



# Special Education Decision Making Role of the Foster Parent

## Can a child with a disability get special help to learn?

Federal and state laws require that children with disabilities, from birth to when they graduate or (in most states) turn 21, get the help they need to learn. This help is called special education. Whenever possible, students with disabilities should be taught what all students are learning in regular classrooms—with the extra help they need. Children with disabilities can also get speech, physical, and occupational therapy; psychological supports; school health services; and other supports to help them make meaningful progress in academic and behavioral areas.

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## Who is eligible for special education and how does the process start?

Not every student who has learning difficulties needs special education. Most school districts have programs to help students with behavior or learning problems as part of the regular school experience. But some students have disabilities such as an emotional disturbance, a specific learning disability, autism, attention deficit disorder, or some other disability that make it hard for them to learn. The first step in deciding whether a student is eligible for special education is a full evaluation by the school district. If the school district decides the student is eligible, it will schedule a meeting to develop an education plan called an Individualized Education Program. The “parent” is part of that team.

Sometimes a child has a disability and needs help but does not need special education. For example, a child who uses a wheelchair may need help getting into and around the school, or a child with asthma may need medication during the school day. A federal law called Section 504 requires school districts to provide such “accommodations” so the child can participate fully in the school experience.

## Who usually makes decisions for a child in the special education system?

Educating a child with a disability requires teamwork between the family and the school. For the protections in the law to work well, every

child with a disability or who might have a disability must have a legally authorized “parent” who can act on her behalf. It is the “parent” to whom the school must send notice of meetings and proposals; who gets to attend meetings and make decisions about what is best for the child; and who can use mediation or the special education hearing system to resolve problems.

## What happens when a child is living with foster parents?

In most states, the **birth or adoptive** parent can make special education decisions for a child in foster care—but only if the parent is active in the process. If a birth or adoptive parent is not responding to notices from the school, is not attending special education meetings, or tells the agency that she is not interested in playing this role, the foster parent may step in and do the job.

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*Even if the birth or adoptive parent or someone appointed by the judge is acting as the “parent,” that person may welcome the foster parent’s input and participation.*

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The **foster parent** may also be the “parent” if no one knows where the birth family is living, a court has terminated the parents’ rights, or the birth or adoptive parents are dead. The exception is if state law prohibits the foster parent from being a “parent” for a child in their care or requires foster parents to be appointed as the Surrogate Parent to make special education decisions for the child. Check with the child’s caseworker, the child’s attorney, or even the judge, to find out whether you are allowed to make special education decisions for a child in your care, whether you first need to be appointed the child’s Surrogate Parent, or whether the school district or the court must assign someone else to perform this role.

## What is a Surrogate Parent?

A Surrogate Parent is an individual appointed by a judge or a school to make special education decisions for a child who does not have someone else who meets the definition of “parent” under the federal special education law. However, if the child has a foster parent who is not prohibited by state law from performing this role, the foster parent may be considered the child’s parent in the special education system—and an alternative Surrogate Parent should **not** be appointed for the child. However, in some states, the foster parent is actually appointed as the Surrogate Parent in this situation, so be sure to consult law, policy, and practice in your state. Again, check with the child’s caseworker, the child’s attorney, or the judge to determine what the rules are in your state.

## Can a court decide that someone other than the foster parent should make special education decisions for a child in care?

Yes! Even when a child is living with a foster parent, and that foster parent is presumed to be the parent for education decision-making purposes, a judge can decide that another individual—for example, an aunt who cannot care for the child but is willing and able to be the special

education decision maker—is the best choice for the job. In that case the judge will issue a written court order that lists the specific person who can act as the child’s “parent” in special education matters.

## What is the role of the foster parent when the birth or adoptive parent is the child’s special education decision maker?

Regardless of whether the foster parent is the education decision maker, it is the foster parent who works hands-on with the child on her homework and who knows how the child is adjusting and progressing in school on a day-by-day basis. Even if the birth or adoptive parent or someone appointed by the judge is acting as the “parent,” that person may welcome the foster parent’s input and participation. In any case, it can’t hurt to ask!

