

# Representing Foster Children Under IDEA 2004

Presenters:

Leslie K. Lipson

The Georgia Advocacy Office, Inc

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## Setting the Stage

Compared to the general school population,  
foster children:

- Have poorer attendance rates,
- Are less likely to perform at grade level,
- Are more likely to have behavior and discipline problems,
- Are more likely to be assigned to special education classes and
- Are less likely to attend college

# Parental Participation

- IDEA based on strong parental participation:
  - Right to review all records
  - Request for and consent to evaluations, services, and placements
  - Participation as IEP Team member
  - Receipt of progress reports
  - Receipt of prior written notice of proposed changes to IEP
  - Right to request Independent Educational Evaluation
  - Right to challenge school district decisions on identification, evaluation, placement, or provision of FAPE

Child is per se harmed if there is no parent to represent child in special education matters.

## Who Is A Parent?

- Natural or adoptive parent. Regulations use “biological” instead of “natural”
- Foster parent (unless state law prohibits)
- Legal Guardian (but not State if child is ward of the state)
- Individual acting in place of parent with whom child lives or has legal responsibility
- Surrogate parent

20 USC 1401(23); 34 CFR 300.30

## Who Is Not a Parent?

- Special education attorney (represents parent, surrogate parent, child in education matters)
- Guardian/attorney ad litem (represents best interests of child in dependency proceedings)
- Foster care case workers
- Institutional staff
- Doctors, social workers and other professionals

## What If More Than One Type of Parent?

- Regulations provide that if there is more than one “parent,” then the biological or adoptive parent who attempts to act as parent for educational decisions is presumed to be the parent, unless they do not have legal authority to make educational decisions.

34 CFR 300.30(b)(1)

## Court May Specify Who Is Parent

- Court can identify a specific person to act as the parent (this would overcome presumption for biological or adoptive parent).
- Only foster parent, guardian or individual acting in place of parent may be judicially ordered to be “parent.”
- Other persons would be appointed as Surrogate Parent.

34 CFR 300.30(b)(2)

## Parental Consent for Wards of State

- District shall make reasonable efforts to obtain consent from parent for initial evaluation.
- District not required to obtain consent if:
  - Whereabouts unknown;
  - Parental rights terminated; or
  - Educational rights subrogated by judge and consent given by person appointed by judge

## Who is a Ward of the State?

- Foster child
- Ward of state as defined by state
- Child in custody of public child welfare agency
- Does not include foster child who has a foster parent who meets definition of parent

34 CFR 300.45

## Who Appoints Surrogate Parents (SP)?

- School districts have had a duty to appoint SP since before IDEA 2004
- For wards of state, state court overseeing child's care may alternatively appoint an SP
- For unaccompanied homeless youth, school district shall appoint SP
- In Georgia, look to 160-4-7-.11 for the rules concerning SPs

## When must Surrogate Parent be appointed?

- State must make reasonable efforts to assign surrogate parents not more than 30 days after determining child needs one.

20 USC 1415(b)(2)(B)

- Handout Georgia Board of Education Rule # 160-4-7-.11 Titled: Surrogate Parent

## Duties of School District

- Must have procedures for:
  - Determining whether child needs an SP
  - Assigning SP
  - Ensuring SP is not employee of SEA, LEA or agency in charge of education or care of child
  - Ensuring SP has no personal or professional conflict of interest with child
  - Ensuring that SP has knowledge and skills that ensure adequate representation of child

34 CFR 300.519

## Appointments by Juvenile Court

- Need only ensure that SP is not employee of SEA, LEA or other agency involved in the education or care of child

34 CFR 300.519(c)

## Who May be a Surrogate Parent for Unaccompanied Homeless Youth?

- Appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed temporarily as SP until another SP is appointed.

34 CFR 300.519(f)

## Duties of Surrogate Parents

- To act as Parent, i.e., SP has all rights and responsibilities of Parent
- SP “represents” child in all matters related to identification, evaluation, placement and provision of FAPE

34 CFR 300.519(g)

## Advocacy Tips When Child Needs SP But No One Has Been Appointed

- If juvenile court involved, ask court to appoint SP. For children with foster parent who is not participating in educational matters, ask court to appoint SP
- Ask school district to promptly appoint SP
- If school district does not do so (and all other avenues have proven fruitless), contact legal services for them to potentially file a due process by child through a next friend and ask hearing officer to order school district to comply with this requirement of IDEA

## Resources

- Foster Children & Education: How you can create a positive educational experience for the foster child.
  - A publication of the Vera Institute of Justice
  - Available at [http://www.vera.org/publication\\_pdf/241\\_452.pdf](http://www.vera.org/publication_pdf/241_452.pdf)
- What Keeps Children in Foster Care from Succeeding in School?
  - A publication of the Vera Institute of Justice
  - Available at [http://www.vera.org/publication\\_pdf/169\\_280.pdf](http://www.vera.org/publication_pdf/169_280.pdf)
- Educating Children in Foster Care
  - A publication of the National Conference of State Legislatures Children's Policy Initiative
  - Available at <http://www.ncsl.org/programs/cyf/cpieducate.pdf>

# Resources

- **ATLANTA LEGAL AID SOCIETY**  
**TeamChild Atlanta** (404)614-3955
- **GEORGIA ADVOCACY OFFICE**  
(770)885-1234
- **GEORGIA LEGAL SERVICES**  
(800) 498 – 9469
- **ATLANTA VOLUNTEER LAWYERS FOUNDATION**  
(404) 521-0790
- **GEORGIA DEPARTMENT OF EDUCATION**  
[www.doe.k12.ga.us](http://www.doe.k12.ga.us)
- **CELEBRATION OF EXCELLENCE**  
[www.celebrationofexcellence.org](http://www.celebrationofexcellence.org)

# Resources

- **NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY** [www.nlchp.org](http://www.nlchp.org)
- **GEORGIA'S EDUCATION FOR HOMELESS CHILDREN AND YOUTH COORDINATOR:** David Davidson 404-651-7555
- **THE GEORGIA LAW CENTER FOR THE HOMELESS**  
404-681-0680 [www.galawcenter.org](http://www.galawcenter.org)
- **FULTON COUNTY JUVENILE COURT EDUCATION ADVOCATE**  
(404)224-4550
- **BARTON CHILD LAW & POLICY CLINIC EMORY LAW SCHOOL**  
(404)727-6664 [www.childwelfare.net](http://www.childwelfare.net)

## Legal Advocacy Information concerning Students with Disabilities

- <http://www.wrightslaw.com/>
- Wrightslaw - From site: Parents, advocates, educators, and attorneys come to Wrightslaw for accurate, up-to-date information about effective advocacy for children with disabilities. I especially like their newsletter.
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- [http://www.doe.k12.ga.us/pea\\_board.aspx?PageReq=PEABoardRules](http://www.doe.k12.ga.us/pea_board.aspx?PageReq=PEABoardRules)
- Georgia Department of Education Website dedicated to exceptional students. Contains the **Georgia State Board of Education Rules Pertaining to Exceptional Students**.
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- <http://www.pacer.org/>
- Parent Advocacy Coalition for Educational Rights - From site: The mission of PACER Center is to expand opportunities and enhance the quality of life of children and young adults with disabilities and their families, based on the concept of parents helping parents.