



## **Guidance on Appointment of Special Education Surrogate Parents**

Revised January 2013

This guidance updates and replaces guidance jointly developed by the Massachusetts Department of Elementary and Secondary Education (ESE) and Massachusetts Department of Children and Families (DCF)<sup>1</sup>, and issued in 2002. It reflects current federal policy as well as the policy of both agencies concerning the needs of children in DCF care or custody who are eligible for special education services, who can make special education decisions for such children and when a Special Education Surrogate Parent (SESP) must be appointed for them.

This guidance:

1. Describes the framework for the Special Education Surrogate Parent Program (SESP Program);
2. Clarifies the circumstances under which the SESP Program will assign a Special Education Surrogate Parent (SESP) to children in the care or custody of DCF;
3. Defines the relationship between such children and their SESP when the child attains the age of majority (18 years of age) under Massachusetts law; and
4. Addresses the issue of judicial appointments of special educational decision-makers.

Please note that a revised referral form requesting appointment of an SESP is attached.

### **I. Background: The Framework for the Special Education Surrogate Parent Program**

The SESP Program exists in response to federal special education law, the Individuals with Disabilities Education Act (IDEA). The IDEA requires states to implement procedures to protect the rights of children entitled to special education services who are in the custody of a state agency (a “ward of the state”), or whose parent or guardian cannot be identified or located.

ESE is the state agency responsible for assuring that this requirement is implemented. It does so through the SESP Program by appointing individuals,<sup>2</sup> called Special Education Surrogate Parents (SESPs), to act in special education matters on behalf of children in certain circumstances in which DCF has obtained care, custody or guardianship of the child. The SESP Program recruits and trains volunteers to act as decision-makers in special education matters for those students, ages 3 – 22, whose parents are unable or unavailable to fulfill their responsibilities in this regard. Neither a parent’s lack of expertise in special education issues nor lack of fluency in English is a basis to seek appointment of an SESP for a student. An SESP has the same rights and responsibilities as a parent for purposes of special education decision-making. This means that the SESP has authority to, among other things, review the child’s educational records, consent to special education evaluation, accept or reject an Individualized Education Program (IEP), request an independent evaluation and request mediation or a hearing to resolve special education disputes.

ESE operates its SESP Program under contract with 2 private entities that are its agents for this purpose.<sup>3</sup> The SESP Program matches eligible students with SESP. Once a match is made, the SESP

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<sup>1</sup> At that time, the agencies were named the Massachusetts Department of Education and the Massachusetts Department of Social Services, respectively.

<sup>2</sup> Individuals may also be appointed by the Juvenile Court or the Probate and Family Court. *See Section IV.*

<sup>3</sup> As of this writing, the address and telephone number of the SESP Program for purposes of obtaining an SESP is 167 Lyman Street, P.O. Box 1184, Westboro, MA, 01581; tel: 508-792-7679; fax: 508-616-0318. Information about the SESP Program can also be obtained by visiting <http://www.sespprogram.org> or emailing

Program issues an appointment letter to the SESP formalizing the relationship between the individual and the student. The SESP Program sends copies of the appointment letter to the responsible school district(s), the child's DCF worker and to other identified professionals involved with the student. The assigned SESP then has authority to provide consent for evaluations and make other decisions regarding special education matters.

The primary mission of DCF is to protect children who have been abused or neglected in a family setting. In carrying out this mission, DCF may remove a child from his or her home and place the child in foster, group or residential care, until the child can be returned home safely or another permanent living arrangement, such as an adoptive home, can be provided. Although, in most cases, DCF receives **custody** of a child through a Care and Protection (C&P) petition alleging parental abuse or neglect, it may also obtain custody through a "Child Requiring Assistance (CRA)" (formerly "CHINS") petition, based on the child's behavior, or as a result of a private custody dispute (e.g., a divorce or other custody proceeding). Children also enter DCF **care** through voluntary agreements between their parent(s) and the agency.

Under federal and state special education law, a parent generally has the authority to make special education decisions for his/her child. Similarly, a foster parent may have authority to make special education decisions on behalf of a foster child placed with the foster parent, if appropriate (see II-D below). A SESP having special education decision-making authority must:

1. Be older than 18 years of age;
2. Not be an employee of a public agency involved in the care or education of the specific student;
3. Have no interest that might conflict with the interests of the student; and
4. Have adequate knowledge and skills to represent the student.

Since DCF workers are "involved in the care...of the specific student" and there are potential conflicts of interest, DCF employees may not make special education decisions for children in DCF care or custody nor can they be appointed as SESP. However, this provision does not bar DCF workers from referring a child for a special education evaluation if the child appears to be a student who may have educational disabilities.<sup>4</sup> In cases where referral for evaluation is appropriate, the DCF worker should simultaneously refer the child to the SESP Program for immediate appointment of an SESP *if appropriate* under this guidance document.

## **II. Determination of the Special Education Decision-maker for a Child in Placement**

While DCF can refer any child for special education services, it does not have the authority to consent to special education evaluation, sign an Individualized Education Program (IEP), make special educational decisions for a child who has an IEP, or file a special education appeal. The following provides guidance for DCF staff in determining when the parent or foster parent will make special educational decisions for DCF-involved children who require a special education evaluation, or who are identified as eligible for special education and require IEP services, and when it may be necessary to request appointment of an SESP by the SESP Program.

### **A. General Principles**

**In general, DCF's decision to seek the appointment of an SESP for a child will be made as follows:**

- **Voluntary Placement Agreements and DCF Custody – "Child Requiring Assistance (CRA)" (formerly "CHINS" custody):** When a child is in the **care of DCF**, as opposed to custody, the parent retains the right and responsibility to make decisions related to special education. In such cases the child has generally entered placement primarily to address his/her issues rather than as a result of

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[contactus@sespprogram.org](mailto:contactus@sespprogram.org)

Recruitment, training and support of SESP is conducted by the Recruitment Training and Support Center (RTSC) for Special Education Surrogate Parents. The RTSC is located at the Federation for Children with Special Needs, The Schrafft Center, 529 Main St., Suite 1102, Charlestown, MA 02129; tel: 617-236-7210; fax: 617-241-0330. Information about the RTSC also may be obtained by visiting [www.fcsn.org/RTSC](http://www.fcsn.org/RTSC) or emailing: [rtsc@fcsn.org](mailto:rtsc@fcsn.org).

<sup>4</sup> It is also important to emphasize that this restriction only applies to special education matters. It does not restrict the authority of DCF workers in general education matters.

concerns regarding the parent’s caretaking. DCF has care of a child in situations where the parent has either signed a voluntary placement agreement with the Department or has entered into a care and responsibility agreement with DCF in the Probate and Family Court. While DCF may receive custody of a child through a **“Child Requiring Assistance (CRA) (formerly “CHINS”) proceeding**, that proceeding is similarly based upon the child’s issues, and in such cases the parent will consequently retain the right and responsibility to make decisions related to special education.

- **DCF Custody – Placement with a Foster Family:** When a child is in the **legal custody of DCF** through an order of either the Juvenile Court or Probate and Family Court (with the exception of “Child Requiring Assistance” matters), is living in a foster home, and DCF determines that the child’s parent should not continue in the role of educational decision-maker, the DCF social worker will request the child’s foster parent to act in this role unless a conflict of interest is identified. When the child’s foster parent agrees to assume this responsibility, federal law provides for **the child’s foster parent** to have authority to make decisions related to special education, and no appointment by the SESP Program is necessary, nor is there a need to request an SESP.
- **DCF Custody – Placement in Congregate Care:** When a child is in the **legal custody of DCF** and living in a congregate care setting (for example, a group home or residential placement) and DCF has determined that the child’s parent will not continue in the role of special educational decision-maker, DCF will seek the appointment of an SESP to make special education decisions on behalf of the child.

Manner of DCF Placement	Usual Special Education Decision-Maker
<b>Voluntary Placement Agreement</b> - Care and Responsibility (where parent and DCF mutually agree to voluntary placement of the child with a foster parent or in a congregate care setting)	<b>Parent</b>
<b>DCF Custody – “Child Requiring Assistance (CRA)”</b> (formerly “CHINS” custody)	<b>Parent</b>
<b>DCF Custody – Placement with a Foster Family</b> (including a contracted “intensive foster care” family)	<b>Foster Parent</b> (if parent does not maintain role, foster parent agrees to it and has no conflict of interest – see II-D below)
<b>DCF Custody – Placement in Congregate Care</b> (such as a group home or residential school)	<b>SESP</b> (if parent does not maintain role)

Unusual circumstances may occur that would warrant departure from the general principles outlined above. In such cases, a referral may be made to the SESP Program with an explanation of the basis for the requested appointment. The SESP Program will consider these requests on an individual basis after consultation with the child’s DCF social worker or other appropriate DCF representative.

**B. Responsibilities of the DCF Social Worker**

A DCF social worker is not allowed to act as a child’s special education decision-maker under federal special education law [see 34 CFR 300.519 (d)(2)]. This means that a DCF social worker does not have authority, for example, to sign an IEP, evaluation consent forms, or request a special education hearing on behalf of a DCF child. However, a DCF social worker may refer a child for a special education evaluation if the social worker believes that the child may have a disability that interferes with the child’s ability to make progress in school. If appointment of an SESP appears appropriate under the principles set out above, the DCF social worker should refer the child to the SESP Program at the same time, using the attached referral form. In some situations, a child who is eligible for an SESP will have an immediate need for a special education decision, such as consent for an initial evaluation, before an SESP is available. In such cases, the SESP Program will appoint a consultant as a temporary SESP who would be able to authorize the school district to proceed with the child’s initial evaluation. The SESP Program will assign an individual as soon as possible to be the ongoing SESP.

When referring a child to the SESP Program, DCF social workers are strongly encouraged to suggest individuals meeting the eligibility criteria whom they know to be interested and available to act as that child’s SESP.

Once an SESP is appointed for a child, the DCF social worker should make sure that the SESP Program and the SESP are informed in a timely manner any time the child changes his/her placement, address or legal status.

In situations where an SESP has been appointed for a child in DCF custody, and the child then leaves DCF custody, DCF will notify the SESP Program that the child has left DCF custody. Upon receiving the notice, the SESP Program will end the appointment of the SESP.

### **C. Parents Remaining as Special Education Decision-makers**

As noted in Subsection A above, DCF may determine that it is in the child and family's best interest for the parent to remain the child's special education decision-maker even though the child is in DCF custody. In making such a decision, the DCF social worker and supervisor consider relevant factors including, but not limited to:

- the child's anticipated length of stay in placement with DCF;
- the past involvement of the parent in education decision-making for the child;
- the permanency plan goal for the child; and
- the willingness of the parent.

If the DCF social worker and his/her supervisor determine that it would best serve the child's interests, special education decision-making may remain with, or be delegated back to, the parent. The DCF social worker shall note this decision and the reasons in support of it in the DCF electronic record and inform the parent, the responsible school district, and, if an SESP has been appointed, the SESP Program, in writing.

If at some point DCF and/or the parent determine the parent will no longer serve as the child's special education decision-maker, the DCF social worker will inform both the parent and responsible school district in writing. Upon such a change, when the child is placed with a foster family, the child's foster parent will have special education decision-making authority, **provided the foster parent agrees to assume this role and has no conflict of interest** (see II-D below). Otherwise, if appropriate (see circumstances above), the DCF social worker will make a referral to the SESP Program for the appointment of an SESP.

### **D. Foster Parents as Special Education Decision-makers**

When a child is placed in a foster home and DCF determines that the child's parent will not continue as the special education decision-maker, the child's special education decision-maker will be the child's foster parent, if the foster parent agrees to assume this role and has no conflict of interest. Examples of circumstances when a foster parent has a conflict of interest include:

- the foster parent is an employee of a placement agency, in addition to being a foster parent for that agency (e.g., Jane is a caseworker for Valley Services and is also a foster parent for that agency); or
- the child is being considered for enrollment in a collaborative or day school program operated by the same agency that licensed the foster home (e.g., the student has been referred to Valley Services' Day School and is living in Jane's Valley Services' foster home).

A foster parent may act as a child's special education decision-maker without having to be appointed by the SESP Program or a court (see 34 CFR 300.30). Since the foster parent has the right to act as special education decision-maker without appointment, the DCF social worker should only need to make referrals to the SESP Program on behalf of a child in a foster home for an SESP in limited circumstances. The DCF social worker should discuss with the foster parent the responsibilities attached to assuming the role of special education decision-maker and document the decisions from that conversation, in writing, **in the Child Placement Agreement** and in the electronic record.

Foster parents may obtain information and other assistance regarding special education decision-making by contacting their local school district, the district's Parent Advisory Council (PAC) on special education or the Federation for Children with Special Needs (FCSN) at 800-331-0688.

### **E. Role of Parent vs. Role of SESP**

The appointment of an SESP does not preclude a parent or parents from participating in their child's education. In most cases, the parent(s) can and should be encouraged to attend their child's educational team meetings, as well as other school meetings, and to work with the SESP on behalf of their child. This

is particularly appropriate when the child is expected to return home and transfer of special educational decision-making from the SESP to the parent is anticipated. The SESP should consider the concerns and wishes of the parent in special education decision-making, but is not bound by parental preferences. If the parent has concerns or questions about the role of the SESP, the DCF social worker should assist in responding to them.

An SESP's responsibility and authority is to make decisions regarding a child's special education in the place of a parent. To that extent, an SESP should not be an active participant in other educational and non-educational decisions made by DCF as custodian of the child, such as permission for school field trips or change in residence decisions. [NOTE: Like a parent, the foster parent who is the child's special education decision-maker has the authority to act in both roles.] This limitation on the authority of the SESP does not preclude an SESP from meeting with DCF representatives, at their invitation, to listen and understand decisions made by DCF on behalf of the child, since many of these decisions will affect the special education of the child.

### **III. Appointment of Special Education Advisors for DCF Student Youth over Age 18**

According to Massachusetts law, a student who has reached the age of majority (18 years of age) is an adult, and is therefore presumed competent to make his or her own decisions. This presumption of competence extends to students aged 18 and older who continue to be in the care of DCF. Such students are no longer eligible for an appointed SESP. The SESP Program will inform both the student and SESP that the SESP's appointment is terminated.<sup>5</sup>

On occasion, DCF has custody, or is the legal guardian, of an individual 18 or older who was in DCF care or custody as a minor and has been adjudicated incompetent. In such cases, an SESP will be appointed as soon as the DCF social worker provides documentation to the SESP Program of the guardianship appointment or continued custody order. An adult student who has been adjudged incompetent will continue to have the right to an appointed SESP until the student is no longer eligible to receive special education services or the guardianship/custody has been terminated, whichever comes first.

### **IV. Judicial Appointments of Special Education Decision-Makers**

Judges of the Juvenile Court or the Probate and Family Court may also make appointments of surrogate parents. Such appointments are contained in written orders. The court order expressly specifies that the individual guardian ad litem (GAL) is appointed as the child's educational decision-maker for special education purposes. A copy of the court order will serve as confirmation of the appointment and should be provided to the appropriate school officials and DCF.

If a GAL is appointed by the court in another role (Extraordinary Medical Treatment, Legal Rights, Evaluator, Competency), but without express authority as the child's decision-maker for special education purposes, the GAL may be appointed by the SESP Program as SESP in addition to the court appointed role if the GAL is willing and has met the requirements of the SESP Program.

Students who have a court appointed education decision-maker should not be referred to the SESP Program because the court appointment is sufficient to act in the place of the parent in special education matters under the federal IDEA. [See 34 CFR 300.519(c).]

It should be noted that if a court appoints a GAL with education decision-making authority and the parent, foster parent or SESP had been making special education decisions for the child up to that point, the parent, foster parent or SESP no longer has the right to consent to evaluations, sign an IEP, or to ask for mediation or a hearing to resolve special education disputes. By appointing the GAL and conferring education decision-making authority on that individual, the court effectively takes away from the parent, foster parent or SESP any authority he/she may have had to act on behalf of the child in this area.

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<sup>5</sup> If, despite the termination, the former SESP volunteers to continue to assist the student, the SESP is doing so on his/her own, i.e., is not acting under the direction, guidance, or with the support of the SESP program.

## **V. Obtaining Additional Information**

Questions regarding the assignment of an SESP should be directed to the Program Director, at 508-792-7679 or [www.sespprogram.org](http://www.sespprogram.org). Questions regarding recruitment, training and support should be directed to the Recruitment, Training and Support Center for Special Education Surrogate Parents at the Federation for Children with Special Needs, at 617-236-7210 or [www.fcsn.org/RTSC](http://www.fcsn.org/RTSC). Questions regarding DCF-related issues should be directed to the DCF Manager of Education Services, at 617-748-2340 or [susan.stelk@state.ma.us](mailto:susan.stelk@state.ma.us).

# Special Education Surrogate Parent Program

P.O. Box 1184, Westboro, MA 01581-6184

Phone (508) 792-7679

Fax (508) 616-0318

<http://www.sespprogram.org>

[contactus@sespprogram.org](mailto:contactus@sespprogram.org)

## Student Referral

**Instructions:** Please print using blue or black ink. Send a copy of the completed form to the student's Local School District. Send the original form to the Special Education Surrogate Parent Program.

1. STUDENT INFORMATION		Date:
Last Name:	First Name:	Middle Name:
Gender: <input type="checkbox"/> Female <input type="checkbox"/> Male	Date of Birth (mm-dd-yyyy):	Age:
Current Residence (name of congregate care program):		
Address (Street, City, State and Zip Code):		
Telephone Number: ( )	How long at this address?	
Reminder: For eligible children in foster homes, the foster parent who agrees to make Special Education decisions for a child placed with her/him has the authority to do so upon placement. No request for appointment is necessary.		

2. SCHOOL INFORMATION	
Current Educational Placement (name and address of school):	
Name and Title of Contact Person:	
Telephone Number: ( )	School District:

3. SPECIAL EDUCATION STATUS ( Select a or b & fill in the corresponding information.)	
<input type="checkbox"/> <b>a. The student is currently receiving special education services.</b>	
Type of Services <input type="checkbox"/> Inclusion <input type="checkbox"/> Day School <input type="checkbox"/> Other (please specify): _____ <input type="checkbox"/> Substantially Separate <input type="checkbox"/> Residential	Next Team Meeting date (mm-dd-yyyy):
<input type="checkbox"/> <b>b. An initial referral for a special education evaluation has been requested.</b>	
Date:	School District:

4. CUSTODY STATUS	
<i>Voluntary Placements are not eligible for the Special Education Surrogate Parent Program and should not be referred. (Exceptions may be addressed on a case-by-case basis.)</i>	
The student is in the legal custody of DCF through:	
<input type="checkbox"/> Care and Protection (C&P) Proceeding <input type="checkbox"/> Child Requiring Assistance (CRA) Petition*	<input type="checkbox"/> Protective Probate Court Custody <input type="checkbox"/> Non-Protective Probate Court Custody**
* In general, an SESP is not required for a student in custody due to a CRA (formerly "CHINS") petition.	**Reason for referral (Non-Protective Probate): _____ _____
<i>Neither a parent's lack of expertise in Special Education nor lack of fluency in English is a basis for an SESP Appointment.</i>	
<b>Please attach letter explaining your request.</b>	

**5. Family member or other adult (i.e.: GAL or Visiting Resource) is willing to make educational decisions:**

<input type="checkbox"/> Yes (If yes, please complete information below) <input type="checkbox"/> No	
Last Name:	First Name:
Address (Street, City, State and Zip):	
Telephone Number: (      )	
Relationship to Child:	
Has this person previously applied to this program to become a Special Education Surrogate Parent? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	

**6. CHILD'S SOCIAL WORKER**

Name:	Telephone Number: (      )
Agency:	Email:
Address (Street, City, State and Zip):	
Supervisor's Name:	Telephone Number: (      )

**7. REFERRAL SUBMITTED BY: (Complete Only if Other Than the Social Worker)**

Name:	Title:
Agency:	Telephone Number: (      )
Address (Street, City, State and Zip):	

*Please Note:* A Case Coordinator from the Special Education Surrogate Parent Program will be contacting you to verify the information provided on this referral.

**Signature** of person completing referral:

<p><b>Did you –</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Fill out the form completely?</li><li><input type="checkbox"/> Attach a list of all persons to be notified of the Special Education Surrogate Parent appointment?</li><li><input type="checkbox"/> Send a copy of this form to the student's school district?</li></ul> <p><b>Mail Original To: Special Education Surrogate Parent Program P.O. Box 1184 Westboro, MA 01581</b></p>
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