

**Introduced by Senator Alpert**

February 21, 2002

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An act to amend Section 7579.5 of the Government Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1677, as introduced, Alpert. Surrogate parents.

Existing law authorizes a court to limit the control exercised over a minor by a parent or guardian in all cases where the minor is adjudged a ward or dependent child of the court.

Existing law provides for the appointment of an individual to act as a surrogate parent upon the referral of a child who is adjudged a ward or dependent child of the court to a local educational agency for special education and related services, or in cases where the child already has a valid individualized education program. Existing law provides that an individual acting as a surrogate parent has the same authority as a parent with respect to educational decisions concerning the child.

Existing law requires that, in appointing a surrogate parent, a local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court appointed special advocate.

This bill would provide that the local educational agency shall also consider appointing a person appointed by the juvenile court for the specific purpose of serving as a surrogate parent. This bill would also specify the requirements and duties of a person who serves as a surrogate parent.

By imposing new duties and a higher level of service upon local educational agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7579.5 of the Government Code is  
2 amended to read:

3 7579.5. (a) A surrogate parent shall not be appointed for a  
4 child who is a dependent or ward of the court unless the court  
5 specifically limits the right of the parent or guardian to make  
6 educational decisions for the child. A surrogate parent shall not be  
7 appointed for a child who has reached the age of majority unless  
8 the child has been declared incompetent by a court of law.

9 (b) A local educational agency shall appoint a surrogate parent  
10 for a child under one or more of the following circumstances:

11 (1) The child is adjudicated a dependent or ward of the court  
12 pursuant to Section 300, 601, or 602 of the Welfare and Institutions  
13 Code upon referral of the child to a local educational agency for  
14 special education and related services, or in cases where the child  
15 already has a valid individualized education program.

16 (2) No parent for the child can be identified.

17 (3) The local educational agency, after reasonable efforts,  
18 cannot discover the location of a parent.

19 (c) When appointing a surrogate parent, the local educational  
20 agency shall, as a first preference, select a relative caretaker, foster  
21 parent, or court appointed special advocate, *or other person*  
22 *appointed by the juvenile court for the specific purpose of serving*  
23 *as a surrogate parent* if any of these individuals exist and is willing  
24 and able to serve. If none of these individuals is willing or able to



1 act as a surrogate parent, the local educational agency shall select  
2 the surrogate parent of its choice. If the child is moved from the  
3 home of the relative caretaker or foster parent who has been  
4 appointed as a surrogate parent, the local educational agency shall  
5 appoint another surrogate parent.

6 (d) For the purposes of this section, the surrogate parent shall  
7 serve as the child's parent and shall have the rights relative to the  
8 child's education that a parent has under Title 20 (commencing  
9 with Section 1400) of the United States Code and pursuant to Part  
10 300 of Title 34 (commencing with Section 300.1) of the Code of  
11 Federal Regulations. The surrogate parent may represent the child  
12 in matters relating to identification, assessment, instructional  
13 planning and development, educational placement, reviewing and  
14 revising the individualized education program, and in all other  
15 matters relating to the provision of a free appropriate public  
16 education of the child. Notwithstanding any other provision of  
17 law, this representation shall include the provision of written  
18 consent to the individualized education program including  
19 nonemergency medical services, mental health treatment services,  
20 and occupational or physical therapy services pursuant to this  
21 chapter. The surrogate parent may sign any consent relating to  
22 individualized education program purposes.

23 (e) *The surrogate parent is required to meet with the child*  
24 *before making educational decisions as a surrogate parent.*

25 (f) *The surrogate parent is required to attend the child's*  
26 *individualized education program meetings.*

27 (g) *The surrogate parent is required to review the child's*  
28 *educational records before making educational decisions as a*  
29 *surrogate parent.*

30 (h) As far as practical, a surrogate parent should be culturally  
31 sensitive to his or her assigned child.

32 ~~(f)~~

33 (i) *The surrogate parent may resign from his or her*  
34 *appointment only after he or she gives notice to the local*  
35 *educational agency and the agency appoints a new surrogate*  
36 *parent.*

37 (j) *The local educational agency may recommend termination*  
38 *during the term of a surrogate parent's appointment if: (1) the*  
39 *person is not properly performing the duties of a surrogate parent,*



1 *or (2) the person has an interest that conflicts with the interests of*  
2 *the child entrusted in his or her care.*

3 (k) Individuals who would have a conflict of interest in  
4 representing the child, as specified under federal regulations, shall  
5 not be appointed as a surrogate parent. “An individual who would  
6 have a conflict of interest,” for purposes of this section, means a  
7 person having any interests that might restrict or bias his or her  
8 ability to advocate for all of the services required to ensure a free  
9 appropriate public education for an individual with exceptional  
10 needs, as defined in Section 56026 of the Education Code.

11 ~~(g)~~

12 (l) Except for individuals who have a conflict of interest in  
13 representing the child, and notwithstanding any other law or  
14 regulation, individuals who may serve as surrogate parents  
15 include, but are not limited to, foster care providers, retired  
16 teachers, social workers, and probation officers who are not  
17 employees of a public agency involved in the education or care of  
18 the child. The surrogate parent shall not be an employee of a public  
19 or private agency that is involved in the education or care of the  
20 child. ~~If a conflict of interest arises subsequent to the appointment~~  
21 ~~of the surrogate parent, the local educational agency shall~~  
22 ~~terminate the appointment and appoint another surrogate parent.~~

23 (m) *The local educational agency shall ensure that the*  
24 *surrogate parent has knowledge and skills that ensure adequate*  
25 *representation of the child.*

26 (n) *Training in the knowledge and skills necessary to ensure*  
27 *adequate representation shall be provided to the proposed*  
28 *surrogate parent, if needed, by the local educational agency.*

29 (o) *The surrogate parent shall represent the child until the child*  
30 *is no longer in need of special education or until the parent of the*  
31 *child resumes responsibility for representing the child in the*  
32 *education decisionmaking process.*

33 ~~(h)~~

34 (p) The surrogate parent and the local educational agency  
35 appointing the surrogate parent shall be held harmless by the State  
36 of California when acting in their official capacity except for acts  
37 or omissions that are found to have been wanton, reckless, or  
38 malicious.

39 ~~(i)~~



1 (q) Nothing in this section shall be interpreted to prevent a  
2 parent or guardian of an individual with exceptional needs from  
3 designating another adult individual to represent the interests of  
4 the child for educational and related services.

5 ~~(j)~~

6 (r) If funding for implementation of this section is provided, it  
7 may only be provided from Item 6110-161-890 of the annual  
8 Budget Act.

9 SEC. 2. Notwithstanding Section 17610 of the Government  
10 Code, if the Commission on State Mandates determines that this  
11 act contains costs mandated by the state, reimbursement to local  
12 agencies and school districts for those costs shall be made pursuant  
13 to Part 7 (commencing with Section 17500) of Division 4 of Title  
14 2 of the Government Code. If the statewide cost of the claim for  
15 reimbursement does not exceed one million dollars (\$1,000,000),  
16 reimbursement shall be made from the State Mandates Claims  
17 Fund.

