

Special Education: Who is the “parent” under the Individuals with Disabilities Education Act (IDEA)?



IDEA is a federal law geared toward students receiving special education services – i.e., students who have an Individualized Education Program (IEP). This act includes a specific definition of who the “parent” (Educational Decision Maker) is under the IDEA for special education purposes.

The purpose of this guide is to assist DCYF caseworkers and foster parents in working with school districts providing special education services to students in foster care.

The “parent” (Educational Decision Maker) under the IDEA is generally presumed to be the biological or adoptive parent, even if the child does not live with their parent. For example, when a youth in out-of-home care is living with a foster parent, their parent retains legal rights and responsibilities, which includes educational decisions. If the parent is unable or unwilling to be the “parent” (Educational Decision Maker) under the IDEA, then the foster parent, a guardian authorized to make educational decisions, or an individual that the child lives with who is acting in place of a biological or adoptive parent may fill the role.

Every child with a disability or suspected disability must have a legally authorized “parent” (Educational Decision Maker) under the IDEA, who can act on their behalf.

It is the “parent” (Educational Decision Maker) under the IDEA who:

- Receives notice of IEP meetings and proposed changes from the school
- Is given an opportunity to attend meetings and make decisions about what is best for the child’s education and services
- Can use special education dispute resolution options to resolve problems

Who can be the “parent” (Educational Decision Maker) under the IDEA for Special Education?

The (birth) parent if the court has not restricted their rights

- Parents retain educational decision-making rights when a child is removed from their custody unless the court has restricted those rights.
- Although parents should remain the educational decision makers for special education (unless their rights have been restricted by the court), foster parents can make day-to-day decisions to support normalcy.

The foster parent if the birth parent is unable/unwilling

- The foster parent may also serve as the “parent” under the IDEA if:
 - The birth family is unreachable, unresponsive to meeting requests, or has indicated they are not interested in participating (note: a birth or adoptive parent being unavailable due to scheduling is not the same as being unreachable, unresponsive, or unwilling to participate);
 - A court has terminated the parents’ rights; or
 - The birth or adoptive parents are deceased.



Washington State Department of
CHILDREN, YOUTH & FAMILIES



Washington Office of Superintendent of
PUBLIC INSTRUCTION

Court appointed educational liaison

- The department must identify an educational liaison for youth in grades six through twelve who are subject to a dependency proceeding and who meet one of the following requirements:
 - All parental rights have been terminated;
 - Parents are unavailable because of incarceration or other limitations;
 - The court has restricted contact between the youth and parents; and
 - The youth is placed in a behavioral rehabilitative setting and the court has limited the educational rights of parents.
- Court appointed education liaison is defined in RCW 13.34.045 (<https://app.leg.wa.gov/RCW/default.aspx?cite=13.34.045>).

Surrogate parent appointed by the district

- Under the IDEA, every school district has an obligation to ensure a surrogate parent is appointed for a student who is eligible for special education when no “parent” (Educational Decision Maker) can be identified for the student.
- Only when no individual qualifies as a “parent” (Educational Decision Maker) under the IDEA will the school district be required to designate a surrogate parent. The rule for appointing a surrogate parent is in WAC 392-172A-05130 (<https://app.leg.wa.gov/WAC/default.aspx?cite=392-172A-05130>). In order for this to happen: no parent is able to be identified, or parental rights have been terminated, and the court has not appointed an educational liaison.
- Each school district likely has a section of their 2161 Special Education policy and procedures on this process. The OSPI Special Education office has resources on their website to support districts including:
 - Appointment, Training, and Role of Surrogate Parents (<https://ospi.k12.wa.us/sites/default/files/2022-12/surrogateparent.pdf>)
 - The Role of the Surrogate Parent - Template for School Districts (<https://ospi.k12.wa.us/sites/default/files/2022-12/rolesurrogateparent.docx>)

Young people ages 18 to 22

- The special education rules provide for the transfer of rights held by “parents” to the student at age 18 according to WAC 392-172A-05135. (<https://app.leg.wa.gov/WAC/default.aspx?cite=392-172A&full=true#392-172A-05135>)
- There are provisions and options for the continued involvement of parents, even after a youth turns 18 (e.g., power of attorney, guardianship, etc.).

Who cannot be the “parent” (Educational Decision Maker) under the IDEA?

Individuals who may have a personal or professional conflict of interest **must not** be the Educational Decision Maker, including:

- DCYF social workers/personnel
- Group home staff or
- OSPI or school district employees



QUESTIONS?

For questions about special education rules and regulations, please contact the OSPI Special Education office at:
speced@k12.wa.us or 1-360-725-6075

For questions about determining who is the “Parent” or Educational Decision Maker for students in foster care, please contact the DCYF Education Team at:
k12education@dcyf.wa.gov