

Who Makes Special Education Decisions for Students in Foster Care?

A Quick Guide for Schools, Agencies and Families

WHO?	WHEN?	BUT!
The Birth or Adoptive Parent	Birth or adoptive parents always have the right to make special education decisions for their child unless their rights have been terminated, surrendered, or limited by the Family Court.	The school district must appoint a surrogate parent for the child if: <ul style="list-style-type: none"> • the birth or adoptive parents' whereabouts are unknown; or • the school district and foster care agency cannot find the parents after making reasonable efforts to do so.
A Designee	The parent has designated someone else to make education decisions for their child under General Obligations Law § 5-1551. This person is called the "designee." Parents may use this form, available at http://bit.ly/designationform .	Parents may limit the designation to a certain time period and may end the designation at any time. Parents can continue to make decisions when the designation is in effect. The parent's decision would override the designee's decision. Designations can last up to one year and may be renewed.
The Foster Parent	The parents' rights have been terminated, surrendered, or limited; the parents are deceased; or their identity is unknown. The foster parent can also be appointed as the surrogate parent for the child in certain circumstances (see below).	Depending on the situation, schools may need documentation from the foster care agency, such as a letter explaining the status of parental rights.
A Surrogate Parent Appointed by the School District	(1) After reasonable efforts, the school district cannot locate the child's birth or adoptive parents; <u>OR</u> (2) The parents' rights have been terminated, surrendered, or limited; they are deceased; or their identity is unknown; <u>AND</u> the child has no one else who can serve as their parent for special education purposes. A child's foster parent can be their surrogate parent. If the child has no foster parent, the school district has a list of surrogate parents.	School districts cannot assign a surrogate parent when a parent's whereabouts are known but they will not consent to special education; only the Family Court can limit the parent's right to make education decisions. For help assigning a surrogate parent to a child in New York City, email specialeducation@schools.nyc.gov .
A Surrogate Parent Appointed by the Family Court	The Family Court can assign a surrogate parent for the same reasons as the school district. In exceptional circumstances, the Court can also limit a parent's right to make education decisions and appoint another person, often the foster parent, as surrogate parent for the child.	A court order should be a tool of last resort and only pursued when non-special education services cannot address the child's needs. This could include situations where a parent is unreasonably (as determined by the Court) withholding consent or unwilling to participate in the special education process.

An ACS or foster care agency employee may NEVER consent to special education evaluations or services.

