



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As you are aware, RSA 186-C: 14,II(c) was repealed effective July 14, 2002, so this question is moot.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

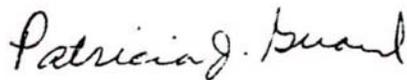
Page 2 – Dr. Mary J. Ford

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,

A handwritten signature in cursive script that reads "Patricia J. Beaud".

For Stephanie S. Lee  
Director  
Office of Special Education Programs