

Educational Surrogate Parents (ESP)

General Q & A

Rules regarding Educational Surrogate Parents can be found in the Rules for the Administration of the Exceptional Children's Educational Act, 1 CCR 301-8, 2220-R-2. 13 and 6.02 (8)

Q. What is an “Educational Surrogate Parent”?

A. An Educational Surrogate Parent (ESP) is a person assigned to represent a child with a disability in educational decision-making regarding the identification, evaluation, educational placement and the provision of a free, appropriate public education (FAPE) for the child.

Q. What does an ESP do?

A. The ESP meets with school staff to determine special education services for the student and how those services will be delivered through an Individualized Education Plan (IEP). An ESP is a member of the IEP team who functions in the place of a parent for educational purposes.

Q. When must an ESP be assigned?

A. An ESP must be assigned to a student with a disability when: 1) no parent can be identified; 2) the parent cannot be located; 3) the child is a ward of the State; or 4) when the child is an unaccompanied homeless child (i.e., a homeless child who is not in the physical custody of a parent or legal guardian).

Q. Who determines when an ESP is necessary and who can assign/appoint an ESP?

A. The determination and assignment of an ESP can only be made by: 1) the Director of Special Education of an Administrative Unit (AU) or State Operated Program (SOP) (in the case of a student in an Approved Facility School – the Special Education Director of the AU of residence); or 2) the Court overseeing a child's case after the child has been placed in the legal custody of the Department of Human Services.

Q. What is the timeline for assigning an ESP to a student?

A. An ESP must be assigned to a student within 30 days of the determination that a student is in need of an ESP.

Q. How is the Colorado Department of Education involved in the assignment of ESPs?

A. All ESP assignments must be reported to CDE. The CDE is required under law to maintain a registry of all ESP assignments in the State.

Q. How are ESP assignments reported to CDE?

A. Every Director of Special Education must report ESP assignments on a form provided by CDE. The form must be completed and submitted to CDE within three business days of the assignment, regardless of whether the Director of Special Education or the Court makes the appointment.

Q. What are the qualifications of an ESP?

A. An ESP: 1) cannot be an employee of CDE, the AU (of attendance or residence), the SOP, or any other agency involved in the care or education of the child; 2) has no personal or professional interest that conflicts with the interest of the child; and 3) has the knowledge and skills to adequately represent the child.



Q. Is there training to become an ESP?

- A. Typically, school districts conduct their own ESP trainings. If you are interested in becoming an ESP, please contact your local school district.

Q. Who can serve as an ESP?

- A. A Guardian Ad Litem (GAL) appointed by the court with educational decision making authority.
A GAL appointed by the Special Education Director of the AU/SOP.
An ESP trained by the AU.
An ESP that the Special Education Director knows has received training or has adequate knowledge to represent a child.

Q. Can a foster parent serve as an ESP?

- A. The term “foster parent” falls under the definition of “parent” in the IDEA regulations (34 C.F.R. §300.30). Therefore, a foster parent would not need to be assigned as an ESP in order to serve as a student’s educational decision maker.

Q. Can a student’s caseworker serve as an ESP?

- A. Because of the potential conflict of interest, a student’s caseworker cannot serve as an ESP.

Q. Should an ESP be assigned to a student when their parent is incarcerated?

- A. Parents who are incarcerated can typically be located and participate in their child’s IEP meeting by telephone conference.

Q. If a judge assigns educational decision making authority to a Guardian Ad Litem, does the School District need to notify the Department?

- A. Yes, regardless of how the appointment is made, the district must notify the Department so that a current ESP registry can be maintained.

Q. Are ESPs paid for their services?

- A. ESPs are typically volunteers willing to give their time on behalf of a student with a disability. However, it is up to each AU to determine whether monetary compensation is provided (e.g., mileage reimbursement).

This CDE guidance document is meant for clarification, is not legally binding, and is not to be confused with legal advice. This guidance reflects CDE’s recommendations, but Administrative Units (AUs) may have developed their own policies or procedures that differ from those described herein. Be sure to refer to your local AU’s policies and procedures through the Director of Special Education. If you are seeking legal advice, please contact your legal counsel.

The contents of this handout were developed under a grant from the U.S. Department of Education. However, the content does not necessarily represent the policy of the U.S. Department of Education, and you should not assume endorsement by the federal government.