regulations. Multiple attempts should be made to identify and/or locate the parent(s) of a student with disabilities. AUs must keep a record of its attempts to identify/locate parent, such as—

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of any written correspondence sent to and any responses received; and
- (3) Detailed records of visits made to the home or place of employment and the results of those visits.

5. Q. *Can a foster parent serve as an ESP?*

A. Foster parents do not have to be assigned as an ESP if they already have educational rights for a student in their care. Foster parent falls under the definition of "Parent" in the IDEA Regulations after biological and adoptive parents and therefore, the foster parent can act as any other parent with regard to the educational decision-making for that student. CAUTION – the foster parent should not be acting as the IDEA parent UNLESS parental rights have been terminated or educational decision making has been revoked from parents and given to foster parents through court order.

6. Q. *How is "conflict of interest" defined?*

A. A person has a conflict of interest when their employment requires him/her to balance the interests of the student with the interests of the employer.

7. Q. *Can a social worker serve as an ESP?*



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- A. No. It would be a conflict of interest for a social worker to serve as an ESP, since they are employed by an agency involved in the care of the child.
8. Q. *Who is responsible for the oversight and accountability of ESPs?*
- A. The AU (School District or BOCES) that trains and assigns the ESP is responsible for oversight and accountability.
9. Q. If a student's only identifiable parent is incarcerated can an ESP be assigned?
- A. Only if the parental rights have been terminated or if some other court order is in place may an ESP be assigned in this situation. If the parent is incarcerated but their whereabouts are known, parent may be able to participate through a telephone conference.
10. Q. What if there is more than one "parent" in the picture?
- A. If there is more than one parent that could be involved, the AU should consult with their legal counsel to determine who the appropriate parent is for educational decision-making purposes, consistent with ECEA Rule 2.33.



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*Sample Interest Letter*

[Date]

[Applicant]

Dear [Applicant],

Thank you for your interest in the Educational Surrogate Parent Program. The purpose of the program is to provide students with assistance in the special education process when they do not have a parent or guardian who can. The ESP is responsible for learning about the student's educational needs and working with the school, just as a parent would, to help meet those needs.

Please complete the enclosed Educational Surrogate Parent Application and return it to:

[Name, Title]  
[School District]  
[Address]  
[phone]

Confirmation of your registration for the ESP training will be confirmed once your application has been processed and reviewed. You are welcome to call if you have any questions. We appreciate your interest in serving our students.

Sincerely,

[Special Education Director]



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*Sample Colorado Application for Educational Surrogate Parent*

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_ DOB \_\_\_\_\_

E-mail address \_\_\_\_\_

Place of Employment \_\_\_\_\_ Position \_\_\_\_\_

Do you speak any languages other than English? If yes, please list the language(s):

\_\_\_\_\_

**Please Answer the Following Questions by Circling Yes or No.**

- Yes No 1. Are you a citizen of the United States?
- Yes No 2. Are you a resident of the state of Colorado?
- Yes No 3. Are you an employee of the school district or any public or private agency involved in the education or care of children?
- Yes No 4. Do you have any interests or are you engaged in any activities that could be considered to be in conflict with the interest of any child that may be assigned to you? If you are unsure, please explain your circumstance:  
\_\_\_\_\_  
\_\_\_\_\_
- Yes No 5. Are you willing to participate in, and complete the required training to be an ESP?
- Yes No 6. Do you have time available to attend meetings as an Educational Surrogate Parent?
- Yes No 7. Are you familiar with the special education process?
- Yes No 8. Are you willing to inform yourself about the student's background, abilities, challenges, educational needs and services?

Please describe your professional and community experience with children or youth and your motivation for serving as an ESP.

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Please discuss any skills or traits that would make you an effective ESP:

\_\_\_\_\_

\_\_\_\_\_

Please list at least two references that may be contacted about your application to be an ESP:

Name \_\_\_\_\_ Relationship \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Name \_\_\_\_\_ Relationship \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

If I consent to become an educational surrogate parent, I will keep all information I receive about the student in strict confidence, while serving as surrogate and thereafter. I further intend to assist the student to whom I am assigned for the duration of their education or at least one school year.

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_ Date \_\_\_\_\_

Please complete this form and send it to:

[name, title]

[school district, address]

[city, state, zip]





### *Sample Applicant Eligibility Letter and Training Confirmation*

[Date]

[Applicant]

[Address]

Dear [Applicant],

Thank you for applying to serve as an Educational Surrogate Parent (ESP). This is an important service for students who do not have a parent or guardian available to them.

We have received your completed educational surrogate parent application and have found that you meet the eligibility requirements, and your registration is confirmed for attendance at the ESP training to be held on [date, time, location]. Completion of this training is required before assignment as an ESP.

During the training you will learn about the special education process and your role in it as an educational surrogate parent. Participants will receive written materials that will assist you with your responsibilities as an ESP and you will have full access to ask questions and get support from the school and administrative unit just as any parent would.

After you have completed the training, your name will be placed on the list of available, trained ESPs maintained by the [School District or BOCES]. You may be contacted at any time and asked to serve as an ESP for any student in need.

We sincerely appreciate your willingness to serve as an ESP. If you have any questions or concerns, please feel free to contact our office at any time.

Sincerely,

[Special Education Director]



### *ESP Training Self-Evaluation Form*

Please complete this form to help us meet your needs and improve our training program.

Training date: \_\_\_\_\_ Location: \_\_\_\_\_

Trainer: \_\_\_\_\_

Below is a list of the topics introduced at the training today. Please mark each topic about which hat you feel you now have a basic understanding:

- The determination that a student is in need of an ESP
- Your responsibilities as an ESP
- Basic information about students with disabilities and how to get more information about specific disabilities
- Services for students with disabilities, including accommodations and modifications
- The special education process and the student's right to a FAPE, including referral, evaluation, eligibility, IEP development and participation in the process, provision of services, review and re-evaluation
- IEP forms
- Procedural safeguards
- Dispute resolution options, including mediation, due process, and state complaint
- Special Education Facilitation

Please tell us about any topics you would like more information about or any feedback or suggestions to improve our ESP training:

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Please return this form to the trainer before you leave.



*Sample ESP Assignment Letter*

[Date]

[ESP]

[Address]

Dear [ESP],

I am the Director of Special Education for the [School District/BOCES]. This is a formal notification that you have been assigned, in accordance with both federal and state law and regulations, as the Educational Surrogate Parent (ESP) for [student's name], a [grade level] at [name of school]. As an ESP, you will have the same rights and responsibilities of parents in matters relating to the special education process, including working with the school to appropriately plan for educational services for the student.

I am here to assist you in your duties as an ESP. Please feel free to contact me at your convenience at [phone number] and [email] with any questions.

Thank you for volunteering for this important service.

Sincerely,

[Name]

Director of Special Education

[School District/BOCES]



*Sample ESP Assignment Termination Letter*

[Date]

[ESP]

[Address]

Dear [ESP],

Thank you for serving as an educational surrogate parent for [student] who attends [school]. The purpose of this letter is to inform you that your assignment as an ESP for this student has ended for the reason indicated below:

- It has been determined that the student is no longer in need of special education services.
- A legal guardian has been assigned to this student who is able to carry out the role of the parent.
- The parent was previously unknown but is now known.
- The whereabouts of a parent was previously unknown but is now known.
- You, as the assigned ESP, have indicated that you no longer wish to or are unable to represent the student.
- The student has moved to a geographic location that is not reasonably accessible to you.
- A court has assigned educational decision-making authority to the student's Guardian Ad Litem.

Thank you for participating in the ESP program. We hope you will continue to be willing to serve as an ESP for other students.

Sincerely,

[Name]

Director of Special Education



## Authority

- Federal Regulations implementing the Individuals with Disabilities Education Act, 34 CFR 300.30 (Definition of Parent) and §300.519 (Surrogate Parents)
- The Rules for the Administration of the Exceptional Children’s Educational Act, 1 CCR 301-8, 2220-R-6.02(8) (Educational Surrogate Parents)

## IDEA Regulations

### **Sec. 300.30 Parent**

#### (a) Parent means –

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child’ parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) 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; or
- (5) A surrogate parent who has been assigned in accordance with §300.519 or section 639(a)(5) of the Act.

(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section. (Authority: 20 U.S.C. 1401(23))

### **Sec. 300.519 Surrogate parents.**

#### (a) General. Each public agency must ensure that the rights of a child are protected when—

- (1) No parent (as defined in §300.30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of that State; or
- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

- (1) The public agency may select a surrogate parent in any way permitted under State law.



- 
- (2) Public agencies must ensure that a person selected as a surrogate parent—
- (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
  - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
  - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—
- (1) The identification, evaluation, and educational placement of the child; and
  - (2) The provision of FAPE to the child.
- (h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))



ECEA Rules

6.028) 34 CFR §300.519 - Educational Surrogate Parents

6.028)(a) General.

The administrative unit of attendance and each state-operated program must ensure that the rights of a child are protected when -

- 6.02(8)(a)(i) No parent (as defined in Section 2.33 of these Rules) can be identified;
- 6.02(8)(a)(ii) The administrative unit of attendance or the state-operated program, after reasonable efforts, cannot locate a parent;
- 6.02(8)(a)(iii) The child is a ward of the State; or
- 6.02(8)(a)(iv) The child is a homeless child as defined in Section 22-1-102.5, C.R.S.

6.02(8)(b) Educational Surrogate Parent Registry

The Department shall maintain a registry of each child with a disability determined to be in need of an educational surrogate parent and the educational surrogate parent assigned to the child. The purpose of the registry is to track those students for whom an educational surrogate parent has been assigned through the procedures established in this Section 6.02(8).

6.02(8)(c) Duties of the administrative unit of attendance or state-operated program.

The duties of an administrative unit of attendance or a state-operated program under Section 6.02(8) include the assignment of an individual to act as an educational surrogate parent for the child. This must include a method:

- 6.02(8)(c)(i) For determining whether a child needs an educational surrogate parent; and
- 6.02(8)(c)(ii) For assigning an educational surrogate parent to the child.

6.02(8)(d) Children placed in the legal custody of the Colorado Department of Human Services.

In the case of a child who is placed in the legal custody of the Colorado Department of Human Services, the educational surrogate parent alternatively may be appointed by the court overseeing the child's case provided that the educational surrogate parent meets the requirements in Section 6.02(8)(e)(iii).

6.02(8)(e) Criteria for selection of educational surrogate parents.

- 6.02(8)(e)(i) The Special Education Director of the administrative unit of attendance or state-operated program shall assign educational surrogate parents.
- 6.02(8)(e)(ii) After determining that a child needs an educational surrogate parent but before the educational surrogate parent is assigned, the Special Education Director must contact the Department to verify that there is no existing educational surrogate assignment for the child.
- 6.02(8)(e)(iii) The Special Education Director must ensure that a person selected and assigned as an educational surrogate parent -
  - 6.02(8)(e)(iii)(A) Is not an employee of the Department, the administrative unit of residence, the administrative unit of attendance (if different from the administrative unit of residence), or state-operated program, or any other public agency that is involved in the education or care of the child;



6.02(8)(e)(iii)(B) Has no personal or professional interest that conflicts with the interest of the child whom the educational surrogate parent represents; and

6.02(8)(e)(iii)(C) Has knowledge and skills that ensure adequate representation of the child.

#### 6.02(8)(f) Requirement for written certification

The Special Education Director shall document in writing, on a form approved by the Department of Education, each assignment of an educational surrogate parent, including a written certification that the requirements of Section 6.02(8)(e)(iii) have been met. The Special Education Director shall provide a copy of the written assignment to the Department within three (3) business days of the date of the assignment.

#### 6.02(8)(g) Non-employee requirement; compensation.

A person otherwise qualified to be an educational surrogate parent under Section 6.02(8)(e)(iii) is not an employee of the administrative unit of attendance or state operated program solely because he or she is paid by such administrative unit or state operated program to serve as an educational surrogate parent.

#### 6.02(8)(h) Homeless children.

In the case of a child who is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to Section 6.02(8)(e)(iii), above, until an educational surrogate parent can be appointed that meets all of the requirements of Section 6.02(8)(e)(iii).

6.02(8)(i) Educational surrogate parent responsibilities. The educational surrogate parent may represent the child in all matters relating to -

6.02(8)(i)(i) The identification, evaluation, and educational placement of the child; and

6.02(8)(i)(ii) The provision of FAPE to the child.

#### 6.02(8)(j) Responsibility of the Department.

The Department must make reasonable efforts to ensure the assignment of an educational surrogate parent not more than 30 days after the responsible administrative unit or state-operated program determines that the child needs an educational surrogate parent.

#### 6.02(8)(k) Approved Facilities Schools.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an approved facility school needs an educational surrogate parent, the child's administrative unit of residence or state-operated program is responsible for locating and assigning the educational surrogate parent. If the approved facility school is not located within the boundaries of the administrative unit of residence, the administrative unit in which the approved facility school is located shall cooperate with the administrative unit of residence in locating an educational surrogate parent for the child.





*Current EDAC approved ESP assignment form*

**ASSIGNMENT OF AN EDUCATIONAL SURROGATE PARENT (ESP)**

In accordance with 1 CCR 301-8, 2220-R-6.02(8)(a) – Educational Surrogate Parents – General – The Administrative Unit (AU) of attendance and each State-Operated Program (SOP) must ensure that the rights of a child are protected when no parent (as defined in 1 CCR 301-8, 2220-R-2.33) can be identified; the AU of attendance and each SOP, after reasonable efforts, cannot locate a parent; the child is a ward of the State; or the child is a homeless child as defined in Section 22-1-102.5, C.R.S. However, if the child has been placed in an eligible facility the responsibility to appoint an ESP lies with the AU of residence or SOP. (1 CCR 301-8, 2220-R-6.02(8)(k))

The Colorado Department of Education (CDE) shall maintain a registry of each child with a disability determined to be in need of an educational surrogate parent and the educational surrogate parent assigned to the child, in accordance with 1 CCR 301-8, 2220-R-6.02(8)(b).

Administrative Unit or State Operated Program: \_\_\_\_\_

Director of Special Education: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

**STUDENT INFORMATION**

Legal Name: \_\_\_\_\_

SASID: \_\_\_\_\_ Grade Level: \_\_\_\_\_

School or Facility: \_\_\_\_\_

**STATUS OF THE PARENT** (please check all that apply)

\_\_\_\_\_ no parent (as defined in 1 CCR 301-8, 2220-R-2.33) can be identified;

\_\_\_\_\_ the AU or SOP, after reasonable efforts, cannot locate a parent;

\_\_\_\_\_ the child is a ward of the state; or

\_\_\_\_\_ the child is a homeless child, as defined in section 22-1-102.5, C.R.S., the child is unaccompanied by a parent, and the parent(s) cannot be identified.

A copy of this document (and any attachments) must be forwarded to CDE within 3 business days of the ESP assignment by secure electronic method (i.e., DMS or Syncplicity) to Katherine Rains at rains\_k@cde.state.co.us or by regular mail. Mailing address: Colorado Department of Education, Exceptional Student Services Unit, ESP Assignments 1560 Broadway, Suite 1100, Denver CO 80202





Current EDAC approved ESP determination form

**EDUCATIONAL SURROGATE PARENT DETERMINATION**

It was determined by the AU/SOP that the student listed above is in need of an Educational Surrogate Parent. 1 CCR 301-8, 2220-R-6.02(8)(c) This determination was made on \_\_\_\_\_(date).

(Please check those that apply.)

\_\_\_\_\_ There is no existing ESP assigned to this student as determined by contact with CDE on \_\_\_\_\_(date). 1 CCR 301-8, 2220-R-6.02(8)(e)(ii)

\_\_\_\_\_ The existing ESP assigned to this student is no longer willing to serve as ESP or is unreachable, as documented by the AU/SOP (a copy of this documentation is attached).

**EDUCATIONAL SURROGATE PARENT** (Please check one.)

\_\_\_\_\_ The Administrative Unit or State-Operated Program has assigned the ESP listed below, in accordance with 1 CCR 301-8, 2220-R-6.02(8). A copy of the assignment is attached.

\_\_\_\_\_ The ESP listed below has been appointed by a Court of competent jurisdiction, in accordance with 1 CCR 301-8, 2220-R-6.02(8)(d). A copy of the Court Order is attached.

\_\_\_\_\_ A Court of competent jurisdiction has issued an order that alters parental responsibilities of the parent(s) and effectively prevents the parent from making educational decisions for the student. Therefore, the AU or SOP has assigned an ESP. Copies of the Court Order and the assignment are attached.

ESP Name: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

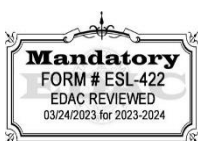
Date of Assignment: \_\_\_\_\_

I hereby certify that the ESP assigned is not an employee of the Colorado Department of Education, the Administrative Unit of Residence or Attendance (if different), or State-Operated Program, or any other public agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child whom the ESP represents (except in the case of an unaccompanied homeless child); and has knowledge and skills that ensure adequate representation of the child. 1 CCR 301-8, 2220-R-6.02(8)(e)(iii)

Director of Special Education Signature: \_\_\_\_\_

Within 3 business days of the assignment a copy will be provided to CDE in accordance with 1 CCR 301-8, 2220-R-6.02(8)(f).

A copy of this document (and any attachments) must be forwarded to CDE within 3 business days of the ESP assignment by secure electronic method (i.e., DMS or Syncplicity) to Katherine Rains at rains\_k@cde.state.co.us or by regular mail. Mailing address: Colorado Department of Education, Exceptional Student Services Unit, ESP Assignments 1560 Broadway, Suite 1100, Denver CO 80202





Contact Authorization Form

[Special Education Director’s authorization and designation of a specific staff member to communicate with CDE regarding the ESP registry]

To: Directors of Special Education
From: Katherine Rains, JD – Supervisor
Exceptional Student Service Unit
1560 Broadway, Suite 1100
Denver, CO 80202-5149
Re: Authorized Contact for Educational Surrogate Parent Assignments

Please provide the Colorado Department of Education (CDE) with the contact information of the individual who will be the point of contact for the administrative unit (AU) or state-operated program (SOP) when coordinating with the CDE regarding Educational Surrogate Parent (ESP) assignments. ESP contacts may be the special education director, or another AU/SOP individual identified by the special education director. Due to confidentiality concerns regarding personally identifiable student information, the CDE is only authorized to communicate with the special education director or their authorized contact regarding the assignment of ESPs. Please note that the special education director remains responsible for assigning each ESP, completing the EDAC –approved ESP assignment form (including all required information and the required certification) and ensuring that the ESP assignment form is submitted to the CDE within three (3) business days of the ESP assignment.

If you have any questions regarding this memorandum, please contact Katherine Rains at (720) 990-1464.

Director of Special Education

Administrative Unit/State-Operated Program

Name of ESP Contact Person and Title

Phone number Email Address

Please complete the above information requested and email it to Katherine Rains at rains\_k@cde.state.co.us.