

Information about Educational Surrogate Parents (ESPs) for Schools

The Surrogate Parent Program was established under the Individuals with Disabilities Education Act (IDEA) and [Delaware special education regulations](#). It ensures that eligible children with disabilities whose parent(s) cannot be identified or located, are entitled to have an adult appointed who can assume “parental rights and responsibilities”, and advocate on their behalf for Early Intervention or Special Education and Related Services. For an eligible school-age child, a trained volunteer *Educational Surrogate Parent (ESP)* is appointed by the [Department of Education](#) (DOE). [Parent Information Center](#) (PIC) administers the Surrogate Parent Program through a contract with DOE.



When working with students in **foster care**, knowing who a “parent” is for special education purposes can often be confusing. Before taking any special education action, it may be helpful to consider the following two questions and accompanying information.

1. Who meets the criteria for being a “parent” based on the IDEA and [Delaware special education regulations](#)? An IDEA parent or parent for special education purposes is defined as:

- A biological or adoptive parent of a child;
- A guardian generally authorized to act as a child’s parent 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 and with whom the child lives - Delaware requires that a [Relative Caregiver’s School Authorization](#) be submitted to the district;
- An individual who is otherwise legally responsible for the child’s welfare; **OR**
- A **surrogate parent** who has been appointed by the Department of Education (DOE)
(Appointment occurs after the individual has met application and training requirements).

2. Is the action proposed by the school related to special education? Examples of Special Education Related Actions:

- Conducting an Initial Evaluation or Re-Evaluation for special education services
- Conducting an IEP meeting to:
 - Determine initial or continued eligibility for special education and related services
 - Review the child’s Individualized Education Program (IEP)
 - Consider post-secondary goals and transition services
 - Develop, review, and/or revise a child’s IEP
 - Develop a Functional Behavior Assessment and/or Behavior Support Plan as part of the IEP
 - Determine whether a behavioral incident was a manifestation of a child’s disability
 - Consider dismissing a child from special education services

If you are planning to take action related to special education and are unsure who the child’s “parent” is as described above, please consider contacting the following resources for more information:

- Child’s DFS (Division of Family Services) worker; **and/or**
- Surrogate Parent Program at [Parent Information Center](#) (PIC):
 Contact: Kathie Herel, Coordinator
 (302) 999-7394, ext. 110 or kherel@picofdel.org / <https://picofdel.org/>

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Appointment of an Educational Surrogate Parent (ESP)

To determine a child's eligibility for an ESP, the Surrogate Parent Program follows a protocol of gathering information from various sources (including DFS and the school). If it is determined that the child needs an Educational Surrogate Parent (ESP), reasonable efforts are made to identify a qualified and trained candidate, with a recommendation provided to the Department of Education (DOE) for appointment within 30 days.

The appointment of an ESP must be approved by the Department of Education (DOE). Once appointed, a letter (with contact information) will be sent electronically by DOE to the parties involved. Parties include: ESP, DFS worker and OCA (Office of the Child Advocate). The *District Special Education Director and appropriate* building personnel (Educational Diagnosticians, Case Manager) will also be copied on the letter.

Role of an Educational Surrogate Parent (ESP)

Once an individual has been appointed as an ESP, he/she assumes the same rights and responsibilities as a parent under IDEA. *Although a child in foster care has many individuals and agencies involved in their case, it is the ESP who is considered the "parent" under the Individuals with Disabilities Education Act (IDEA) and Delaware special education regulations.* Therefore, an ESP is to be included in all educational decision-making related to special education (identification, evaluation, educational placement of a student and provision of a free appropriate public education).

An ESP has the right and responsibility to:

- Provide consent for educational evaluations
- Work with a school team to determine eligibility for special education services
- Participate in IEP (Individualized Education Program) meetings
- Agree or disagree with special education services
- Agree or disagree with a child's educational placement
- Sign school documents as the "parent"
- Review school records
- Receive progress reports
- Observe a classroom (as appropriate)
- Visit a school placement (as appropriate)
- Abide by established school rules, policies and/or codes of conduct

DSCYF (Department of Services for Children, Youth & their Families)

Agency support workers such as social workers, therapists and other personnel from DSCYF departments may participate in the special education process: **DFS** (Division of Family Services), **PBHS** (Prevention & Behavioral Health Services) and/or **YRS** (Youth & Rehabilitative Services). *An individual from one of these agencies would generally present a conflict of interest and would not be appointed by DOE as a child's ESP.*

Other Support Team Members for a Child in Foster Care

Many people may participate in the special education process aside from required IEP team members. *Unless the individual has a letter appointing her as the ESP for the child, she is not the ESP and does not have the same IDEA rights and responsibilities as an ESP.*

Foster Parent – Person who provides care in their home for a child who has been removed from his/her home due to abuse, neglect or dependency.

Attorney – The attorney for the child is appointed by Family Court to represent the child in dependency/neglect proceedings. The attorney for the child is employed by or contracted with the [Office of the Child Advocate](#) (OCA) and advocates for the child's best interests and express wishes. In some cases, the attorney for the child works in conjunction with a CASA (Court Appointed Special Advocate) to represent the best interests of the child.

Education Decision Maker – Person designated by Family Court to make education decisions for a child who has been found to be abused, neglected, dependent, delinquent or whose parents are unable, unavailable, or consents to an Education Decision Maker. If there is a disagreement regarding any part of the IEP process or special education services between the Education Decision Maker and the ESP, the authority

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