



## Education Screen Section 2:

### *The Role of Education/Special Education Decision Makers*

2. EDUCATION DECISION-MAKER (*A special education decision maker cannot be a child welfare professional, except when appointed by a court to request and consent to an initial evaluation.*)

A. The child has an education decision maker who is acting or attempting to act.

B. The child has a special education decision maker who is acting or attempting to act.

## Why This Matters

- Children in care are highly mobile. As a result, a child's educational needs may remain unidentified by caretakers & will be unknown to schools.
- Children need an advocate in school to ensure an appropriate school placement, address school discipline issues, access services, etc.
- Schools need an identified consistent contact to communicate concerns & address issues.

# Why This Matters

- Special education is a **parent driven system.**
- Only a legally authorized special education decision maker can consent to an evaluation, change in placement, services etc.
- Children in care often lack an “active” involved special education decision maker.
- In the absence of an advocate, frequent school moves cause evaluations to fall through the cracks, ineffectual IEPs and poor transition plans

# What Laws Govern Education Decision Makers?

- Juvenile Court Rules (eff. July 2011)
  - Court may appoint an educational decision maker if it determines that:
    - (1) the child has no guardian; or
    - (2) the court, after notice to the guardian and an opportunity for the guardian to be heard has made a determination that it is in the juvenile's best interest to limit the guardian's right to make decisions regarding the juvenile's education.

Pa. R.J.C.P. 1147 & 147

# What Laws Govern?

- Juvenile Court Rules apply to children in both *dependency and delinquency systems*:

**Comments to Rule:** “A juvenile is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for juveniles who are adjudicated delinquent, may be returning from delinquency placements, and may not have a parent available and able to perform this function.”

# What Laws Govern

- “A court is *not to appoint* an educational decision maker if there is a parent, guardian, or other authorized person (e.g., foster parent, relative with whom the juvenile lives or surrogate parent appointed under the IDEA) who is “**competent, willing, and available to make decisions regarding the juvenile’s education and who is acting in the juvenile’s best interest** regarding all educational matters.” *Comment to Rule 147*

# What Laws Govern: Special Education Decision Makers

- IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2) authorizes an “IDEA Parent” to act on behalf of a student with a disability. An “IDEA Parent” is defined as:
  - (1) A biological or adoptive parent of a child;
  - (2) A foster parent
  - (3) A guardian generally authorized to act as the child's parent or to make educational decisions for the child **(but not the State if the child is a ward of the State);**
  - (4) An individual acting in the place of a parent with whom the child lives, or an individual who is legally responsible for the child's welfare; or
  - (5) A surrogate parent. 34 C.F.R. § 300.30

# What Laws Govern

- **An IDEA Parent CANNOT be** “the State or employees of any agency that is involved in the education or care” of the child. 34 C.F.R. § 300.519(c), (d)(2)(i).

*A special education decision maker cannot be a teacher or employee of the school district the child attends or a caseworker or employee of an agency involved in the care of the child. (It does not in GAL or CASA. See U.S. Dept. of Ed/OSEP guidance*

<http://www.projectforum.org/docs/SurrogateParentsand>

# How to Ensure the Rights of a Child's Education Decision Maker

2. EDUCATION DECISION-MAKER (*A special education decision maker cannot be a child welfare professional, except when appointed by a court to request and consent to an initial evaluation.*)

A. The child has an education decision maker who is acting or attempting to act.

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# Step 1: Does the Child Need an Educational Decision Maker?

- Some children have NO GUARDIAN:
  - Parental rights have been terminated;
  - Parents deceased or whereabouts unknown
  - Child resides in group home rather than living with foster parent or guardian;
  - Child may be unaccompanied homeless youth
  - Child is returning from delinquency placement and on their own.

# Step 1: Does the Child Need an Educational Decision Maker?

- Presumption in favor of biological parent continuing to act in this important role
- Way to connect to child on ongoing, continuing basis
- Supports reunification
- Parent knows the child best
- Parents have absolute clear right under law

# Step 1: Does the Child Need An Educational Decision Maker?

- **Presumption in Favor of the Parent**

**Comment to Pa. R.J.C.P. 147 & 1147:**

Court is not to appoint an educational decision maker if there is a

- parent, guardian, or other authorized person;
- who is competent, willing, and available to make decisions regarding the juvenile's education; and
- who is acting in the juvenile's best interest regarding all educational matters.

Court should only limit the authority of a parent to make decisions regarding the juvenile's education **to the extent necessary** to protect the juvenile's interest. Court can reinstate the parent or change educational decision maker **at any time**.

# Step 1: Does the Child Need An Educational Decision Maker?

- “Other authorized person” includes
  - Foster Parent
  - Guardian
  - Person acting as a parent in the place of a parent with whom the child lives
  - Kinship care

unless this person is not competent, willing and available to make education decisions

# Factors To Consider

- Whether a parent or other authorized person is “acting” in this capacity – making decisions
- Whether the person is willing & competent to act in this role
- **Disagreement** with a parent’s decision not to accept certain services or to decline to evaluate a child or consenting to place child in more restrictive setting is NOT grounds for appointing an EDM.

# Your Role in the Process

- If the child has no guardian, raise this issue with the child's attorney and ask that s/he inform the Court immediately or raise the issue in report to Court
- If you believe the child has no active involved parent or other authorized person, discuss issue with others and provide ALL facts to attorneys & Court

## Step 2: Who Can be an Educational Decision Maker?

- If not the parent or other authorized person, EDM may be:
  - Family member
  - Family friend
  - Mentor
  - Former foster parent
  - CASA or GAL
  - Child welfare professional (*ONLY IF THE CHILD HAS NO SPECIAL EDUCATION NEEDS*)

Comment to Pa. R.J.C.P. 147/1147

## Step 2: Who Can be an Education Decision Maker?

- Except as otherwise provided by the IDEA, it is within the **discretion of the court** to appoint an educational decision maker and whom to appoint.
- In all cases, an educational decision maker appointed by the court **should be familiar with a juvenile's educational rights** or is to agree to be trained regarding these issues.

Comment to Pa. R.J.C.P. 147/1147

## Step 3: What Does an Education Decision Maker Address?

- School stability, enrollment & attendance
- Appropriate education (including school placement, remedial services, Student Assistance Program etc.)
- School discipline and other issues
- Child Welfare Independent Living and Transition Services that will further the youth's secondary and post-secondary education plans.

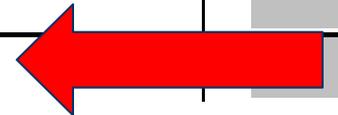
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# When Should A Court Appoint A **Special** Educational Decision Maker?

- “An “IDEA Parent” is defined as:
  - (1) A biological or adoptive parent of a child;
  - (2) A foster parent
  - (3) A guardian generally authorized to act as the child's parent or to make educational decisions for the child **(but not the State if the child is a ward of the State)**;
  - (4) An individual acting in the place of a parent with whom the child lives, or an individual who is legally responsible for the child's welfare; or
  - (5) A surrogate parent. 34 C.F.R. § 300.30

# When Should A Court Appoint **Special Educational Decision Maker**?

- A **birth or adoptive parent** must be the decision maker if he or she is “attempting to act” on behalf of the child
- If there is no birth or adoptive parent, the **foster parent or other authorized person** is automatically the parent.
- However - If the **court appoints** someone to make special education decisions, that person trumps all others. 34 C.F.R. § 300.30

# Factors To Consider

- Whether a parent or other authorized person is “acting” in this capacity – making decisions
- Whether the person is willing & competent to act in this role
- **Disagreement** with a parent’s decision not to accept certain services or to decline to evaluate a child or consenting to place child in more restrictive setting is NOT grounds for appointing an EDM.

# When Does A School District Appoint A Surrogate Parent?

- A school district **must** assign a **surrogate parent**) (aka an EDM) to make special education decisions when
  - The parent cannot be identified
  - The parent cannot be located after reasonable efforts or
  - The child is unaccompanied homeless youth

34 C.F.R. § 300.519(a), (c)

# How Long Does a School District Have to Appoint?

- The education agency must make reasonable efforts to ensure the assignment of a surrogate parent “not more than 30 days after a public agency determines that the child needs a surrogate parent.”

34 C.F.R. § 300.519(h)

# Who can be a **Special** Educational Decision Maker?

- **Criteria:**

- Cannot be the child's caseworker or educator
- Cannot have personal or professional interest that conflicts with the interest of the child ***and***
- Has knowledge and skills that ensure adequate representation of the child.

34 C.F.R. § 300.519(d), (e)

# Who can be the **Special** Educational Decision Maker?

- For unaccompanied homeless youth, EDM CAN be appropriate staff of
  - emergency shelters
  - transitional shelters
  - independent living programs and
  - street outreach programs
- May be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all of the requirements.

34 C.F.R. § 300.519(f)

# What Does a **Special** Education Decision Maker Do?

- Consent to initial evaluation\*
- Participate in IEP meetings
- Agree to or reject IEP plan
- Represent the child in matter relating to placement and the provision of FAPE
- Potentially also address regular education issues

\*Others can also consent to initial evaluation, including caseworkers.  
34 C.F.R. § 300.300, 34 C.F.R. § 300.519(g)

# Special Education Responsibilities

- Evaluations & Re-evaluations
- Review IEPs & Attend Meetings
- Monitor Progress Re measurable goals
- Review & Consent to NOREPs
- Education in least restrictive environment
- Manifestation Determinations
- Transition Planning

# Section 504 Plans

- Evaluations re children who need accommodations in school
- Inform school of disability
- Accommodations Plan
- Revisions of Plan
- Enforcement of Plan
- Ensure Equal Access & non-discrimination



# Contact Information

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