



## MEETING CHILDREN'S AND YOUTH'S SPECIAL NEEDS WITH QUALITY SERVICES



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### WHY IT MATTERS

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Several studies show that children and youth in foster care are between 2.5 and 3.5 times more likely to receive special education services than their non-foster care peers. Research also indicates that children in foster care experience rates of emotional and behavioral problems impacting their education at higher rates than their peers who have not been involved in the child welfare system.<sup>1</sup> Furthermore, children in foster care who are in special education tend to change schools more frequently, are placed in more restrictive educational settings, and have poorer quality education plans than their non-foster care peers in special education. Studies conducted with California caregivers and school liaisons indicate that children in foster care need more intensive educational and support services to succeed in school.<sup>2</sup> While screening foster youth for special education needs has been shown to increase the chance that

youth receive needed services, one study showed that 84% of foster youth whose screenings indicated potential special education needs did not receive related services within 9–12 months.<sup>3</sup>

**Having a disability and being in special education only compounds a student in foster care's ability to educationally succeed.**

Unfortunately, while children and youth in foster care are more likely to be identified as having a

disability, there are also many children and youth who, because of early, often unaddressed trauma associated with abuse and neglect, and placement and school instability, have learning difficulties that require extra support, but they do not have disabilities. Often these children may be misdiagnosed and either don't receive the kind of support they need or are burdened with a label that is inaccurate. Children of color are especially at risk of inappropriate placement in special education programs for students with emotional and behavioral disabilities.

Each individual child should be assessed and evaluated for their individual strengths and needs. This is the basis of the *Individual with Disabilities Education Act (IDEA)*, a federal law that requires local education agencies to provide a “free appropriate public education” (FAPE) to children with a qualifying disability. <sup>4</sup> A child with a disability is entitled to a program of special education and related services that will help them make meaningful academic and behavioral progress. These services are listed in an *Individualized Education Program (IEP)*. Whenever possible, children with disabilities should be taught in regular classrooms, learning what other students are learning and with the extra support and help they need.

For children who struggle with learning and behavioral problems but have not been diagnosed with a disability according to IDEA, they may need extra supports to help them address the instability and trauma they have experienced. Some students may qualify for 504 services, a part of the IDEA law.<sup>5</sup> Other students struggling in school, but not qualified for special education services, may benefit from participating in trauma informed classrooms and schools. <sup>6</sup>

Determining who can make decisions for a child who needs special education begins with the IDEA’s complex definition of “parent.” A child cannot be evaluated or begin to receive special education services until an IDEA parent has given written permission. In most cases it is the IDEA parent who provides consent to evaluations and services through the IEP or who disagrees with the IEP that the school district is proposing. Child welfare agencies that have an effective IDEA parent are ensuring that children with disabilities in foster care get the special help they need to reach their learning potential.

## WHO IS THE “IDEA PARENT” FOR A CHILD IN FOSTER CARE? <sup>7</sup>

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- **An active birth or adoptive parent.**

In the absence of judicial intervention, a birth or adoptive parent who is participating in IEP meetings and is actively involved in the special education process should be viewed as the child’s IDEA parent. This is true even if the child is living in a foster home or a group setting.

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- **Another qualified person.**

If the birth or adoptive parent is not “attempting to act,” any of the following individuals can be the IDEA parent:

- » A foster parent not barred by State law from serving as an IDEA parent
  - » A guardian
  - » A person acting in the place of the parent with whom the child lives
  - » A person legally responsible for the child’s welfare
  - » A surrogate parent<sup>8</sup>
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- **A person designated by the judge.**

Federal rules give a judge broad power to designate a specific person to function as the IDEA parent and to make special education decisions for a child in the custody of the child welfare agency. <sup>9</sup>

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## ADVOCACY IN ACTION

*Compared to their peers, young people in foster care are five times as likely to be eligible for or to receive special education services.*

### ACTIONS

- **Learn if children you advocate for have a disability.**

If they do, review their evaluation results and most recent IEP, find out when the next review meeting is scheduled or was held. Review their school history to determine how long they have been receiving special education services and whether they are making reasonable progress on their IEP stated goals. Identify who is the IDEA parent for the child. Raise concerns you have with your supervisor to identify a course for action.

- **For children you suspect may have a disability but do not have an IEP,**

inquire about their school history. Find out if they have ever had a referral and/or evaluation completed or if they have been on an IEP or 504 plan in the past. Remember that past or current trauma and/or school and placement instability may be contributing to their challenges in school. If you believe that the child has a disability as outlined in IDEA, work with your supervisor to make a referral for an evaluation.

- **When possible, support the birth or adoptive parent as the IDEA parent for the child.**

Most children in foster care return to their birth or adoptive families. When possible and in the child's best interests, help parents stay involved and empowered to make education decisions for their children. All parties involved should respect the parent's rights and treat

parents the same way they would treat any other member of the team.

- **Make sure there is an IDEA parent.** The rules for determining who the IDEA parent is are often complicated. As an advocate you can inquire about who is serving in the parent role for meetings and important education decisions. You can remind the school and child welfare agency professionals that the birth parent retains education-decision making rights. Or find out who the judge has appointed to be the IDEA parent if it is not clear to you.

- **Raise concerns you have if you don't believe that the current IDEA parent is the right person to make educational decisions for the child.** If you have concerns that the IDEA parent is not acting in the best interest of the child when making education decisions, you should suggest a specific person to serve in this role who is known to the child and who you think would do a good job. Ask the child or youth who they think would be the best decision maker. Or ask the child's caregiver. Any number of people such as a family member, family friend, church member or even yourself may be the best person to serve in this role.

- **Know your state law and how it affects who can be an education decision maker and when.** States have different laws about who can serve as an IDEA parent. For example, in some states, foster parents can and in some states they can't.

- **Participate in IEP meetings, recommend surrogate parents and ensure that the child or youth is making adequate yearly progress on their IEP goals.** The IEP is basically the “roadmap” for what the child is to learn or acquire and the supports and accommodations for how to get them there. The IEP should always be thought of as a dynamic, ever evolving tool to support the child’s progress. If you are concerned that the IEP is not being used in this way effectively, raise the issue with the team and advocate for more appropriate goals, supports, accommodations or even “graduation” off the IEP, if applicable.
- **Inform the judge and other court personnel of a child’s educational status including whether they are on an IEP or in need of an evaluation.** Courts

typically do not order school districts to provide special education services, but they may order the child welfare agency to refer a child for evaluations and services. If a child is not receiving the services to which he or she is entitled, a due process action must be filed but this cannot be resolved by the dependency court.<sup>10</sup>

- **If a school move is in the child’s best interest, work with others to expedite enrollment and alert the new school about the child’s special education needs.** When a child with an IEP moves to a new school in a new district, that school must provide the child with a free appropriate public education (FAPE). If the school wants to change or discontinue services, they must first conduct an evaluation or develop a new IEP.<sup>11</sup>

## BRIGHT SPOT

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### EDUCATIONAL DECISION-MAKER PROGRAM CASA PHILADELPHIA

In 2011, the Pennsylvania Supreme Court amended the Juvenile Court Rules to ensure judges proactively address the educational needs of dependent children who come before them at all stages of the adjudicatory process. One of the most significant changes was the addition of two new rules that require judges to appoint an “Educational Decision Maker” (EDM) for children in both dependency and delinquency proceedings when such an appointment is needed. When a child needs an EDM, child advocates or another party may suggest individuals to appoint, such as grandparents, adult siblings, family friends, guardians ad litem,

former foster parents, or other adults in the child’s life. But for many children, particularly those in residential placements, there is no one in their lives who can serve in this role. The absence of an EDM presents a critical barrier to educational success for this at-risk population.

Realizing their unique position to train volunteers to be EDM’s, CASA Philadelphia developed a pilot project to train six volunteers to serve in this role. Following this learning experience, CASA Philadelphia applied for and obtained a grant from IMPACT 100 Philadelphia to expand its program to train and supervise a pool of CASA volunteers to serve as educational decision makers for children in out of home care. Working in collaboration with the Education Law Center, the program developed a training curriculum and “EDM

Toolkit” that can be used across Pennsylvania to train and support high-quality volunteers to serve as court-appointed EDMs for children in foster care. The EDM program builds on CASA Philadelphia’s demonstrated ability to recruit, screen, train, and supervise volunteer advocates for children in the foster care system. The Program has been highly successful and currently provides EDMs for 80 children in foster care.

Advocates who want to become EDMs receive intensive CASA training as well as an EDM training and opportunities to attend quarterly meetings to ask

that have been identified and what the EDM volunteer activities have been to address or remove the barriers. EDM CASA volunteers are often able to advocate for more than one child at a time and will frequently become the EDM for two or more children at a time.

In addition, CASA Philadelphia’s EDM Program also established a stakeholder workgroup which includes DHS Philadelphia, the School District of Philadelphia and others who work collaboratively to address systemic barriers to academic success and provide targeted interventions for children in foster care.

*Having an EDM assigned to a child has resulted in greater school stability, expanded access to public school instead of an “on-grounds residential school” and placement in a least restrictive environment.*

questions and expand their knowledge about education issues. CASA EDMs who have extensive special education expertise also provide additional support to EDM volunteers by providing technical assistance.

A dedicated EDM Supervisor is responsible for supervising the EDM Volunteers and providing the initial and ongoing training and is facilitating quarterly group supervisor sessions. The Volunteer Coordinator and Program Manager, when recruiting and screening new volunteers, do so with an eye towards identifying and encouraging potential volunteers with skills sets that would naturally help them become an EDM for a child in foster care. The EDM Supervisor has the volunteers complete quarterly reports that collect information about the child’s educational progress, any barriers

CASA Philadelphia currently has 30 EDM CASA volunteers and other CASA volunteers who serve as EDMs advocating for the educational rights and needs of children and youth in foster care. The vast majority of these children with EDMs are students with disabilities, and the majority live in residential placements. Having an EDM assigned to a child has resulted in greater school stability, expanded access to public school instead of an “on-grounds residential school” and placement in a least restrictive environment. There is a currently a waiting list for EDMs to be assigned as judges have truly embraced the value of these important people in the lives of children and youth.

For more information, contact [training@casaforchildren.org](mailto:training@casaforchildren.org)

## SELECTED RESOURCES

Name	Description
<p><a href="#"><u>Legal Center for Foster Care and Education, Special Education Tools and Resources</u></a><sup>12</sup></p>	<p>The Legal Center for Foster Care and Education have created a number of resources related to this topic including specific tips for CASAs and child attorneys.</p>
<p><a href="#"><u>U.S. Department of Education and U.S. Department of Health and Human Services, Guidance on the Foster Care Provisions in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act of 2015</u></a><sup>13</sup></p>	<p>As part of the new provisions for students in foster care under the Every Student Succeeds Act, there is specific considerations around the educational supports for students in foster care and special education. This guidance is addressed in detail in this document.</p>
<p><a href="#"><u>U.S. Department of Education, Individual with Disabilities Education Act</u></a><sup>14</sup></p>	<p>Updated recently, this site provides extensive information on IDEA, rights of children and parents, due process, etc.</p>

## ENDNOTES

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- 1 See “Fostering Success in Education: Educational Outcomes of Students in Foster Care” (March 2018). Available at: <http://www.fostercareandeducation.org/>
- 2 Ibid.
- 3 Ibid.
- 4 See: <https://www2.ed.gov/about/offices/list/osers/osep/osep-idea.html>
- 5 For more information on 504 services see: <https://www2.ed.gov/about/offices/list/ocr/504faq.html#protected>
- 6 For more information, see the Issue Brief, “Preventing Behavior Issues in School.”
- 7 Adapted from the Legal Center for Foster Care and Education, <http://www.fostercareandeducation.org>
- 8 Education agencies must determine whether a surrogate parent is needed when: 1) a child does not have anyone who meets the definition of an IDEA parent (for example, a birth or adoptive parent or a foster parent who is not barred by state law from serving as an IDEA parent); 2) the education agency cannot locate an IDEA parent after reasonable efforts; 3) the child is a ward of the state under the laws of the state; or 4) the child qualifies as an “unaccompanied homeless youth.” For children in out-of-home care, a Surrogate Parent must always be appointed in situations 1 and 2.
- 9 For more information see “Special Education Decision-Making: Role of the Judge.” Available at: [http://www.fostercareandeducation.org/portals/0/dmx/2012/10/file\\_20121003\\_104020\\_Xsp\\_0.pdf](http://www.fostercareandeducation.org/portals/0/dmx/2012/10/file_20121003_104020_Xsp_0.pdf)
- 10 To learn more about due process under IDEA see: <https://www2.ed.gov/policy/speced/guid/idea/tb-safeguards-3.pdf>
- 11 To learn more about school placement stability for youth in foster care see Issue Brief: “Supporting school stability and seamless transitions.”
- 12 <http://www.fostercareandeducation.org/SearchResults.aspx?Search=special+education>
- 13 <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>
- 14 <https://sites.ed.gov/idea/?src=pr>