



Advocates for Children of New York

Protecting every child's right to learn

Education Concepts for Child Welfare Practitioners

A Brief Summary of the Law in New York State

General Education

A child's parent has the right to control his or her child's education.¹ Parents also have the responsibility to ensure that their child attends school regularly.² In New York City, students are **required** to attend school from the age of 6 until the end of the school year in which they turn 17. Students have the **right** to be in school between the age of 5 until the end of the school year in which they turn 21 or until high school graduation, whichever comes first.³

Under New York State law, a 'person in parental relation' to a student is the person responsible for the student's education. A person in parental relation includes the student's:

Definition of Parent under New York State Law

- Father or mother, by birth or adoption;
- Step-father or step-mother;
- Legally appointed guardian; or
- Custodian – a person who has assumed the charge and care of the student because the parents or guardians have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted the child, are living outside the state, or their whereabouts are unknown.⁴

A parent or guardian may designate someone else to act as a person in parental relation to their child, pursuant to the New York State General Obligations Law (*see below*).

Special Education

The federal Individuals with Disabilities Education Act (IDEA) provides for a child's parent to play a crucial role in all aspects of the special education process, including consenting and contributing to evaluations, attending meetings, and, if the child is found eligible for special education, deciding if the child should or should not receive services.⁵

'Parent' is defined as:

- A child's birth or adoptive parent;
- A person in parental relationship to the child (such as a relative the child lives with);

Definition of Parent under the IDEA

¹ *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, Massachusetts, 321 U.S. 158, 166 (1944).

² N.Y. Educ. Law § 3212.

³ N.Y. Educ. Law § 3205; N.Y.C. Chancellor's Regulation A-101.

⁴ N.Y. Educ. Law § 3212.

⁵ Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

- An individual designated by the birth parent as a person in parental relationship;
- A foster parent, if the birth parents' rights have been terminated or surrendered, their rights to make educational decisions have been limited, or the parent is deceased;
- A person appointed by the judge to make educational decisions; or
- A surrogate parent.

If more than one person falls within the definition of 'parent,' then the birth or adoptive parent is presumed to be the 'parent.' **The law is very clear that the state education department, school district, foster care agency or other social service agency cannot act as the 'parent' for a special education student in foster care.**⁶

When the child's parents are not available to participate in the special education process, the school district must assign a surrogate parent to act in place of the child's parents. A surrogate parent may be required if the parents are deceased, if their identities are unknown, or if, after making reasonable efforts, the school district cannot locate the parents.⁷ A family court judge also may assign a surrogate parent to the child. A surrogate parent exercises the same rights as a parent in all issues concerning special education evaluations, services, and placement. An unaccompanied homeless youth may also need a surrogate parent.⁸ School districts are required to maintain a list of individuals who are qualified to serve as surrogate parents for students who need them.⁹

A School District must assign a 'surrogate parent' for a child who does not have a parent in his or her life.

The school district must assign a surrogate parent within 10 days of determining that the student needs a surrogate parent.¹⁰ An adult who has a relationship with the student, such as the foster parent, a relative, family friend, mentor, or coach can serve as the student's surrogate parent. Otherwise, the student should be assigned a 'stranger surrogate' from the school district's list of qualified surrogate parents.

Designating a Person in Parental Relation

If a parent is unable to make education or health decisions for their child, he or she may temporarily designate another person to make those decisions, as long as the other person agrees. The person who is assuming this responsibility is called the 'designee.'

Requirements for Designating a 'Person in Parental Relation'

If the **agreement is for less than 30 days**, it must be in writing and contain the following information:

- Parent's name;
- Designee's name;
- Child(ren)'s name(s); and
- Parent's signature and date of signature.

In order for an **agreement to last more than 30 days**, it must be notarized and contain the following information:

- Name, address, and phone number of the parent;

⁶ 34 C.F.R. § 300.30; 8 N.Y.C.R.R. § 200.1(ii).

⁷ 34 C.F.R. § 300.519; 8 N.Y.C.R.R. § 200.5(n).

⁸ An unaccompanied homeless youth is a homeless youth who is not in the physical custody of his or her parent or guardian. 34 C.F.R. § 300.519(f).

⁹ 34 C.F.R. § 300.519(b); 8 N.Y.C.R.R. § 200.5(n).

¹⁰ 8 N.Y.C.R.R. § 200.5(n)(3)(iii).

- Name, address, and phone number of the designee;
- Child(ren)'s name(s) and date(s) of birth;
- Date or event upon which the agreement begins;
- Written consent of the designee;
- A statement that no court order prohibits the parent from entering into the agreement; and
- Parent's signature and date of signature.

A parent may limit this agreement to a certain time period or to certain types of decisions, as long as these limitations are noted in the agreement. A parent may end the agreement at any time by notifying the designee, school, or health provider orally or in writing that he or she wishes to end the agreement.

The agreement automatically ends if the parent creates a new agreement and **automatically expires after six months**; it may be renewed. Any decision by the parent will trump a decision by the designee, even if an agreement is in effect at the time of the decision.¹¹

Access to School Records

Under the Family Educational Rights and Privacy Act (FERPA), parents have the right to inspect and review their child's education records maintained by the school and can request copies of the records from the school. A parent includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.¹² In New York City, local regulations include the representative of a foster care agency in the definition of 'parent' with respect to accessing records.¹³ Noncustodial parents, including parents whose children are in foster care, maintain their rights under FERPA unless a court order specifically states otherwise.

Parents have the right to access their child's records. Their consent is required to release a student's education records.

Schools and school districts may not release education records unless the student's parent (or the student, if he or she is over the age of 18) gives written consent.¹⁴ While the following list is not exhaustive, there are some exceptions to FERPA, which include:

- Requests from schools or school systems to which the student will transfer;
- Situations where the information is necessary to protect the health or safety of the student or other individuals; and
- Pursuant to a judicial order or lawfully issued subpoena, as long as the parent and student are notified prior to the release of records.¹⁵

If you have further questions, please call:

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¹¹ N.Y. Gen. Oblig. Law Title 15-A § 5-1551 to 1555.

¹² 20 U.S.C. § 1232g. This definition also may include the foster parent or any individual that the student is living with on a day-to-day basis, such as a grandmother, other relative or family friend. See Family Educational Rights and Privacy, 61 Fed. Reg. 59292, 59294 (Nov. 21, 1996).

¹³ N.Y.C. Chancellor's Regulations A-820.

¹⁴ 20 U.S.C. § 1232g.

¹⁵ 34 CFR § 99.31.