

WHO MAKES DECISIONS ABOUT EDUCATION FOR FOSTER CHILDREN AND YOUTH

Who has the right to make educational decisions for a child?

- The child's parents or legal guardians
- A court-appointed Educational Representative for the child
- A surrogate parent appointed by the court and the school district
- A juvenile court judge

What kind of educational decisions are made by the parent or other decision-maker?

- Enrollment in school
- Preference for placement in school of origin
- Consent for assessment for special education
- Consent for implementation of the individual education plan
- Request for special education due process (such as a due process hearing or mediation)
- Application to a magnet school, charter school, or alternative education setting

How is "parent" defined?

It depends. For students in general education, the law does not define who is considered a parent. In special education, however, the law specifically defines parent to include any of the following:

1. A person having legal custody of a child.
 - Biological or adoptive parent.
 - Legal guardian.
2. A foster parent if
 - the court has limited the parent's authority to make educational decisions.
 - the child has been placed in a planned permanent living arrangement with the foster parent.
 - A surrogate parent appointed by the district or court.
 - A responsible adult appointed by the court.
 - An adult student for whom no guardian or conservator has been appointed.
 - A person acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives².

Under what circumstances will the Juvenile Court limit the education rights of the parent or legal guardian?

If the student's parent or guardian is unavailable, unable, or unwilling to make educational decisions for the child, the juvenile court may limit the parent or guardian's educational rights.³

Who is a "responsible adult"?

Once the Juvenile Court limits the rights of the parent or guardian to make educational decisions, it must appoint an Educational Representative to make decisions for that child regardless of educational placement.

Who cannot be appointed an Educational Representative?

Educational Representatives cannot have a conflict of interest or be employed by any agency involved in the education or care of the child. This includes child welfare workers, probation officers, and attorneys' for the child, as well as school district and group home employees. Foster parents are not considered to have a conflict solely because they receive payment for their services.

How does an "Educational Representative" differ from a "Surrogate Parent"?

A surrogate parent is someone who is appointed to represent the child's interests if they receive or are eligible for special education services. If the court is unable to locate a Surrogate Parent for a child who has been referred for special education assessment or is currently receiving special education services, the court may either appoint a surrogate parent or direct the local school district to appoint a surrogate parent. The school district must appoint a surrogate parent within 30 days of making a determination that the child needs a surrogate.⁴

Who can be appointed a Surrogate Parent or Educational Representative?

Relative caregivers, foster parents, and court-appointed special advocates (CASAs) have priority in the law for appointment as a surrogate parent or educational representative. If none of these individuals are available or willing to act as a surrogate parent, Humboldt County of Education must choose someone who is qualified to be a surrogate parent and is not an employee of any agency that is involved in the education or care of the child. Those who may not be appointed include child welfare workers, probation officers, and attorneys for the child as well as school district and group home employees. If an educational representative can not be found the court would act as representative.

How long does an appointment as an Educational Representative or Surrogate Parent last?

The appointment of a responsible adult or surrogate parents lasts until:

- The youth reaches 18 years of age and no guardian or conservator has been appointed.
- Another adult is appointed to make educational decisions.
- The educational rights of the parent or guardian are fully restored.
- The child is placed in a planned permanent living arrangement, at which time the foster parent, relative caregiver, or non-relative extended family member has the right to make educational decisions on behalf of the child.
- The child is no longer in need of special education services.⁷

Is there special training required for a surrogate parent / educational representative?

Surrogate Parents must attend a three hour class that is put on by the Humboldt County of Education. An educational representative does need any special training.

What are the specific responsibilities of a surrogate parent / educational representative?

The federal special education law was written to give parents an equal say with the school district in determining the appropriate educational services for their child. A surrogate parent must represent the child's interests relating to special education services just like any parent would. By law the surrogate parent is required to meet with the child at least once. It also is recommended that the surrogate parent meet with the child as often as possible, attend the child's individualized education program meetings, review the child's education records, consult with persons involved in the child's education, and sign any consent relating to the individualized education program.

- Ed. Reps. follow list of rights and responsibilities on CRC 5.650
- Respond to JV -538 transfer from School of Origin request
- Submit reports to the court using JV-537
- Participate in hearings regarding education
- Submit JV-539 to request a hearing to remove child from school of origin

When can a Juvenile Court judge make educational decisions?

If, at the initial hearing on a petition alleging abuse or neglect of the child, the Juvenile Court limits the right of the parents to make educational decisions but cannot identify an educational representative and the appointment of a surrogate parent is not warranted, the court may, with the input of any interested person,

make educational decisions for the child. Any order made under this provision shall expire at the time the petition is either adjudicated or dismissed.⁹

⁷Welf.& Inst. Code § 361; Cal.Ed.Code § 56028; Gov't. Code § 7579.5.

⁸ Gov't. Code § 7579.5(c), (d)

⁹Welf.& Inst. Code § 319

⁴ Gov't Code § 7579.5(a)⁵20 U.S.C. § 1415(b)(2)(A)(i)⁶
Gov't Code § 7579.5(a)(1)(b)