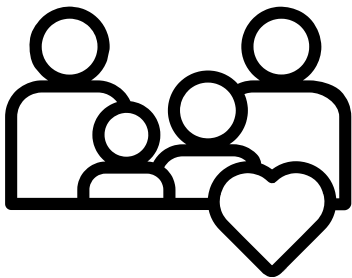




NOTE FROM THE DIRECTOR

Well, we are certainly starting this year off with a bang! All joking aside, I fully recognize that many of you are encountering situations with students and caregivers that may be new to you as an educator. I've been in the field of special education for many years and as I've told many of you, I've seen some stuff. Yet each year, just when I think I've seen it all, I find myself saying "huh, well that's new...". This September, custody, parental rights, and who can serve as a parent seems to be a pressing issue so that is the theme of our newsletter. As always, if you have questions, concerns, or if you just want to talk a situation through with someone, reach out to your coordinator or to me.

-Dr. Nicole Reybok



Parental Participation

We all know that parents are a required member of IEP teams. So what do we do when a student does not live with their biological or adoptive parent? According to IDEA law, if a parent has not had their rights legally terminated they must be provided the opportunity to

participate in their child's IEP. If the school does not have a legal documentation outlining child custody or stating that parental rights have been terminated, best practice to ask.

- Under the IDEA, a parent is:
 - A biological or adoptive parent of a child.
 - A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
 - A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the state if the child is a ward of the state).
 - An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child's welfare.
 - A surrogate parent who has been appointed in accordance with [34 CFR 300.519](#) or [20 USC 1439 \(a\)\(5\)](#).

Foster Care

For students in foster care, it's best to ask their foster care case manager (who should also be invited to meetings) if parental rights have been terminated. If not, ask them to provide you with the names and addresses of biological parents so that you may send them an invitation to the meeting and copies of the special education paperwork. This is especially important if reunification is the goal for the child and the parent. If rights have not been terminated, but the parent is not to have contact with the child or the foster family, ask the foster care caseworker how the school and social services can work together to follow IDEA law and keep the student safe. This may mean of having the IEP in a neutral location such as the social services office or the GST office or inviting parents to participate through a different modality. The foster care case worker can help with this decision. Remember, attendance by phone or virtual is always an option for any parent/caregiver. It also may mean providing families with a redacted IEP that has no demographics cover page. In cases like these, you need to contact Dr. Reybok so she can provide guidance with documents.

Person Acting in the biological or adoptive parents place

Recently many parents have opted to have their child live with a family member or family friend and have not gone through the court system for this placement. This could be for a variety of reasons, which are not our concern. What matters is that we are providing FAPE. In cases like these, we follow the same guidance as foster care. We send all meeting invites and copies of documents to the legal parent in addition to the person that is acting in the parent's place. These people can sign special education documents, but as with foster care, we would still need the legal parent's signature if we were requesting records from an outside agency or medical facility.

Divorced Parents

- If a judicial decree or order identifies a specific person or people to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or people shall be determined to be the "parent." 34 CFR 300.30 (b)(2).
- While a district may feel the need to include both parents in the IEP process, it must always follow judicial decrees that restrict or set forth specific guidelines regarding a parent's rights. For example, a district could invite a divorced father to his son's IEP meeting and answer his questions, however, if a state court order expressly grants educational decision-making power only to the mother, the district isn't required to consider the father's input in the development of the student's IEP and placement.
- If parents have joint legal custody but a contentious relationship with each other, teams should consider alternative means of parent meeting participation, such as video conferences and conference calls for one parent while having the other parent attend in person. If parents can not agree with who will be in person and who will be attending via other methods, consider having both parents attend via alternate method.

Meaningful Parent Participation

Although parents are "equal" participants in the IEP process, they **do not** have veto power over the IEP. Also, there isn't any "majority vote" rule for IEP team meetings. According to the U.S. Education Department, if the team cannot reach consensus, the public agency must provide the parents with **prior written notice** of the agency's proposals or refusals, or both, regarding the child's educational program. We do not want to get locked into a battle of wills between parents or parents and the school. At the end of the day, we must consider the parent's input, but the educational team has the final say as to what is considered FAPE. This is true for all students on an IEP.

Who qualifies as a 'parent'?

As used in the IDEA, the term "parent" may include all of the following



A biological or adoptive parent

Educators should presume that a student's biological or adoptive parent is the "parent" for IDEA purposes unless the biological or adoptive parent does not have the legal authority to make educational decisions for the student.

A foster parent

A student's foster parent can be his "parent" under the IDEA unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.



A guardian

A guardian may be a "parent" for IDEA purposes if he or she is authorized to act as the student's guardian or to make educational decisions for the student.

A person acting in the biological or adoptive parent's place

This could include a grandparent, stepparent, or other relative with whom the student lives or an individual who is legally responsible for the student's welfare.



A surrogate parent

If a public agency cannot identify or locate a student's parent after making reasonable efforts to do so or if the student is a ward of the state or an unaccompanied homeless youth, the public agency must assign a surrogate parent to act on the student's behalf.