



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP -6 2011

Ronald Caplan
Director of Community Education
Board of Child Care
3300 Gaither Road
Baltimore, Maryland 21244-2999

Dear Mr. Caplan:

This is in response to your January 20, 2011 letter to Dr. Alexa Posny, Assistant Secretary for the Office of Special Education and Rehabilitative Services, regarding the appointment of surrogate parents for children who are wards of the State in Maryland. You indicate that the Baltimore County Public School System interprets the requirement in the Individuals with Disabilities Education Act (IDEA) Part B regulations, at 34 CFR §300.519, to include all children in foster care or group homes as wards of the State even if the parent has not relinquished guardianship, but where the court(s) have limited guardianship for medical, educational and dental decisions and reunification is the ultimate goal of placement. Specifically, you ask if every child with a disability in foster care or a group home requires the automatic appointment of a surrogate parent when the court has assigned limited guardianship to a state agency and the parent is available and reunification and/or parent participation in meetings is part of the same order.

Regulatory Authority

Under 34 CFR §300.519(a)(3), a public agency must ensure that the rights of a child are protected when the child is a ward of the State under the laws of that State. Although the duties of a public agency include the assignment of an individual to act as a surrogate for the parents in this circumstance, the public agency must have a method (1) for determining whether a child needs a surrogate parent and (2) for assigning a surrogate parent to the child. 34 CFR §300.519(b).

“Ward of the State,” as defined in 34 CFR §300.45, means a child determined by the State where the child resides to be a foster child; a ward of the State; or in the custody of a public child welfare agency. This definition excludes a foster child who has a foster parent who meets the definition of parent in 34 CFR §300.30. Under 34 CFR §300.30(a)(2), a foster parent is considered the child’s parent under Part B, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent. Finally, 34 CFR §300.30(b)(1) presumes that the child’s biological or adoptive parent is the parent under Part B if more than one person is qualified and is attempting to act as parent, unless the biological or adoptive parent does not have the authority under State law or a court order to make educational decisions for the child.

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Analysis and Conclusion

Part B of the IDEA requires States and their public agencies to determine whether a surrogate parent must be appointed for a child with a disability who is a ward of the State under the laws of that State. In general, we believe that consistent with its duty under 34 CFR §300.519(b), a public agency would be required to appoint a surrogate parent for a child who is a ward of the State - even if the child's biological or adoptive parent is available - if State law or a court order specifies that the biological or adoptive parent has no authority to make educational decisions for the child. We do not believe that 34 CFR §300.519(b) would require the automatic appointment of a surrogate parent for every child who is a ward of the State if the public agency determines that the child's rights are otherwise protected. That is why, for example, the IDEA definition of "ward of the State" excludes a foster child who has a foster parent who is legally authorized to act as the parent and make educational decisions for the child, consistent with 34 CFR §300.30(a)(2). Therefore, in meeting its duty under 34 CFR §300.519(b), the responsible public agency would need to determine whether a surrogate parent must be appointed for a child with a disability who is in the temporary custody of a public welfare agency, in light of the facts and circumstances relevant to the particular case, including the nature of the child's status under State law and any judicial order or decree addressing whether the parent has legal authority to make educational decisions for the child. We express no view as to whether the Baltimore County Public School System has considered all relevant factors in making these determinations in the situation prompting your inquiry.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Dwight Thomas, the OSEP State contact for Maryland, at 202-245-6238 or by email at Dwight.Thomas@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education