



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

JUL 10 2003

Dr. Mary J. Ford
Director of Special Education
New Hampshire Department of Education
101 Pleasant Street
Concord, New Hampshire 03301-3860

Dear Dr. Ford:

This letter is in response to your E-mail to Lois Taylor regarding surrogate parent requirements under Part B of the Individuals with Disabilities Education Act (IDEA). Your questions and our responses appear below:

1. *If RSA 186-C:14, II(c) were changed to read as follows, would that comply with federal regulations?*

(c) "Unavailable parent" shall include a parent or guardian whose location is unknown or who is incarcerated, comatose or otherwise unable to act as the child's advocate in the educational decision-making process.

As you are aware, RSA 186-C: 14,II(c) was repealed effective July 14, 2002, so this question is moot.

2. *Why is it that when a child is a ward of the state a surrogate parent **may** be appointed **but the surrogate parent cannot be the foster parent unless the natural parents' rights to make educational decisions has [sic] been terminated by state law?***

Your question involves two different regulations under the Part B regulations implementing the IDEA and the distinction between a surrogate parent under 34 CFR §300.515 and a person acting as a parent under 34 CFR §300.20. The first part of your question, regarding the appointment of a surrogate parent for a child who is a ward of the State, involves 34 CFR §300.515(a). This regulation requires the public agency to ensure that the rights of a child are protected if 1) no parents (as defined in §300.20) can be identified, 2) the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or 3) the child is a ward of the State under the laws of the State. The duty of the public agency under §300.515(a) includes the assignment of an individual to act as a surrogate for the parents. The public agency must have a method for determining whether the child needs a surrogate parent and for assigning a surrogate parent for the child. (34 CFR §300.515(b)). The regulations further set forth the criteria for selection of a surrogate at §300.515(c). There is nothing in the criteria listed in §300.515(c) requiring that the natural parents' rights to make educational decisions be terminated in order for a foster parent to be appointed as a surrogate. In fact, there is no discussion of foster parents in any part of §300.515. Thus, a foster parent may be appointed as the surrogate parent if the State determines that the criteria found in 34 CFR §300.515(c) are satisfied.

The second part of your question involves the regulatory definition of "parent" at 34 CFR §300.20(b), which may include a foster parent. This regulation states that unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of IDEA if 1) the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law and 2) the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child.

In situations where a child who is a ward of the State has a foster parent who meets the requirements to act as a parent pursuant to §300.20(b) and the State permits the foster parent to act as the parent, there may be no need to appoint a surrogate. Because the child is a ward of the State, however, the public agency has a duty under §300.515 to determine if there is a need for a surrogate parent to ensure the rights of the child.

We hope that this response has been helpful. If you need further assistance, please call Rex Shipp, the New Hampshire Part B contact, at 202-401-4061.

Sincerely,



Stephanie S. Lee
Director
Office of Special Education Programs