

Identifying Special Education Parent for Children in Care

Per Ariz. R. P. Juv. Ct. 310(c), “The court must enter a signed order designating a person, other than a DCS child safety worker, who has special education decision-making authority as to the child, as provided in A.R.S. § 8-514.08.” Use the information below to help guide your decision.

A special education parent should be appointed even if the child does not yet have an IEP or 504 plan—if there is any suspicion of a disability or need to request an evaluation, the child will need a special education parent in place.

Biological/Adoptive Parent

The biological/adoptive parent is the **default IDEA parent**, unless there is a reason they cannot serve in this role. If a child has more than one person who fits the definition of “parent” under IDEA, the biological/adoptive parent is the presumed “parent” under IDEA (34 C.F.R. § 300.30(b)).

Biological/adoptive parents retain the right to serve as the IDEA parent even when the child is placed in out-of-home care or when the parent is incarcerated or institutionalized.

If biological/adoptive parent can't be IDEA parent, consider:

When bio/adoptive parent should not be IDEA parent:

- The identity or whereabouts of the bio/adoptive parent is unknown
- The bio/adoptive parent is deceased
- The bio/adoptive parent's rights have been terminated by a court
- The bio/adoptive parent fails to actively participate in the special education process and the child welfare agency identifies another person who can serve as the IDEA parent (ARS 8-514.08(B))
- If a party to the case believes bio/adoptive parents are not acting in the best interests of the child, the party may move the court to temporarily suspend bio/adoptive parents' special education decision making rights and name someone else as the IDEA parent

Kinship Placement

Foster Parent

Guardian (not DCS)

Case Manager (If the child is in **tribal** social services' custody and the case manager was appointed by a tribal court to that role.)

If child has no one else who can serve as IDEA parent:

A surrogate parent is a volunteer trained by the AZ Department of Education to serve as an IDEA parent. Surrogate parents cannot be employees of the child welfare agency or the school.

Surrogate Parent

DCS is NEVER the IDEA parent

Special Education vs. General Education: Who Makes Decisions?

Special Education

Decisions and actions related to a student's **special education** must be made by the student's IDEA parent. This is the person identified by the court in accordance with the IDEA definition of "parent" as laid out on the previous page.

Examples of special education actions/decisions for which the IDEA parent is responsible:

- Must be invited to student's IEP meetings
- Consent to school evaluation for IDEA eligibility
- Consent to initial provision of IDEA special education services by school
- Trigger 15 school day timeline for response from school by submitting a request for an IDEA evaluation of a student
- Must be invited to IDEA school discipline proceedings such as manifestation determination reviews
- Can request an independent educational evaluation of the student at the school's expense
- Can file a due process complaint against a school
- Has a right to be a meaningful participant in the IEP team, which may require them to be included in the "general education" meetings/decisions listed to the right in order to have the same information about the student as the school-based members of the IEP team

General Education

Decisions and actions related to a student's **general education** must be made by the student's legal guardian (DCS or tribal social services, if the student is in foster care) or those to whom the child welfare agency has delegated its rights (holder of the Notice to Provider), even if the child has an IEP or 504 plan.

Examples of general education actions/decisions for which child welfare agency/Notice to Provider holder is responsible:

- Enrollment in school (subject to a Best Interest Determination)
- Consenting to school activities, like field trips
- Participating in parent-teacher conferences or other non-IDEA meetings with the school
- Transporting the student to and from school
- Calling in excused absences
- Emergency contact
- Participating in school discipline proceedings, such as suspension or expulsion hearings
- May participate in special education proceedings, such as IEP meetings, if invited by either the IDEA parent or school as a person with "knowledge or special expertise regarding the child," but is not considered the child's "parent" in those proceedings