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# SPECIAL REVIEW

A NEWSLETTER ABOUT SPECIAL EDUCATION LAW ISSUES

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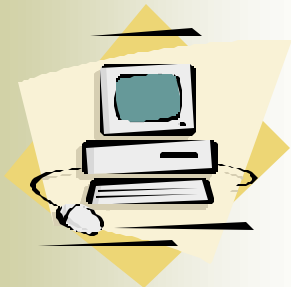
Special Education Services Unit  
Colorado Department of Education

## PROCEDURAL SAFEGUARDS – IDENTIFICATION OF PARENTS



### Visit the Special Education Law Website:

- > For Parents Rights and other special education informational brochures: [www.cde.state.co.us/cdesped/spedlaw.htm](http://www.cde.state.co.us/cdesped/spedlaw.htm)
- > To view the updated Rules for the Administration of the Exceptional Children's Educational Act: [www.cde.state.co.us/cdesped/download/pdf/ECEARules2002.pdf](http://www.cde.state.co.us/cdesped/download/pdf/ECEARules2002.pdf)
- > To view the IDEA Amendments of 1997: [www.ed.gov/offices/OSERS/Policy/IDEA/index.html](http://www.ed.gov/offices/OSERS/Policy/IDEA/index.html)
- > To view recent Due Process Hearing Decisions: [www.cde.state.co.us/cdesped/DueProcess.htm](http://www.cde.state.co.us/cdesped/DueProcess.htm)
- > To view recent Federal Complaint Decisions: [www.cde.state.co.us/cdesped/FedComplaints.htm](http://www.cde.state.co.us/cdesped/FedComplaints.htm)



### DEFINITION OF PARENTS UNDER THE IDEA

Although natural or adoptive parents who reside with a child are parents within the meaning of IDEA, other adults may also be considered parents under the IDEA as well. Any of the following individuals may be a parent, for purposes of rights and responsibilities under the law:

1. Natural or adoptive parents.
  2. Guardian (other than the state for children who are state wards.)
  3. Person acting in the place of a parent.
  4. Surrogate parent.
  5. Foster parent.
- 34 CFR 300.20

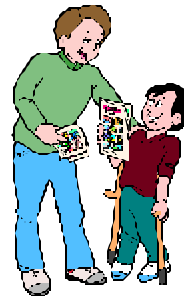
### PERSONS ACTING AS A PARENT OF A CHILD

An individual may meet the definition of a parent under IDEA if he is legally authorized to act as a parent and has no conflict of interest that would render him incapable of adequately representing the interests of the child. *Ysleta Indep. Sch. Dist.*, 29 IDELR 1093 (SEA TX 1998). The U.S. Department of Education suggests a person should be considered to be acting as a parent if he has ongoing day-to-day involvement in the life of the child and personal concerns for the child's interest and well-being. For example, this can include a grandparent or stepparent with whom a child lives or a per-

son who is legally responsible for the child's welfare. 34 CFR 300.20(a)(3).

### CHILDREN WHO LIVE WITH RELATIVES

IDEA does not address who the parent is in cases where a child with a disability is living with a relative other than his parents. The resolution of this issue is left to the states. Generally speaking, a



parent must live with the student and have a relationship with the student that can be characterized by a universally recognizable familial-type label, such as "guardian,"

"stepparent" or some type of blood relative. *Family & Children's Center, Inc. v. School city of Mishawaka*, 19 IDELR 780 (N.D. Ind. 1993).

### STATE LAW DEFINITIONS OF PARENTS

A state may define the term "parent" more expansively than does IDEA, giving a wider range of individuals or entities the ability to represent children in IDEA claims.

*Family & Children's Center, Inc. v. School city of Mishawaka*, 19 IDELR 780 (N.D. Ind. 1993).

(continued on page 2)

IDENTIFICATION OF PARENTS (CONTINUED FROM COVER PAGE)

**LIMITATIONS ON PEOPLE WHO CAN ACT AS PARENTS**  
 A state may limit the ability of certain individuals who have legal responsibility for a child to be deemed a person acting as a parent. *Ysleta Indep. Sch. Dist.*, 29 IDELR 1093 (SEA TX 1998). OSEP has provided Guidance on how Part C regulations address the obligations of a lead agency to protect a child who is a ward of the state, and certain limitations when appointing a surrogate parent,

if one is needed, *Letter to Baker*, 35 IDELR 10 (OSEP 2000).

**TRANSFER OF PARENTAL RIGHTS TO STUDENTS UPON THE AGE OF MAJORITY**

States can choose to transfer a parent's rights to students who are competent to act on their own behalf upon reaching the age of majority. 34 CFR 300.51. However, where such a transfer of rights takes place, parents will always

retain the right to receive all notices sent by school districts under IDEA. Beyond that, each state decides the extent to which school districts must take actions to keep the parents in the loop.

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The age of majority, for special education students in Colorado, is 21.

COLORADO'S DEFINITION OF PARENT UNDER THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT (ECEA), 1 CCR 301-8

2.07 Parent and Educational Surrogate Parent

2.07(1) Parent shall mean biological parent, adoptive parent, guardian or person having legal custody of the child.

2.07(2) Educational surrogate parent shall mean a person who has training

and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a

disability is unknown, cannot be located, is unavailable or the child is a ward of the state.

An Educational Surrogate Parent must be appointed by the Special Education Services Unit of the Colorado Department of Education.



OSEP EXPLAINS PART C'S 'SURROGATE PARENT' RULES

OSEP 2000. Part C regulations require the lead agency to appoint a surrogate parent for a child when necessary to protect the child's IDEA rights. However, the agency is prohibited from naming as a surrogate any person who provides early inter-

vention services to the child or to any family members. Employees of state agencies are also ineligible to serve. OSEP noted that a foster parent may act as a child's "parent" if permitted by



state law and provided IDEA requirements are met. In the alternative, a guardian may serve as a parent, but not if the state itself is the guardian for a ward of the state. *Baker, Letter to*, 35 IDELR 10. Individuals with Disabilities Education Law Report, Cu-

mulative Digest & Tables, Volume 34-36, 2002 LRP Publications, p. VIII-148.

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