



CHAPTER 8: EDUCATIONAL DECISION-MAKING UNDER THE IDEA

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Generally, **parents** are the **substitute decision-makers** for their children on an array of decisions, including decisions relating to their education. Under the Individuals with Disabilities Education Act (IDEA), parents have the right to make decisions concerning their children who have disabilities. The IDEA is a federal law that requires public schools to provide special education and related services to school-age children with disabilities who need such services to meaningfully access and participate in education. Although in other circumstances parents lose the right to make decisions for their children once they reach age 18, parents retain authority to make IDEA-related education decisions for their children until they graduate from high school or turn 21, whichever happens first.

I. SCOPE OF PARENTAL DECISION-MAKING

There are a number of procedural and substantive decisions under the IDEA that parents have the right to make for their children, including:

- determining whether the child should be evaluated for special education services;
- identifying what services and supports should be included in the child's individualized educational plan (IEP);
- determining whether to approve or challenge the IEP;
- determining whether to pursue dispute resolution processes, like mediation or administrative hearings;
- reviewing the child's education records.

II. IDENTIFYING THE "PARENT"

Under the IDEA, it is the "parent" who has the right to make IDEA-related education decisions. The IDEA, however, recognizes that "parents" are often persons other than the biological parents. Accordingly, the IDEA identifies the following people who may be the "parent" authorized to make education decisions:

- a biological parent;
- an adoptive parent;
- a foster parent;
- a **guardian** who is authorized to act as the child's parent or to make education decisions for the child;
- an individual who acts in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) if the child lives with that individual or if that individual is legally responsible for the child's welfare;
- a "surrogate" parent.

There are times when it is possible for a child to have more than one "parent." This can create problems if those parents do not agree on educational decisions. The school must recognize a birth or adoptive parent who is attempting to act on behalf of the child in the special education system as the educational decision-maker unless that person's legal right to make educational decisions for the child has been terminated by a judge or a judge has appointed a different person to make educational decisions. If a birth or adoptive parent has the right to make educational

decisions for his or her child but is unable or unwilling to do so, the school can recognize the authority of another person as the "parent" if he or she fits into one of the categories stated above, such as a foster parent or relative with whom the child is living.

In some situations, a child's biological parents may not agree on an education decision. If the parents have joint legal custody, the IDEA allows the school to accept the decision of either parent. For example, one parent may agree to the IEP while the other concludes it is inadequate. The school may implement the IEP based on the authorization of one parent.

The other parent has the right to pursue dispute resolution, such as filing for a due process hearing, to challenge the IEP. If only one biological parent has legal custody of the child, the other parent can participate in the IEP process but cannot make special education decisions for the child.

III. "SURROGATE" PARENTS

Sometimes, a school is legally responsible for appointing a "surrogate" parent to serve as the educational decision-maker for a child under the IDEA. A surrogate parent has all the rights that a birth or adoptive parent would have related to the provision of free, appropriate public education to the child and the identification, evaluation, and educational placement of the child under the IDEA. A surrogate parent does not have authority to make decisions outside of the special education context. A school must appoint a surrogate parent when:

- there is no other person who can be the "parent" as defined by the IDEA;
- the school cannot locate a parent, as defined by the IDEA, after reasonable efforts;
- the child is a ward of the State, but only if there is no biological or adoptive parent who has the authority to make educational decisions, no foster parent, and no court-appointed guardian; or
- the child is an "unaccompanied homeless youth" as defined by the federal law that protects the rights of homeless youth.

The school must make reasonable efforts to appoint a surrogate parent for a child within 30 days of determining that the child needs a surrogate parent. In identifying a surrogate parent, the school:

- cannot appoint an employee of the school, the local school district, the state education agency, or any agency involved in the education or care of that child (including a children and youth agency);
- must choose a person who does not have a personal or professional interest that conflicts with the interests of the child in getting identified, evaluated, and receiving a free appropriate public education in the least restrictive educational placement; and
- must choose a person who has the knowledge and skills necessary to assure adequate special education services.

IV. CHILDREN IN THE CUSTODY OF THE STATE

If a child is in the custody of the children and youth system because he has been declared "dependent" or "delinquent" and removed from the home, he or she is a "ward of the state." The fact that a child is a ward of the state

does not automatically strip other persons who are "parents" under the IDEA, such as biological parents, from continuing to make educational decisions for the child. The Juvenile Court, however, may appoint a surrogate parent for a child who is a ward of the state unless the child has a foster parent. If the Juvenile Court appoints a surrogate for a child who is a ward of the state, then, for instance, biological parents no longer have the right to make education decisions for their child. In identifying a surrogate, the Juvenile Court must follow the guidelines listed in Section III, above.

Most importantly, the Court cannot appoint the children and youth agency (or any employee of that agency) to act as the surrogate.

When a child has a foster parent, the Juvenile Court may not appoint a surrogate as the foster parent is the child's "parent" under the IDEA. The Court may, however, appoint a guardian and authorize the guardian to make educational decisions for the child, which would make the guardian the "parent" under the IDEA. The guardian cannot be the child's caseworker. The Juvenile Court also can appoint a guardian to make education decisions for a child who has been adjudicated dependent even if he or she remains in the parent's home and is not in the custody of the children and youth agency.

Contact Information

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@disabilityrightspa.org.

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