

Parent Information Center of Delaware



Parent Information Center (PIC) is the new home of the Educational Surrogate Parent (ESP) Program.

Got Kids? Get Involved!

The Delaware Department of Education (DOE) contracts with PIC to administer the ESP Program. The ESP Program was established to ensure that children with special education needs, who are in foster care, have the same protections as all other eligible children under the Individuals with Disabilities Education Act (IDEA).

Both the IDEA and state special education regulations mandate this protection for children with disabilities whose parents cannot advocate for them in the special education process.

Who is an Educational Surrogate Parent (ESP)?

An Educational Surrogate Parent (ESP) is a person appointed by the Department of Education (DOE) to represent a child who receives, or may be in need of, special education and related services. The appointment occurs after the individual participates in training with PIC and is recommended to be an ESP by PIC.

An ESP is included in all educational decision making related to the identification, evaluation, educational placement and provision of special education and related services of the child.

See, 14 DE Admin Code 926 19.0; 34 C.F.R. §300.519



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Who is considered a parent under the Individuals with Disabilities Education Act (IDEA)?

All of the following are considered to be a parent under the IDEA:

- A biological or adoptive parent of a child;
- A guardian authorized to act as a child's parent or authorized to make educational decisions for the child BUT not the State if the child is a ward of the State;
- An individual acting in the place of a biological or adoptive parent and with whom the child lives – A Relative Caregiver's School Authorization is needed (*see question #7*);
- An individual who is legally responsible for the child's welfare; or a
- A **surrogate parent** who has been appointed by the Dept. of Education (*The appointment occurs after the individual participates in training with PIC and is recommended to be an ESP by PIC.*) *See, 14 DE Admin Code 922 3.0; 34 C.F.R. §300.30*

Which children have Educational Surrogate Parents (ESP) appointed to represent them?

A child will have an ESP appointed to them when:

- After reasonable efforts, no parent can be located;
- The parental rights of the child have been terminated and legal responsibility has not been granted by a court of law to an individual;
- The child's parent has consented voluntarily in writing to the appointment of an ESP; (*Note: This consent is revocable by the parent at any time when PIC receives written notice.*)
- The child is in the custody of the DE Division of Family Services/Department of Services for Children, Youth and Their Families (DSCYF); or
- The child is considered to be an unaccompanied homeless youth as defined under the McKinney-Vento Homeless Education Assistance Act (42 U.S.C. 11434a(6)). *See, 14 DE Admin Code 926 19.2; 34 C.F.R. §300.519*

Frequently Asked Questions about Special Education and Educational Surrogate Parents

1. What is the Individuals with Disabilities Education Act (IDEA)?

The IDEA is a federal law that mandates that eligible children with disabilities between the ages of three through twenty-one receive a free appropriate public education. A free appropriate public education means special education and related services.

2. What are the DE State Special Education Regulations?

The DE State Special Education Regulations outline how Delaware will implement the IDEA and describes the rights and responsibilities of parents, school districts and the DE Dept. of Education (<http://www.doe.k12.de.us>) related to IDEA.

3. How is a child determined to be eligible for special education and related services?

An educational evaluation must be conducted by school personnel.

- The evaluation includes information from a variety of sources, including, as appropriate, aptitude and achievement tests, information from intervention processes, parents and teachers.
- The evaluation is conducted by trained and knowledgeable school personnel.
- A team of individuals knowledgeable about the child, including the parent, review the evaluation information to determine if the child is a “child with a disability” for educational purposes.
- The team uses eligibility criteria as described in the IDEA and DE Special Education Regulations to make their determination of whether the child is eligible for special education and related services.
See, 14 DE Admin Code 925 2.0 - 925 6.0; 34 C.F.R. §300.8, §300.301 - §300.306

The educational classifications in Delaware used to define a “child with a disability” are: Autism, Deaf-Blindness, Developmental Delay, Emotional Disturbance, Hearing Impairment, Intellectual Disability, Learning Disability Orthopedic Impairment, Other Health Impairment; Speech and/or Language Impairment, Traumatic Brain Injury, Visual Impairment and Preschool Speech Delay (3 and 4 year olds only). *See, 14 DE Admin Code 925 6.6 – 925 6.18; 34 C.F.R. §300.8*

If a child is determined to be eligible for special education and related services, a meeting to develop an Individualized Education Program (IEP) will be held within 30 days of determination.
See, 14 DE Admin Code 925 23.0

4. Who can make a request to have a child evaluated for special education and related services?

A parent, a school or other public agency may initiate a request for an initial evaluation to determine if a child is eligible for special education and related services. *See, 14 DE Admin Code 925 2.2; 34 C.F.R. §300.301*

5. Who can sign the “permission to evaluate” to initiate an educational evaluation?

A school must get informed written parental consent prior to conducting an education evaluation to determine if a child is eligible for special education and related services. A parent (as defined under IDEA) must provide consent and sign the “permission to evaluate” form before a school can conduct an evaluation. *See, 14 DE Admin Code 925 1.0; 34 C.F.R. §300.300*

6. Are caregivers such as grandparents able to sign parental consent forms?

If a child lives with a grandparent (or other relative by blood, marriage or adoption) and that person is acting in the place of a biological or adoptive parent, then that grandparent (or other relative) is considered a parent under IDEA and can sign parental consent forms. Additionally, Delaware regulations require that the person complete a Relative Caregiver’s School Authorization form.
See, 14 DE Admin Code 922 3.0; 34 C.F.R. §300.30

7. What is a Relative Caregiver Authorization Form?

The Delaware Relative Caregivers' School Authorization Affidavit is required for a relative caregiver who is raising a child without legal custody or guardianship to register a child for public school. You can obtain this form through your school district or from the DE Health and Social Services/Division of Services for Aging and Adults with Physical Disabilities <http://dhss.delaware.gov/dhss/dsaapd/sample.html>

8. What is guardianship and who can be a guardian?

Guardianship is the possession by a non-parent of the powers, rights, and duties which are necessary to protect, manage and care for a child. A guardian has the legal authority to take care of the child as if he/she were the child's parent until the child turns 18 years of age. Included in a Guardianship Order is a Custody Order from the Family Court of Delaware (<http://courts.delaware.gov/family/>); therefore, a guardian has the same legal authority to care for the child as a parent would. A guardian as described here is considered a "parent" under IDEA.

There is also Permanent Guardianship in which a blood relative or foster parent may petition the court to become the guardian of an individual. Permanent Guardianship extends beyond 18 years of age. A guardian as described here is considered a "parent" under IDEA.

Note: Youth in the care of the Department of Services for Children, Youth and their Families (DSCYF) are said to be in their "custody"; therefore, a DFS (Division of Family Services) worker is not considered a guardian or parent of a child in foster care.

9. What is a guardian ad litem (GAL)?

A guardian ad litem (GAL) is a person appointed by the Family Court of Delaware to represent the best interests of a child who is the subject of a custody, visitation, guardianship, termination of parental rights, adoption or other related proceedings in which the Division of Family Services (DFS) is a party. A guardian ad litem representing a child through the Office of the Child Advocate (OCA) (<http://courts.delaware.gov/childadvocate/>) is an attorney. The OCA staff is comprised of several attorneys and other attorneys offer their services as guardian ad litem on a pro bono basis. You may see a GAL at an IEP (Individualized Education Program) meeting for your surrogate child.

10. What is a CASA?

A CASA (Court Appointed Special Advocate) serves as a guardian ad litem for abused and neglected children who come before the Court and is appointed through an order executed by a Family Court Judge. The CASA is charged with representing the best interests of the child and is a full party to court proceedings <http://courts.delaware.gov/Family/CASA/about.stm>. You may see a CASA worker at an IEP (Individualized Education Program) meeting for your surrogate child.

RESOURCES

DE Administrative Code - Information about the special education process can be found in the final State Special Education Regulations (Effective June 11, 2007) Dept. of Education http://www.doe.k12.de.us/infosuites/students_family/specialed/default.shtml

IDEA CFR (Code of Federal Regulations) - US Dept. of Education: Building the Legacy: IDEA 2004 <http://idea.ed.gov>

DE Dept. of Education - <http://www.doe.k12.de.us/>

DE Office of the Child Advocate - <http://courts.delaware.gov/childadvocate/>

National Dissemination Center for Children with Disabilities (NICHCY) <http://nichcy.org>