



Determining Special Education Decision-Makers for Children Placed with Foster Families

This tip sheet is designed to help Social Workers in determining who should make educational decisions for a child in DCF care or custody who:

- (1) is placed with a foster family; and
- (2) is being evaluated for special education or has an Individualized Education Program (IEP).

For purposes of this document, "foster" parent/child/family includes "pre-adoptive" parents/children/families.

BACKGROUND

Under federal law, when a child is referred for special education evaluation or has an Individualized Educational Program (IEP), no DCF employee is permitted to be her/his special education decision-maker. This means the Social Worker and Supervisor must determine who the child's special education decision-maker will be. The definition of "parent" in the relevant federal law and Massachusetts regulations is:

Parent shall mean father or mother. For purposes of special education decision-making, parent shall mean father, mother, legal guardian, person acting as a parent of the child, foster parent, or an educational surrogate parent appointed in accordance with federal law. Legal authority of the parent shall transfer to the student when the student reaches 18 years of age. [Massachusetts Regulations 603 CMR 28.02 (15)]

This broad definition provides the Social Worker with latitude to determine whether it is in the child's best interest for the parent or the foster parent to make special education decisions for the child, or, in rare circumstances, to request a Special Education Surrogate Parent (SESP).

Federal law and Massachusetts regulations also require that, with regard to the parent, foster parent or SESP who is making special education decisions for the child, the schools must:

- Schedule IEP meetings at a mutually agreed upon time and place.
- Mail progress reports and report cards to her/him.
- Keep her/him informed of any changes.
- Maintain communication with her/him.

SPECIAL EDUCATION DECISION-MAKER – CONSIDERATIONS

Parent as Special Education Decision-Maker

The parent always retains special education decision-making rights when the child comes into care through a Voluntary Placement Agreement or a Probate Court action initiated for non-protective reasons, or when the child is placed in DCF custody as the result of a "Child Requiring Assistance (CRA)" (formerly "CHINS") petition. Even when the child is committed to DCF custody as the result of a Care and Protection petition, the Social Worker and Supervisor first consider whether the parent can or should remain the child's special education decision-maker.

In determining whether the parent will retain special education decision-making rights for a child placed with a foster family, the Social Worker and Supervisor consider:

- the child’s anticipated length of stay in placement;
- 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 Social Worker and Supervisor determine that the parent will continue or will assume special education decision-making responsibility, the Social Worker documents this decision in the electronic record and notifies the school district and the foster parent.

Foster Parent as Special Education Decision-Maker

Since 2004, federal law and state regulations have recognized the important role foster parents play in the education of children by permitting them to assume the role of special education decision-maker upon placement of a child with them and discussion with the Department – without requiring appointment by the SESP Program. When it has been determined that a parent will not be the special education decision-maker, the Social Worker discusses the role and responsibilities with the foster parents and seeks their agreement to assume this role. The Social Worker documents this discussion and the decision in the Child Placement Agreement and the electronic record and notifies the school of the decision.

Duties associated with the role of special education decision-maker to be reviewed with the foster parent include:

- consent to a special education evaluation, if requested,
- attend IEP meetings (usually annually, unless a meeting is requested sooner),
- sign the child’s IEP,
- review the child’s educational records,
- review periodic progress notes,
- maintain regular communication with the school/program/teacher,
- voice her/his concerns and vision, as a parent, for the student and her/his education,
- advocate for resources that will help the student make progress in whatever need areas are identified and
- request a reconvening of the IEP/Team meeting if she/he has concerns that the school is not addressing.

If a foster parent feels that she/he needs additional information or training in assuming this role, some of the available resources are:

- **Special Education Parent Advisory Councils (PACs):** School district-based support, information and training. Contact information available through the school.
- **Federation for Children with Special Needs (FCSN):** Consultation and training. Contact: 1-800-331-0688 or www.fcsn.org.
- **Area Office Social Worker and Lead Agency Education Coordinator:** Information, guidance and support. Contact information available through the DCF Area Office.
- **Massachusetts Department of Elementary and Secondary Education “Special Education Home”:** See www.doe.edu/sped/.

As is true for parents, the foster parent does not need to be fluent in English or possess expertise in special education or knowledge of special education requirements to become the child’s special education decision-maker.

When to Request a Special Education Surrogate Parent (SESP)

Under the following limited circumstances, the Social Worker will request appointment of a SESP:

- **The foster parent has a conflict of interest** - For example:
 - the foster parent is an employee of a placement agency, in addition to being a foster parent with that agency (e.g., Jane is a caseworker for Valley services and is also a foster parent for the 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); or
- **The foster parent is unable to assume the role;** or
- **The child's circumstances/educational needs are complex** and, in discussion with the SESP Program, it is determined that the expertise of a SESP is needed.

For further SESP information, see the SESP Program website at www.sespprogram.org.

OTHER WAYS FOSTER PARENTS CAN SUPPORT A CHILD'S EDUCATION

Apart from the role of special education decision-maker, foster parents can support the education of the children in their care in many important ways:

- partnering with the child, family and Department to identify the child's individual learning needs and assist her/him to set and achieve high educational expectations;
- making sure the child attends school regularly and on time;
- supervising her/his completion of homework;
- learning of and planning for the child's participation in school activities; and
- attending/facilitating the child's involvement in all school-related activities that address the child's goals, interests and capabilities.

Under the Foster/Pre-Adoptive Parent Agreement, the foster parent is required to "authorize appropriate general school-related activities such as registration and field trips and notify the Department of educational activities authorized for the child."