

DEFINITION OF PARENT

Definition

According to EC §56028, Parent means any of the following:

1. A biological or adoptive parent.
2. A foster parent if the authority of the biological or adoptive parents to make educational decisions on the student's behalf specifically has been limited by court order.
3. A guardian generally authorized to act as the student's parent or authorized to make educational decisions for the student.
4. An individual acting in the place of a biological or adoptive parent, including grandparent, stepparent, or other relative with whom the student lives or an individual who is legally responsible for the student's welfare.
5. A surrogate parent appointed by the district.

Except as provided in number two above, the biological or adoptive parent, when attempting to act as the parent, and when more than one party is qualified to act as parent, shall be presumed to be the parent unless they do not have legal authority to make educational decisions for the student.

If a judicial decree or order identifies a specific person or persons listed in number 1 – 4 above to act as the parent or to make educational decisions on behalf of a student, that person or persons shall be determined to be the parent. Such an order would limit the rights of any biological or adoptive parent.

Parent does not include the State or any political subdivision of the government.

Parent does not include a nonpublic, nonsectarian school or agency under contract with a district for the provision of special education or designated instruction and services for a student.

Legal Requirements

This section only applies if the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the student and the student has been placed in a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of § 366.221, § 366.22, § 366.26, or paragraph (5) or (6) of subdivision (b) of § 727.3 of the Welfare and Institutions Code.

A foster parent shall include a person, relative caretaker or non-relative extended family member who has been licensed or approved by the county welfare department, county probation department or State Department of Social Services, or who has been designated by the court as a specified placement.

The foster parent may represent the foster student for the duration of the foster parent/foster student relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP and in all other matters relating to the provision of a free appropriate public education (FAPE) of the student. The foster parent may sign any consent relating to IEP purposes. The foster parent may consult with the parent or guardian of the student to ensure continuity of health, mental health, or other services. A foster parent who has been excluded by court order from making educational decisions on behalf of a student does not have the rights described above.

Legal References

EC 56028; EC 56055, 34 CFR 300:30

Local Procedures

Foster Youth

It is important to determine who has educational rights for a student for special education purposes, as the person designated as the student's "parent" has the right to consent or revoke consent. While most of the examples above are self-explanatory, administrators and case carriers need to be cautious in determining whether the foster parent can be considered the parent. In order to do so, the district must do the following:

1. Obtain a copy of the court order limiting the parents' rights to make educational decisions for their student. This should be available from the student's probation officer or social service caseworker. The order should specifically state that the parent's rights are limited. In the absence of such a statement, the district cannot consider the foster parent the parent.
2. Establish whether the student is in a permanent living situation as defined above. Once again this information should be available from the student's caseworker. If the student is not in a permanent living situation (most are not), the district may consider appointing the foster parent as the surrogate parent. The procedures for appointing a surrogate parent are discussed in the Surrogate Parent Section of this manual.
3. Ensure that the individual with educational rights is invited to and participates in all IEP meetings.

While not addressed above, an adult student is not required to have a parent sign consent for them. Unless they are unable to care for themselves and have been legally conserved, they can give consent for special education purposes without parent approval.

FAQs

What if the step-parent wants to act as the parent?

Provided that the student is living with the stepparent, that person meets the legal definition of parent. Caution should be used; as divorced parents will often have a court order that specifically lists who has legal rights over the student. Unless the stepparent is listed in the order, he/she would not be permitted to act as the parent.

What if the student is not in a permanent living situation but the court appoints that person as the parent for educational purposes?

The court has the right to appoint someone to act as parent.

REMINDERS

- The law defines 'parent' for special education purposes.
- Before assigning the foster parent or a surrogate to act as parent check the court order to make sure the biological or adoptive parent's rights have been limited.
- If the court order does not specifically limit a parent's right to make educational decisions, they have not been removed.
- Before accepting the foster parent as parent, check to see if the student is in a permanent living situation.