

Out-of-District Manual

Parents and Educational Surrogate Parents

Definition of Parent

IDEA 2004 defines the term parent as:

- A biological or adoptive parent of a student;
- A foster parent (if there is a long-term foster care relationship);
- A guardian generally authorized to act as the child's parents, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent or other relative) with whom the child lives or an individual who is legally responsible for the child's welfare; or
- An educational surrogate parent appointed by the administrative unit of residence *ECEA rules 2.33(1)*.

When more than one person is qualified to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person(s) to act as the "parent" of a child or to make educational decisions on behalf of a child, then he or she shall be determined to be the parent *ECEA rules 2.33(2)*.

Neither IDEA nor Colorado defines "long term foster care relationship", so there may be some variance in how individual administrative units interpret that provision. Even if the foster care relationship is deemed to be long-term, the foster parent can only act as the parent while the student is in placement in the foster home. If a student who has been in foster care placement and is then moved to a residential facility, the foster parent can no longer be seen as the parent while the student is in the residential facility even if the plan is for the student to return to the foster home. The administrative unit of residence could however, appoint the former foster parent as the Educational Surrogate Parent provided the person has appropriate training and otherwise meets the qualifications of an ESP.

Educational Surrogate Parent (ESP)

Special education law provides that students, from birth to age 21, whose parents' rights have been terminated by the courts or whose parents have relinquished rights, or cannot be located, are entitled to be represented by an ESP. An ESP is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the state, *ECEA Rules 2.13*.

It is not appropriate to appoint an educational surrogate parent based solely on the fact that:

- the parent is incarcerated;
- the parent resides outside of Colorado;
- the student is legally emancipated; or
- the parent is homeless.

If the parent is incarcerated, but parental rights have not been terminated, the parent should be included in special education procedures by the means that are available in the given situation. Written correspondence should be sent to the parent and if it is permissible, provisions should be made to include the parent by phone.

If the parent lives outside of Colorado, but parental rights are still intact and the student has been placed by a Colorado public agency, parents should be included in person when feasible, or else by phone or through written input.

An ESP can be assigned if the court has ordered that the parents cannot make decisions regarding the student's education, or the parents are deceased and no guardian has been appointed. For these students, sometimes referred to as "educational orphans", the school district or administrative unit where the student lives becomes the school district of residence and would be responsible for the assignment of the ESP.

If there is a "no-contact" order from the court, the student may or may not be entitled to an ESP depending on the specifics of the court order. If the court order specifies that the parent is not to know the location of the child, then the student may be entitled to an ESP even if rights have not yet been terminated. An individual decision must be made in each situation. In all cases, the safety of the child must be of primary importance.

An ESP must be selected and appointed to represent the student by the administrative unit of residence. CDE is then notified of the appointment *ECEA rules 6.02(8)(f)*.

Qualifications of an ESP:

- An ESP is an adult who has no interest that conflicts with the interests of the student.
- An ESP cannot be an employee of any agency involved in the education, care or treatment of the student.
- An ESP needs to be assigned by the administrative unit of residence *ECEA rules 6.02(8)(f)*. The administrative unit making the appointment determines the level training needed and provides or arranges for such training.

Social Services Caseworker or Division of Youth Corrections Client Manager

At no time may a caseworker or client manager serve as the parent or ESP in special education procedures for a student with a disability. IDEA specifically states that a parent cannot be a person who is an employee of an agency that is involved in the education or care of the child *IDEA regulations 300.519(d)(2)*. This means that it is never appropriate for a case worker or client manager to sign as the parent of a child for purposes of special education. Even if the case worker/client manager can sign as the parent for other purposes, for special education procedures the parent must meet the definition of a parent listed above.

Case workers and client managers can certainly be invited to IEP meetings, but they would sign as a participant, not the parent. And any procedural safeguards awarded to the parent (i.e. giving permission for assessment, permission for placement in special education, etc.) must be signed by a parent who meets the IDEA definition, not by the case worker or client manager.

Guardian Ad Litem (GAL)

Because a person has been appointed a GAL, he/she is not automatically given the authority to be an ESP. However, if a student is entitled to an ESP, a GAL may be appointed in that capacity if the courts have specifically given him/her authority to make decisions regarding the education of the child and such authority is established in a written order of the court. If the GAL has not been given such authority, but is willing to serve in that capacity, the GAL may request the court action or the special education director of the Administrative Unit of residence may appoint the GAL as the ESP, provided the person has appropriate training and otherwise meets the qualifications of an ESP.

Court Appointed Special Advocate (CASA)

A CASA volunteer most often functions to advise the court on matters pertaining to the child, but is not given specific authority to make decisions on behalf of the child and should not be treated as the parent of the child. An Administrative Unit could appoint the CASA volunteer as the ESP if the person has appropriate training and is otherwise qualified.

Administrative Unit Information

- Obtain a copy of the pertinent court order(s) from the facility, county social/human services caseworker or NYC client manager to verify the status of parental rights.
- Each administrative unit is responsible to have a pool of trained Educational Surrogate Parents (ESPs) available. The administrative unit is responsible to arrange for or provide training for ESPs and determine if each person has appropriate qualifications.
- If it is determined that a student is entitled to have an ESP, contact CDE to inquire whether the student already has someone assigned. If not, contact qualified individuals and select one to serve as the ESP for the student.
- After the ESP agrees to represent the student and the appointment has been made, the administrative unit submits the appropriate form and copy of the appointment letter to the Colorado Department of Education (CDE). The form is sent to the Special Ed Directors annually, or the director may contact CDE for a copy.
- If there is a delay in the appointment of an ESP, it is inappropriate for the administrative unit to refuse to pay excess costs due to the IEP being out of compliance.
- While an ESP cannot be an employee, it is permissible to offer some compensation for services provided, *ECEA Rules 6.02(8)(g)*. The most common practice is to reimburse mileage.

Facility Information

- Obtain a copy of the pertinent court order(s) from the county social/human services caseworker or DYC client manager to verify the status of parental rights.
- It is the facility's responsibility to work with the administrative unit of residence to identify students who may be entitled to have an ESP appointed.
- Requests for the appointment of an ESP should be directed to the administrative unit of residence. The administrative unit must complete the appropriate procedures for an appointment of an ESP. An approved facility does not have the authority to appoint an ESP.
- If the facility has contacted the administrative unit of residence requesting that an ESP be appointed and provided appropriate information to document the need, but there is a delay in the appointment, the facility should contact the special education director of the administrative unit. If the special education director has been notified and there is still a delay, the facility should contact the Facility Schools Unit for assistance in resolving the issue.

Resources

ECEA Rules 6.02(8)

<http://www.cde.state.co.us/spedlaw/download/ECEARules-March2013.pdf>

IDEA regulations 34 CFR 300.519

<http://idea.ed.gov/download/finalregulations.pdf>

For more information contact:

Colorado Department of Education
Office of Facility Schools
1560 Broadway, Suite 1175
Denver, CO 80202
Fax: (303) 866-6767
facility_schools@cde.state.co.us

Facility Schools Web page:

<http://www.cde.state.co.us/facilityschools/index.asp>

Kama Linscome
303 866-6876
linscome_k@cde.state.co.us

Dema Herrera
303 866-6473
herrera_d@cde.state.co.us

Robin Singer
303 866-5509
singer_r@cde.state.co.us

Ellen Hunter
303 866-6244
hunter_e@cde.state.co.us