

# Overview

## Educational Decision-Makers

This section of the Education Practice Kit outlines the importance of ensuring youth in care under the age of 18 have willing, active, and capable educational decision-makers driving education decisions. In this section, we have included a Tip Sheet outlining the legal framework and relevant statutory provisions surrounding educational decision-makers, as well as practical tips regarding requirements for surrogate educational decision-makers in DC and Maryland. We have also included the template court order preferred for use in DC Superior Court when a party is seeking the appointment of someone other than a parent to serve as educational decision-maker for a youth; this order was updated as of February 2018. This document is included as a template, and an editable Word-version of the document can be obtained from the Counsel for Child Abuse or Neglect (CCAN) Office or by calling the Children’s Law Center.

### Legal Resources

#### Federal Regulations

- [34 C.F.R. § 300 et seq.](#)

#### DC Law & Regulations

- [5 D.C.M.R. § E3001.1](#)

# Educational Decision-Makers for Youth in Care

## Why Educational Decision-Makers (EDMs) Matter

Youth in foster care are among the most educationally at risk of all student groups. Children in care are more likely to experience multiple school changes, exhibit poor attendance, perform below grade level, repeat a grade, have behavior and discipline programs, and require special education services.<sup>1</sup>

It is critically important for all children to have an engaged, active adult who is willing and able to make educational decisions on their behalves. An educational decision-maker is a designated adult with the legal authority to make education decisions for a child. In general, an educational decision-maker's role is to protect the educational rights of a child, and can include providing input regarding the child's grade, classroom, and school, advocating for a child's school stability and appropriate placement, ensuring a child's records and credits transfer between schools, serving as a participant in school meetings, and protecting a child's interests in school discipline proceedings. Not having a clearly defined or active educational decision-maker can result in delays in securing appropriate educational services for a child, or lead to a situation in which no one is actively monitoring the child's education. Ordinarily, a child's parents are his or her de facto educational decision-makers. However, for children in foster care, in particular, situations may arise where a parent is not able or well-suited to serve as educational decision-maker.

## When might a child need an alternate educational decision-maker?

- ◆ A child's parental rights have been terminated.
- ◆ A child doesn't have an active, involved adult in his or her life who is willing and available to make educational decisions.
  - For instance, a child's parents are alive, but have not made themselves readily available to engage with the child's school.
- ◆ The school is asking a child's GAL or social worker to make educational decisions on behalf of the child.
  - This may arise when the school has concerns about a child's academic, social-emotional, or behavioral needs and believes special education evaluations and programming may be warranted, and the child's parents are otherwise not available to engage in the special education process.
- ◆ The adult who has authority to make educational decisions is not acting in a manner consistent with the child's best interests.

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<sup>1</sup> American Bar Association, Center on Children and the Law, Legal Center for Foster Care and Education.

## Who can serve as an educational decision-maker?

As previously noted, there is a natural presumption that a child's parents will serve as their educational decision-makers; this is true in both the regular education and special education contexts. However, if a parent is not willing or able to serve in this capacity, an adult other than the parent can be appointed to serve as educational decision-maker in the parent's stead. In the abuse and neglect context, if a parent is not willing or able to fulfill the role of educational decision-maker, any party may petition the court to appoint someone other than the parent to serve as a child's legally designated educational decision-maker. Ideally, a court-appointed educational decision-maker is someone who is familiar with the child and willing and able to build a trusting relationship with the youth. As a child grows older, it is even more important for the youth to have a voice in his or her own educational process, and having someone who is connected and well-acquainted with the child responsible for making educational decisions can help facilitate a child's engagement in his or her own education. Persons other than a child's parents who may be able to accept appointment to serve as educational decision-maker for a youth may include a family friend or relative, a child's mentor or CASA, or a former or current foster parent.

## Educational Decision-Makers and Special Education

The Individuals with Disabilities in Education Act (IDEA) defines who can serve as a "parent" for special education purposes. The IDEA prescribes who has the authority to make special education decisions for a child; such authority includes the right to execute consent to evaluations, a child's Individualized Education Plan (IEP), and special education and related services. A person serving as a parent under the IDEA assumes all educational rights and responsibilities of a natural parent, and may represent the child in all matters relating to identification, evaluation, and educational placement of the child and the child's receipt of a free and appropriate public education (FAPE).<sup>2</sup>

## Who can serve as a "parent" under the IDEA<sup>3</sup>?

- ◆ A child's birth or adoptive parent, so long as the Court has not terminated or limited the parent's rights or appointed another person to make educational decisions on behalf of that child and the parent is "attempting to act" as the IDEA parent by participating in IEP meetings and monitoring the child's education. A birth or adoptive parent is a child's presumptive IDEA parent.
- ◆ A foster parent, so long as permitted by state law.
  - **NOTE:** DC law only allows a foster parent to act as an IDEA parent if the natural parent's authority to make educational decisions has been terminated and the foster parent has no interest that conflicts with the child.<sup>4</sup>
    - **PRACTICE TIP:** In practice, if you are interested in having a DC foster parent serve as the educational decision-maker for a DC ward, it is best to request the

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<sup>2</sup> See generally 34 C.F.R. § 300.519(g).

<sup>3</sup> 34 C.F.R. §300.30.

<sup>4</sup> See 5 D.C.M.R. E3001.1.

court appoint the foster parent to serve as a surrogate EDM; this is a necessity if a child's parental rights are intact, and is also particularly important if there is a possibility that the foster parent may discontinue serving as the child's foster parent, but it would be appropriate for that person to remain on as EDM.

- ◆ A guardian generally authorized to act as the child's parent or to make educational decisions for the child.
  - **NOTE:** CFSA or the child welfare agency does not have the authority to make educational decisions for a committed child under this provision.
- ◆ A person with whom the child lives who has been acting in the place of the parent. This person could be a relative or non-relative under the statute.
- ◆ A surrogate parent, when (1) no other IDEA parent can be identified, (2) a public agency cannot locate a parent after reasonable efforts, (3) the child is a ward of the state, or (4) the child is an unaccompanied homeless youth.<sup>5</sup>
  - **NOTE:** For youth in care, the court can appoint a person to serve as the youth's surrogate parent under the IDEA; the State Education Agency ("SEA"; in DC, OSSE is the SEA<sup>6</sup>) can also identify a person to serve as surrogate parent for a youth after an education agency serving the child (such as OSSE, DCPS, or an independent public charter school) has identified the need for a surrogate parent.
  - **NOTE:** To serve as a surrogate parent, a person must meet specific criteria under the law.<sup>7</sup> This includes the following requirements:
    - The person cannot be an employee of the SEA, the local education agency (which, in DC, is DCPS or an independent public charter school serving the child), or another agency that is involved in the education or care of the child, such as CFSA;
    - The person cannot have a personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
    - The person must have the knowledge and skills to ensure the adequate representation of the child.
  - **NOTE:** If the court appoints a person living in Maryland to serve as surrogate parent for a DC ward placed in Maryland or if a DC-resident is serving as the surrogate parent for a youth attending a Maryland school, the appointed surrogate parent is required to attend a Maryland surrogate parent training. In Prince Georges County, Maryland, these trainings are conducted by the Parent Surrogate Office and offered bi-monthly or upon request.

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<sup>5</sup> 34 C.F.R. § 300.519.

<sup>6</sup> OSSE is DC's Office of the State Superintendent of Education.

<sup>7</sup> 34 C.F.R. § 300.519 (d).

## What is the process for getting authorization for a person other than the parent to serve as an educational decision-maker?

For youth in care, a party – typically, a GAL or government attorney representing CFSA – may file a motion seeking the appointment of an educational decision-maker. If the child does not have any identified or possible special education needs, this person can be anyone having familiarity with the child; if the child has confirmed or possible special education needs, the person must be someone who meets the IDEA definition of a parent and likely that of a surrogate parent, as outlined above. If there is an identified adult who is willing, capable, and eligible to serve as the child’s educational decision-maker, the party motioning the court to appoint the educational decision-maker should identify the preferred EDM in the motion, outlining why the person meets the criteria to serve as EDM, citing back to the requisite statutory criteria.

If a party determines it is in the child’s best interests to have an educational decision-maker appointed, but there is no person identified to serve as educational decision-maker, a party can file a motion seeking the appointment of an unnamed educational decision-maker. If the motion is granted, the court will issue an order directing a GAL or social worker to refer the child to OSSE for the appointment of a volunteer surrogate parent. OSSE’s Educational Surrogate Parent (“ESP”) Program will subsequently appoint a trained volunteer to act as special education decision-maker for the identified student.

In 2016, the DC Superior Court adopted a uniform educational decision-maker/surrogate parent appointment order for use in abuse and neglect cases. Attorneys filing a motion seeking the appointment of an educational decision-maker should attach a copy of this proposed order to any such motion; please review and edit the order before attaching it to a motion, as the proposed order may contain language that is not applicable to your specific case. This template order is included in the Children’s Law Center’s Education Practice Kit for reference, and an editable Word-version of the document can be obtained from the Counsel for Child Abuse or Neglect (“CCAN”) Office or by calling the Children’s Law Center.

## What are the practical implications of having someone other than the parent serve as educational decision-maker?

If the court appoints an alternative educational decision-maker, a parent remains entitled to access a child’s educational information, unless the parent’s access has been otherwise limited by the court or his or her parental rights have been terminated. A parent with residual educational rights is authorized to participate in school meetings and access educational information, such as school records, but the parent will not have any legally recognized educational decision-making authority for the child. In general, an order appointing an educational decision-maker for a child will remain in effect until otherwise ordered by the court, and will automatically terminate on the child’s 18<sup>th</sup> birthday.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
FAMILY DIVISION**

<b>IN THE MATTER OF</b>	)	<b>Docket No.</b>	<b>Social File No.</b>
	)		
<b>X.Y. (D.O.B. 1/1/2001)</b>	)	<b>2015 NEG 00</b>	<b>2015 JSF 0000</b>
	)		
<b>Respondent.</b>	)	<b>Magistrate Judge/Associate Judge</b>	
	)		

**ORDER APPOINTING EDUCATIONAL DECISION MAKER/ SURROGATE PARENT**

Upon consideration of the motion of a party and any opposition thereto, the consent of all parties, or following a hearing, any evidence presented, and the arguments of counsel, the above-referenced child being in the custody of the District of Columbia Child and Family Services Agency (CFSA), it is this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

**ORDERED**, that after consideration of the rights of the parent(s) to make educational decisions, the Court has determined it is in the best interest of the child to appoint an Educational Decision Maker for the child, including as a Surrogate Parent for special education services when appropriate. The rights of the parent(s) to make educational decisions are suspended until further order of the Court.

*(Please select one of the below two paragraphs as applicable; selection of the second paragraph includes further orders that follow.)*

It is:

**ORDERED**, that \_\_\_\_\_ shall immediately make a referral and provide necessary information to the Office of the State Superintendent (OSSE) so that OSSE may promptly appoint a Surrogate Parent for the child, a student who is or is suspected of having a disability;

**OR, IT IS**

**ORDERED**, that the Court hereby appoints \_\_\_\_\_ to serve as the Educational Decision Maker for the Respondent, pursuant to D.C. Code § 16-2320(a)(5); this person may also serve as the Educational Decision Maker/Surrogate Parent when the child is or is

suspected of being a child with a disability under the Individuals with Disabilities Education Act (IDEA), pursuant to 34 CFR §300.30(b)(2), and 34 CFR §300.519(c); and it is

**FURTHER ORDERED**, the appointed individual shall have the following educational rights and responsibilities, pursuant to 34 CFR 300 *et seq.*; 5 DCMR *et seq.*, and relevant D.C. Code provisions, including, but not limited to, the following:

- a.) Review and keep confidential the child's educational records;
- b.) Participate in educational meetings and conferences;
- c.) Participate in decisions related to the child's school of enrollment and educational placement;
- d.) Participate in disciplinary meetings and proceedings;
- e.) Initiate a request or provide consent for an initial evaluation or re-evaluation for the child;
- f.) Request and participate in eligibility and Individualized Education Program (IEP) meetings;
- g.) Provide consent for special education, including the initiation and any modifications to specialized instruction and related services;
- h.) Assert all protections provided under the procedural safeguards of the IDEA;
- i.) Attend appropriate court hearings or proceedings, as required, to address the educational needs of the child; and
- j.) Any other educational rights ordinarily afforded to a parent under the laws of the District of Columbia. It is

**FURTHER ORDERED**, that the appointed individual shall meet the training requirements for the appointment of a Surrogate Parent that may be required by the Local Educational Agency where the child attends school, if the child is or is suspected of being a child with a disability under the IDEA pursuant to 34 CFR §300.30(b)(2), and 34 CFR §300.519(c)." It is

**FURTHER ORDERED**, that the parent(s) shall not be excluded from access to information unless specifically directed by this Court. And, it is

**FURTHER ORDERED**, that all terms of this order may be modified at any time by the Court upon its own motion or motion of any party, and unless otherwise ordered by this Court, this order will automatically terminate upon the child's 18<sup>th</sup> birthday.

**SO ORDERED.**

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Date

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Magistrate Judge/Associate Judge