



Joint Policy Statement
Iowa Department of Human Services & Iowa Department of Education
August 2011

“Decision-Making for Children with Disabilities in Foster Care”

Occasionally differences in policy interpretations between DHS social workers and educators arise when children who are eligible for services under the Individuals with Disabilities Education Act (IDEA) are placed in foster care. While there have been discussions between DE and DHS regarding these issues, there has not been any coordinated guidance to help social workers and educators identify who has the authority to sign consents for educational and other services (or make other important decisions) under Early ACCESS (Part C of the IDEA, ages 0 to 3) or special education services (Part B of the IDEA, ages 3 to 21) on behalf of children in foster care.

The DHS and the DE have agreed to a common set of principles that will guide each agency’s policies related to these issues.

Important Notes

- 1. This joint statement does not apply to children in general education. It only applies to children who are or may be receiving services under the IDEA.**
- 2. Even for children who are or may be in special education or Early ACCESS, this joint statement only applies to issues under the IDEA, such as evaluation, programming, or placement. If the matter at issue is a “general education” question (e.g., field trip consents, open enrollment requests), then this joint statement does not apply.**

I. *Preference for Established Parents.* Both child welfare law and special education law recognize the importance of involving parents in important decisions for their children. When a child is placed in foster care, generally parents retain legal guardianship of the child. Therefore, they retain the right to make educational decisions for the child. All parties working with the child and family should make reasonable efforts to engage parents and obtain informed consent for evaluations, services, and releases of information. Iowa Code § 232.2(11). This is consistent with the IDEA, which gives priority to biological or adoptive parents in decision-making, “unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.” 34 C.F.R. § 300.30(b)(1).

II. *Established Parent Unable or Unavailable.* When a parent does not have authority to make educational decisions for a child or is not available (location unknown or not reasonable to locate), social workers and educators must find someone else who has that authority.

A. *Guardianship.* When a court with jurisdiction over the child awards guardianship to someone other than the biological or adoptive parent, the guardian may sign consents on behalf of the child. Iowa Code § 232.2(21); 34 C.F.R. § 300.30(a)(3). Education law provides an important exception to this rule: if a child's guardian is DHS, DHS employees may not sign consents on behalf of the child because they are not defined as parents under 34 C.F.R. § 300.30(a)(3).

B. *Relative Placement.* If a child is placed with an adult, such as a relative, and that adult is "acting in place of the biological or adoptive parent," that adult may act as the child's parent. 34 C.F.R. § 300.30(b)(4). This may include "a grandparent, stepparent, or other relative." *Id.*

C. *Foster Parents.* Based on Iowa law, a foster parent may not serve as a child's parent under the IDEA. Notwithstanding this law, a foster parent who is a child's relative may still serve as a child's parent (Item II.B, above). A foster parent could also be appointed as a child's surrogate parent (Item III, below).

D. *Court designee.* A court order may name a particular person to make educational decisions for a child. 34 C.F.R. § 300.30(b)(2). That person cannot be a DHS employee or educator. That person may be the child's foster parent.

III. *Appointing a Surrogate Parent.* The IDEA requires appointment of a surrogate parent for a child whenever no parent for the child can be identified or located. 34 C.F.R. § 300.519(a). A surrogate parent cannot be a school employee, a DHS employee, or an employee of "any other agency involved in the education or care of the child." *Id.* § 300.519(d)(2). The surrogate parent represents the child in all matters related to the child's special education or Early ACCESS services. Iowa Admin. Code rr. 281—41.519(7), 281—120.68(3). The law allows two different means of appointing a surrogate parent.

A. *AEA Selection of Surrogate Parent.* If no parent can be identified (this includes other persons who might meet the definition of parent, such as a grandparent) or reasonably located, the AEA selects the child's surrogate parent. *Id.* rr. 281—41.519(4), 281—120(1). The AEA may select a foster parent as the child's surrogate parent if the foster parent meets the AEA's criteria for selection as a surrogate parent.

B. *Juvenile Court Selection of Surrogate Parent.* If the child is a "ward of the state" (in foster care or in DHS custody, see Iowa Admin. Code r. 281—41.45) and needs a surrogate parent, the judge presiding over the child's case in juvenile court may appoint a surrogate parent. *Id.* r. 281—41.519(3). The judge may not appoint any person involved in the care or education of a child to be the child's surrogate, including DHS social workers. The judge may appoint a child's foster parent to serve as the child's surrogate parent.

III. *Other Matters.* Please take note of the following items.

A. *Scope of Statement.* As noted above, this applies only to special education and Early ACCESS (consents for services, consents for evaluations, requests for mediation, etc.). It does not apply to decisions that are made for all children, such as field trip consents. While DHS workers are not able to sign special education consents, DHS's laws determine whether they may give consent for general education students or issues.

B. *Releases of Information.* Persons who meet the IDEA definition of parent may sign for releases of information. Please note that there may be additional persons who are eligible to sign releases of information under the Family Educational Rights and Privacy Act (FERPA), which provides similar but not identical protections for student and family privacy. *See* 34 C.F.R. pt. 99.

C. *Parents with Limited Rights.* Biological or adoptive parents of children with disabilities whose parental rights have not been terminated but whose rights to make educational decisions have been limited are still entitled to involvement in their children's education, unless a court specifically directs otherwise. For example, they continue to be entitled to receive notices and to participate in IEP/IFSP team meetings. Unless specifically ordered by a court, all parents are entitled to notices, to educational records, and to participate in meetings; however, only one parent's consent is required under the IDEA. If the established parent and another person who meets the IDEA definition of parent disagree (see Item I, above), follow the direction of the established parent, unless their educational decision-making authority has been eliminated or limited.

D. *Proper Use of Surrogate Parents.* The surrogate parent process is used in limited circumstances. It is not used when a parent's location is known but the parent is not able to personally attend a meeting (e.g., incarceration, military deployment); in those situations, the law allows for alternative forms of meeting participation (e.g., telephone calls, videoconferences). It is also not used when a more "agreeable" parent would make the jobs of DHS or educators easier.

E. *Further Information.* Each Department will be responsible for providing training to their respective staff and partners. DHS employees with further questions may contact the Division of Adult Children and Family Services. AEA, school district and Early ACCESS partner agency employees with further questions may contact the Bureau of Early Childhood Services or the Bureau of Student and Family Support Services.