

EDUCATIONAL RIGHTS

Parents have the right to make educational decisions for their minor child unless the child is in legal guardianship, has been freed for adoption, or the court has specifically limited the parents' educational rights.

Since schools are required to get parent consent for assessments and services for children with special needs, situations arise in which the school may be unsure who holds educational rights for the child. In these cases, the school personnel should:

1. Assume that the natural parents share educational rights, unless you have been provided with information to the contrary. This information must be in the form of a legal document from a court officer (a divorce decree listing "educational rights" or "all rights" to one party, a document naming another person as a Court Appointed Special Advocate (CASA), or a written document from the natural parent stating that they have assigned educational rights to another responsible adult. If you have not received one of these documents but have reason to believe the natural parent does not have educational rights, ask for documentation before proceeding.
2. Parents are not prevented from designating another adult individual to represent the interests of the child for educational and related services.
3. If the information described above is not available and the natural parents cannot be contacted, school personnel should appoint a responsible adult as a Surrogate Parent for the purposes of approving special education assessments and services. The law requires the district to appoint: (a) relative caregivers, (b) foster parents, and (c) CASAs if available. If none are available, the school can select the surrogate of its choice, as long as that person does not have a conflict of interest. A "conflict of interest" is usually defined as having any interest that might bias his or her ability to advocate for all of the services required to ensure a free appropriate public education. Thus, a paid employee of a non-public school, for example, would not fill the conditions of a Surrogate Parent. Please refer to the "Parents as Partners" section for more information regarding the appointment of a surrogate parent.
4. Act in a timely manner to proceed with the assessment and IEP. The need for a Surrogate Parent should not delay the Special Education timelines.