

Parental Role Questions & Answers

- 1. Can a biological parent sign something to give another person (e.g., a friend, a foster parent, etc.) permission to assume the role of “parent” for IDEA purposes? In other words, can a parent choose someone to act in his or her place?**

No, not unless the person meets the IDEA/Rules definition of a parent. The list of persons who may assume the role of “parent” for IDEA purposes is exhaustive and does not include a person assigned or delegated by the parent who does not otherwise meet the definition of a parent. “I have a note from the parent” or “The parent has signed a power of attorney” do not meet the Rule’s standard.

DHS has a process and form allowing the established parent to give a foster parent the authority to give consent to routine matters (e.g., field trips, etc.), but this assignment of authority would not apply to participation and authority as a “parent” under IDEA Part B or Part C.

- 2. How soon do you need a surrogate once it is determined that a parent, including all persons who qualify as a “parent” under IDEA, cannot be identified or located, the child is made a ward of the state, or the child is an unaccompanied homeless youth?**

A surrogate must be appointed within 30 days after a child is determined to need a surrogate. Appoint a surrogate as soon as the need for one is identified. Do not wait until consent or agreement is needed, a “parent” needs to be provided prior written notice or a progress report, or a meeting needs to be scheduled.

- 3. Once a surrogate is appointed, how long does the person remain a surrogate?**

As long as one is necessary and as long as the surrogate remains willing to serve in that capacity. One is necessary as long as a parent cannot be identified or located, the child is a ward of the state, or the child is an unaccompanied homeless youth.

4. After a surrogate is appointed, a parent comes back into the picture. Would the parent resume the parental role for IDEA purposes?

Yes, the parent would resume the “parent” role unless his or her authority to make educational decisions has been taken away.

5. In a case of divorce with joint custody, what do you do if one parent says “yes” to services and the other says “no” to services?

Until you hear otherwise, the answer that the school or AEA must accept is “no”. A parent has the unilateral right to revoke consent to services, including services to which the other parent has consented. If one parent grants consent and the other revokes consent, then services stop.

6. Can a guardian ad litem* (GAL) be considered a “parent” for granting consent for an evaluation or placement, filling the parent role at IEP meetings, receiving prior written notice, and so forth?

* A guardian ad litem is a guardian appointed by a court to protect the interests of a minor or individual who is incompetent in a particular matter.

Yes, if the GAL meets the IDEA’s requirement to serve as a parent. A GAL does not automatically meet the IDEA’s definition of a “guardian” serving as a parent.

However, a GAL can be a good choice for a surrogate. If appointed as a surrogate, the GAL would most likely need surrogate training.

7. Should a surrogate named by a judge go through the same training as a surrogate appointed by the AEA Director?

In this circumstance, training is not required but it should be offered.

8. If the household in which a child resides includes an adult sibling of the child, could that sibling fill the role of “parent” for IDEA purposes?

It depends. The sibling could be “an individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or another relative with whom the child lives” if the sibling has assumed or shares responsibility for the child’s welfare (i.e., isn’t simply living in the same place). It would be best to inquire about the relationship before assuming that the sibling may serve as a parent. [41.30(1)d]

9. If the household in which a child resides includes an unrelated adult (a friend of the parent(s), for example), could that person fill the role of “parent” for IDEA purposes?

It depends. The person in question could be “an individual who is legally responsible for the child’s welfare”. It would be important to determine if the individual has assumed or shares responsibility for the child’s welfare (i.e., isn’t a house guest, renter, etc.) [41.30(1)d]

10. When multiple adults in a household appear to be qualified to act as “parents” under IDEA, can a school or AEA ask the biological or adoptive parent(s) to indicate which, if any, of them may fill the role of “parent” for IDEA purposes?

Yes.

The household in which a child resides includes the father’s girlfriend. The father’s girlfriend attends a meeting that is also attended by the child’s biological mother and the two disagree on a matter requiring consent or agreement (reevaluation, excusal, etc.). Which “parent” prevails?

The biological mother. Biological or adoptive parents have superior authority over other individuals who may qualify as parents. [41.30(2)a]

11. The household in which a child resides includes the father’s girlfriend. If the biological mother of the child gives consent for placement or evaluation, does the father’s girlfriend have the authority to revoke consent?

No. Biological or adoptive parents have superior authority over other individuals who may qualify as parents. [41.30(2)a]

The household in which a child resides includes the mother’s boyfriend. The mother’s work includes frequent travel and meeting attendance and routine communications mostly involve the boyfriend. May formal correspondence (e.g., prior written notices, copies of evaluations, etc.) be directed to the boyfriend?

With the consent of or upon request of the biological or adoptive parent.

12. The AEA Special Education Director or designee appoints a foster parent as a surrogate parent at a point in time when neither biological parent holds the legal authority to make educational decisions for the child. Parents regain decision-making rights and later lose them and the child is again placed with the same foster parent. Does the foster parent need to be assigned as a surrogate again?

Yes. Surrogate parent status ended when the parents regained legal authority to make educational decisions for the child.

13. A child's living situation is subject to frequent change. Time is sometimes spent with one or the other of the child's biological parents, whose households have frequent changes in adult members (boyfriends, girlfriends, relatives, and friends). The child has spent time in several different foster care placements. Biological parents sometimes do and sometimes do not hold the legal authority to make educational decisions for the child. What is the school or AEA's responsibility for assuring "parent" participation and assuring that consent or agreement is obtained from the correct individual(s)?

The school or AEA must assure at each point of required parental involvement, agreement or consent that it has involved or sought consent or agreement from the appropriate "parent" and, in cases of disagreement between individuals qualified to act as a parent, the school or AEA must follow the wishes of the parent with superior authority.

14. The household in which a child resides includes the father's girlfriend. The child is placed in foster care. The father retains the authority to make educational decisions. Does the father's girlfriend retain "parent" status while the child is in a foster care placement?

No. The "with whom the child lives" clause applies to the father's girlfriend and her "parent" status would be lost with the foster care placement and regained if the child returns to the original living situation.

15. Is the place where the IDEA “parent” lives used to define “district of residence” for financial responsibility purposes?

The “district of residence” is typically where the child lives, unless the child is in foster care, a residential facility, or other similar placement. In these circumstances, the district in which the biological or adoptive parent lives is the “district of residence”.

Circumstances such as equal custody arrangements of divorced parents living in different districts, one or both parents being incarcerated and other situations may complicate the determination of the district of residence.