





WHAT EVERY CASEWORKER NEEDS TO KNOW ABOUT EDUCATION AND SPECIAL EDUCATION

NEW JERSEY CHILD WELFARE TRAINING PARTNERSHIP

DAY ONE MORNING SESSION

Identifying and Surmounting Common Barriers to School Access

Jennifer Rosen Valverde, Esq., MSW
Education and Health Law Clinic
Rutgers U. School of Law – Newark

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OBJECTIVES: DAY ONE MORNING

- Identify and surmount common obstacles children in out-of-home placements face in getting through the school doors
- List dos and don'ts of information-sharing and effects of same on rapport development and success in advocacy efforts
- Identify the right questions to ask and the role DCP&P can play in cross-systems advocacy on general education issues
- School stability NOT covered in this training

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PUBLIC SCHOOL SYSTEMS – NEW JERSEY

- 600+ school districts
 - Only five states have more: CA, IL, NY, OH, TX
- 591 operating school districts
 - Largest – Newark (40,000 students)
 - Smallest – Stockton (45 students)
- ~30% school districts offer full K-12 programming

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PUBLIC SCHOOL SYSTEMS – FUNDING (NJ)

- Average cost per student (general education): \$13k-\$14k
- State aid toward school budgets: 10%-90%
 - 4 state "takeover" school districts
 - ~30 formerly known as Abbott school districts
- 60-70% of most school district budgets come from local property taxes

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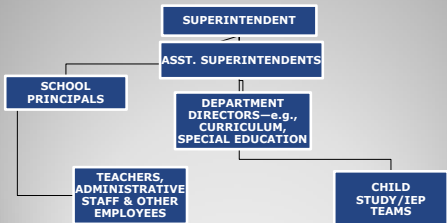
PUBLIC SCHOOL SYSTEMS – GOVERNING BODY

Board of Education (BOE) – governing body responsible for management of school district's affairs

- Sets policy
- Approves budget
- Oversees staffing, curriculum, and programming
- Hires superintendent

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PUBLIC SCHOOL DISTRICT ADMINISTRATIVE STRUCTURE



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GETTING THROUGH THE FRONT DOOR

Common roadblocks:

- Registration
- Attendance
- School Records
- "District of Residence"

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REGISTRATION V. ATTENDANCE

Registration = entering child into the school district's system as a student

versus

Attendance = the act of going to or being present at school

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DOMICILE

DOMICILE defined:

- Domicile of child determines school district
- Domicile for child in out-of-home placement is school district in which child placed by DCP&P
- School district in which child is domiciled is responsible for *providing* child with an education (may differ from school district that is responsible for *paying* for child's education)

N.J.A.C. 6A:22-3.1

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REGISTRATION FOR SCHOOL

Required documents to register child in out-of-home placement:

- Resource Parent ID Letter (DCP&P 5-49), Agency Placement Letter, or Court Order **and**
- Resource Parent Proof of Residence (e.g., lease, mortgage statement, utility bill, affidavit)

N.J.A.C. 6A:22-3.4

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THE CASE OF MARISOL

Marisol, age 10, lived with her mother in Vineland until one month ago when she was removed due to allegations of abuse. She was placed with a non-relative resource parent in Mount Laurel, and it was found in her best interest to change school districts.

How does Marisol register for school?

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TIMELINE FOR REGISTRATION

School-age children should be registered immediately, and in no event more than 72 hours from the time of out-of-home placement.

ADMISSION INTO SCHOOL

Required documents for attendance:

- Immunization Records AND
- Certified copy of child's birth certificate or other proof of identity within 30 days of enrollment

NOTE: Non-production of birth certificate cannot be sole reason for denial of admission

* School records recommended, NOT required for attendance at school

N.J.A.C. 6A:22-4.1 and N.J.S.A. 18A:36-25.1

RESPONSIBILITIES – SCHOOL DISTRICTS

School districts must NOT require any more documentation than provided by law for a child in out-of-home placement to register in and attend school.

DCP&P RESPONSIBILITIES FOR REGISTRATION & ATTENDANCE

- Ensure all children in out-of-home placements are registered in school
- Provide updated health record, including immunization record, to resource parent/caregiver agency
- Inform biological/adoptive parents of right to be involved in child's education

N.J.A.C. 10:122D-2.6

RESPONSIBILITIES – RESOURCE PARENTS & CAREGIVER AGENCIES

- Register child
- Ensure child attends regularly
- Cooperate with DCP&P to ensure child receives educational program
- Ensure child ages 3-5 (but not in K) enrolled in early childhood education program
- Ensure preschool age child in environment to stimulate proper development

N.J.A.C. 10:122C-6.3

THE CASE OF KEISHA

Keisha is a 13-year-old student in seventh grade. She attended Shabazz Junior High School until approximately one month ago when allegations of abuse were made against her mother. After visiting Keisha's home, DCP&P took temporary custody of her and placed her in a resource home 50 miles away. The closest middle school to her new home is MLK, Jr. Middle, but she has yet to begin attending.

Who is responsible for what?
(disregard school stability)

THE CASE OF KEISHA

- Who are the relevant parties for education purposes?
- What are the responsibilities of the relevant parties with respect to:
 - Registration?
 - Attendance?

REGISTRATION & ATTENDANCE RED FLAGS



- Refusal to register child w/o birth certificate
- Refusal to register child w/o immunization records
- Require custody or guardianship order for registration
- Require SSN or immigration status for registration or attendance
- Require school records for registration or attendance
- Require IEP for registration or attendance
- Require reevaluation of student prior to attendance

BRAINSTORM

What role can/should a child welfare agency play to ensure a smooth registration and attendance process?



THE CASE OF NATALIE

Natalie transfers from Trenton to Hamilton school district, where her resource parent lives. Natalie's resource parent gives the district the resource parent ID letter, her proof of residence, and her immunization records. The district says Natalie cannot be registered until Hamilton receives all of her school records, so she is sitting at home. The resource parent tells DCP&P to move Natalie because she cannot continue to miss work to watch her.

Does this sound familiar?

SCHOOL RECORDS

Mandated School Records include:
 Student identifying information, grades, health records, attendance records, standardized assessments, special education records

RESPONSIBILITIES FOR SCHOOL RECORDS – SCHOOL DISTRICTS

Where child transfers between districts:

- School district into which child is transferring must request child's school records within 2 weeks of child enrolling in district
- Former school district must forward records (incl. disciplinary records) to new school district within 10 school days of receiving request

***NOTE:** CRITICAL ASSUMPTION – new district knows name of district child previously attended

N.J.A.C. 6A:32-7.5

RESPONSIBILITIES FOR SCHOOL RECORDS – SCHOOL DISTRICTS

- Written consent of parent not required as condition of transfer
- Written notice to parent of school records transfer is required **unless**
 - Release to child welfare agency *if agency legally responsible for child's care and protection*
 - Release pursuant to court order in child welfare matter where parents are parties in the case (but state law may still require notice in this instance)

RESPONSIBILITIES - DCP&P

- DCP&P must compile educational records for each school-aged child entering out-of-home placement
- DCP&P must provide resource parents with child's educational records at time of out-of-home placement and update records upon any placement transfers

N.J.A.C. 10:122D-2.6

THE CASE OF NATALIE

Natalie transfers from Trenton to Hamilton school district, where her resource parent lives. The district says Natalie cannot be registered until Hamilton receives all of her school records, so she is sitting at home. The resource parent tells DCP&P to move Natalie because she cannot continue to miss work to watch her.

What can you do?

CONFIDENTIALITY AND INFORMATION SHARING

RELEVANT LAWS:

- CAPTA
- FERPA
- AACWA

CONFIDENTIALITY & INFORMATION SHARING

- Child Abuse Prevention and Treatment Act (CAPTA) requires that states enact laws to protect confidentiality of child's foster care records (42 USC 5101)
- Family Educational Rights and Privacy Act (FERPA) governs access to child's educational records and confidentiality parameters for these records (20 USC 1232)
- Adoption Assistance and Child Welfare Act (AACWA) requires child welfare agencies to keep child's education records in his/her child welfare case plan as appropriate (42 USC 675(1)(c))

CONFIDENTIALITY & INFORMATION SHARING – DISCLOSURE BY DISTRICTS

- School districts must provide DCF with access to a child's school records within 10 days of written request or pursuant to court order
- School records may be withheld from child's parent only if court order revokes right to access; only portion of record designated by order may be withheld

N.J.A.C. 6A:32-7.1, 7.5, 7.6

CONFIDENTIALITY & INFORMATION SHARING – DISCLOSURE BY DCP&P

DCP&P may share information only:

- If in accordance with court order;
- To parent, foster parent, guardian, or other person responsible for child’s welfare where information relates to provision of care, treatment, assessment or evaluation of child, and disclosure in child’s best interests;

CONFIDENTIALITY & INFORMATION SHARING – DISCLOSURE BY DCP&P

- To child’s legal counsel, parent, or guardian when information is needed to discuss child’s DCP&P case to make decisions relating to or concerning child; or
- To member of family team or other case planning group to address child’s safety, permanency, or well-being when provision of such information in child’s best interests.

N.J.S.A. 9:6-8.10a

THE CASE OF BETHANY

Bethany transferred schools six months ago when she was placed in a new resource home by DCP&P. Since that time, she has exhibited signs of depression and anxiety and now is refusing to attend school. DCP&P is conducting a psychiatric evaluation to assess her mental state, determine whether she needs medication, and to develop a plan for therapeutic support outside of school. The school district learned of the evaluation from Bethany’s resource parent and has requested a copy of the report.

THE CASE OF BETHANY

What are your concerns, if any?

- **Should you release the report?**
- **Why? Why not?**

WHAT WILL YOU SAY IF...?

The school district says:

- We are entitled to all reports that could help educationally
- We cannot provide counseling services for the child without the psychiatrist’s report
- You have no right to see the child’s school records
- We need to know why DCP&P is involved to make sure the child is not a danger to himself or others
- We will give you the school records but it may take 30+ days to get them together for you

BRAINSTORM

- What are the potential benefits of sharing information across agency lines?
- What are the potential harms?
- How do rules of confidentiality and information sharing affect cross-systems relationships?



EDUCATING CHILD V. PAYING FOR CHILD'S EDUCATION

- District in which a child resides (domicile) is responsible for educating the child
- "District of Residence" (DoR) is responsible for paying for child's educational services (e.g., tuition) and transportation
- DoR ≠ District in which child resides automatically

N.J.S.A. 30:4C-26

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DETERMINING DoR

- If child placed in resource home or residential facility, DoR is the present district of the parent with whom the child lived prior to placement into foster care
- State assumes fiscal responsibility for a child in out-of-home care if:
 - DoR cannot be determined or
 - DoR of parent is out-of-state
 - Parental rights terminated + no permanency

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THE CASE OF TALIAH

For each situation below, determine which district is responsible for educating Taliah and which is responsible for paying for Taliah's education.

- Taliah is removed from her mother's care in Trenton and placed with her aunt in Camden.
- Taliah is then moved to a group home in Hamilton.
- Six months later, Taliah's mother moves to Atlantic City.
- Taliah moves back in with her mother in Atlantic City for two months and then is placed in a residential treatment facility in Ohio.

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EDUCATIONAL DUTIES TO HOMELESS CHILDREN

- McKinney-Vento Homeless Assistance Act (42 USC 11431) provides educational stability to homeless children and youth
 - Grants right to remain in school of origin despite changes to living situation as long as in child's best interest
- Homeless child/youth defined as having no fixed, regular, and adequate nighttime residence
 - Includes children "awaiting foster care placement"
 - NJ defines as children in temporary location awaiting foster care placement (N.J.A.C. 6A:17-2.3)

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EDUCATIONAL DUTIES TO HOMELESS CHILDREN

- McKinney-Vento applies to state and local educational agencies only—school district makes the best interest determination with parent/guardian
- If child not staying in school of origin, must be enrolled immediately in new school district
- Child has right to stay in school of origin for as long as child is homeless or for remainder of the school year if child gets permanent housing during that year

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EDUCATIONAL DUTIES TO HOSPITALIZED CHILDREN

- Duty to educate hospitalized child where temporary or chronic health condition causes child to miss 10 consecutive days or 20 cumulative days
- Entitled to education needed to continue student's academic progress (no minimum number of days or hours required)
- If child to miss more than 30 consecutive days, entitled to written plan to educate child

N.J.A.C. 6A:16-10.1

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BRAINSTORM

What are some possible benefits of educational advocacy on behalf of children in out-of-home placements?



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BRAINSTORM

What role can/should a child welfare agency play in the education of children under their care/custody?



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SIGNS OF SUCCESS

- Immediate enrollment and attendance in new school
- Timely transfer of school records and credits
- All crucial education documents are maintained in case file (including enrollment docs, IEPs, evaluations)
- Children receive full/partial credit for prior work completed
- No penalties for lost school time or work missed due to school transfers, court dates and/or child welfare-related activities, and time spent on those activities is minimized
- Proper programming and services received

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REMEMBER: WE ALL ARE FOR EDUCATION

"By all rights, education should be an easy sell because you never find anyone who is 'against' it. No advocacy groups clamor for its overthrow, no politicians or columnists protest its irrelevance. Unlike nuclear power, or abortion rights, or the graduated income tax, education has no enemies. The trouble, therefore, can only be with those who are 'for' it. In education, I've found, you can easily mistake the actions of those who are for it as being against it." -Joseph Fernandez, former Chancellor of NYC Public Schools

Source: Fernandez, J. A., & Underwood, J. (1993). *Tales out of school: Joseph Fernandez's crusade to rescue American education*. New York, NY: Little Brown & Co.

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DAY ONE AFTERNOON SESSION

Special Education (Part I)

Jennifer Rosen Valverde, Esq., MSW
Education and Health Law Clinic
Rutgers U. School of Law – Newark

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OBJECTIVES: DAY ONE AFTERNOON

- Recognize importance of addressing educational needs of children in out-of-home placements
- Describe special education system structure and key special education terminology
- Recognize the significance of "parent" for special education purposes and identify who may serve in that role
- Become familiar with the overall special education process

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RELEVANT DATA

1. More than 50% of school-age children in foster care have been retained at least one year in school.
✓ **True**
2. 30-50% of youth exit the foster care system without a high school diploma or GED.
✓ **True**
3. High school drop outs are eight times more likely to be incarcerated.
✓ **True**
4. High school drop outs are 25% more likely to be on public assistance.
✓ **False (40%)**

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RELEVANT DATA

5. High school drop outs are no more likely to use drugs or be involved in criminal activity than h.s. graduates.
✓ **False**
6. 10% of youth formerly in foster care complete a bachelor's degree before age 25, compared with 24% of general population.
✓ **False (fewer than 2%)**
7. 30% of the nation's homeless adults report foster care history.
✓ **True**
8. The estimated cost to society of one youth who drops out and turns to crime & drugs is \$1.7 to \$2.3 million.
✓ **True**

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RELEVANT DATA

9. 50-60% children in foster care have developmental disabilities or delays, compared with 10% general population.
✓ **True**
10. 20% children in foster care have mental health disorders.
✓ **False Between 40-85%**
11. <50% children in foster care suffer from severe behavior and emotional problems.
✓ **False: 50-75%**
12. Children in foster care are twice as likely to be referred for special education than their non-foster care peers.
✓ **False – Three times as likely**

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RELEVANT DATA

13. As many as 40% children in foster care receive special education, compared with 15% general population.
✓ **True**
14. Children in foster care are over-identified as having behavioral disorders and under-identified as having learning and language disabilities.
✓ **True**
15. Children classified with emotional disorders are less likely to exit foster care.
✓ **True**

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RELEVANT DATA

16. Children with developmental delays remain in foster care for the same amount of time as their non-disabled peers.
✓ **False**
17. Children with disabilities have higher maltreatment prevalence rates.
✓ **True – 31% Experience maltreatment, compared to 9% non-disabled children**
18. Children who experience maltreatment are more likely to develop physical, emotional, and behavioral disabilities.
✓ **True**

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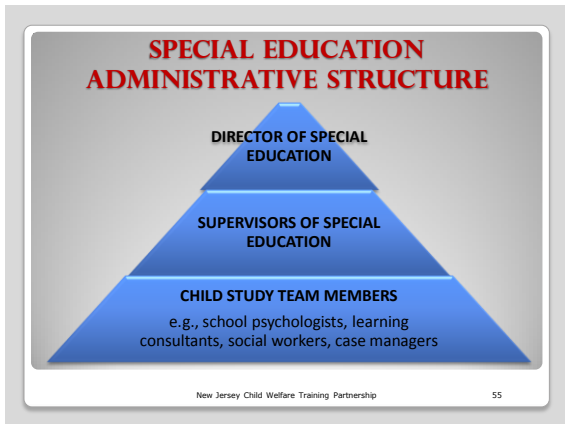
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**EDUCATION
is one of the
greatest predictors
of future success**

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BRAINSTORM

What is a "child with a disability?"

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BRAINSTORM

What is special education?

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INDIVIDUALS WITH DISABILITIES EDUCATION ACT

- Enacted in 1975 as EAHCA
- Prior educational maltreatment of children with disabilities ("separate and unequal")
- Act aims to provide equality in educational opportunity for children with disabilities

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WHAT IS A CHILD WITH A DISABILITY?

A child with a physical, emotional, learning, and/or cognitive disability who, because of his/her condition(s), needs special education and related services.

NOTE: The disability must have an adverse effect on the child's educational performance.

20 U.S.C. 1401(3)

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WHAT IS A CHILD WITH A DISABILITY?

3-part test for special education purposes:

- Does the child have a disability?
- Does the disability adversely affect the child's ability to learn?
- Does the child need special education and related services?

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WHAT IS SPECIAL EDUCATION?

Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Includes instruction in:

- Classrooms,
- Home,
- Hospitals,
- Institutions, and
- Detention.

20 U.S.C. 1401(29); 34 C.F.R. 30.39

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WHAT IS SPECIAL EDUCATION?

- Special education instruction not limited to academics
 - Physical education
 - Travel training
 - Vocational education
 - Social skills
 - Behavioral modification
- Specially designed instruction means adapting as appropriate, content, methodology, and/or delivery of instruction to address child's unique needs

34. C.F.R. 300.39

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WHAT DOES THE LAW PROVIDE?

Individuals with Disabilities Education Improvement Act 2004 (IDEA)

Every child with a disability between the ages of 3 and 21 has the right to a free and appropriate public education (FAPE) in the least restrictive environment (LRE)

- SPED designed to meet child's unique needs
- Ensure rights of disabled children and parents are protected
- Includes children who are homeless, suspended or expelled, and wards of the State

20 U.S.C. 1400(d); N.J.A.C. 6A:14-1.1, 1.2

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WHAT IS A FAPE?

- Free
 - At no greater cost to child and family than nondisabled student incurs (i.e., incidental fees) as part of regular education program (34 C.F.R. 300.39(b)(1))
- Appropriate
 - Meaningful educational benefit/progress
 - Achieve significant learning
 - ≠ the best
- Public
- Education - defined broadly

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WHAT IS LRE?

Least Restrictive Environment (LRE) provides:

Students with disabilities must be educated with non-disabled students *to the maximum extent appropriate*.

20 U.S.C. 1412(a)(5); N.J.A.C. 6A:14-4.2

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STANDARD FOR EDUCATIONAL QUALITY

What standard for educational quality applies to children with disabilities in out-of-home care?

- Thorough and efficient education (NJ Const.)
- Free and Appropriate Public Education (IDEA)
- Educational program that will **maximize** the child's potential (NJ Child Placement Bill of Rights, NJSA 9:6B-2)
 - See K.J. ex rel. Lowry v. Division of Youth and Family Services, et al., 363 F.Supp.2d 728 (D.N.J. 2005), holding CPBR provides private right of action

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WHAT IS THE ROLE OF PARENT IN SPED?

- IDEA is parent-driven
- No standing for children under 18 = no voice
- Parent right to participate in all stages of SPED process (N.J.A.C. 6A:14-2.3(j))
- Written consent of parent required for SPED evaluations, initial IEP implementation (N.J.A.C. 6A:14-2.3)
- IDEA procedural safeguards for parents, e.g., due process (N.J.A.C. 6A:14-2.1 et seq.)

DEFINING THE PARENT

- Who is the parent for a child in out-of-home placement?
 - General education → DCP&P authorizes resource parents to make routine educational decisions
 - Special education → "Parent" defined by federal and state law and regulations

WHO IS THE "PARENT" FOR SPED PURPOSES?

- Birth or adoptive parent/legal guardian
- Relative caregiver with whom child is living (person in parental relationship)
- Foster/Resource parent when willing to so serve
- Surrogate parent
- Person appointed by the Court to act as "parent" or to make educational decisions
- Adult student

N.J.A.C. 6A:14-1.3

WHAT IS THE "PARENT" HIERARCHY?

If more than one person qualifies as the parent:

- Biological or adoptive parent who is "attempting to act as the parent" is presumed to be the parent unless s/he no longer has legal authority to make educational decisions
- BUT, if court order identifies specific person to be the "parent" or to make educational decisions for a child, then such person is the "parent" for educational purposes

34 C.F.R. 300.30

WHAT IS "ATTEMPTING TO ACT AS PARENT?"

- Is expressing interest/desire in parenting enough?
- Are certain actions required?
- What if parent impaired due to mental illness, disabling condition, or substance use/abuse?
- What if there is a no contact order?
- Who determines if parent is "attempting to act as the parent?"
 - DCP&P?
 - School district?
 - Judge?



TAKE NOTE

**NO AUTOMATIC CHANGE
in parent's right to make educational
decisions when child enters
out-of-home placement**

WHEN SHOULD A SURROGATE PARENT BE APPOINTED?

IF:

- No parent/guardian can be identified;
- Whereabouts of the parent or guardian are unknown after reasonable efforts to locate;
- Parental rights have been terminated;
- Student is an unaccompanied youth; OR
- Rights of the parent/guardian to make educational decisions have been removed by the Court

N.J.A.C. 6A:14-2.2; 34 C.F.R. 300.519

WHEN SHOULD A SURROGATE PARENT BE APPOINTED? (cont.)

IF:

- Child residing with resource parent and resource parent not willing to serve as "parent" for special education purposes OR
- No resource parent (e.g. child in group home)

THEN:

- School district to consult with DCP&P case manager to help identify person to serve as surrogate parent and appoint surrogate parent (N.J.A.C. 6A:14-2.2(i)) OR
- DCP&P to ask court to appoint limited guardian for educational purposes

WHO APPOINTS A SURROGATE PARENT?

- Local school district, in consultation with DCP&P, **OR**
- Family court judge overseeing child's care (may be called educational surrogate or limited guardian for educational purposes)

N.J.A.C. 6A:14-2.2; 34 C.F.R. 300.519

SURROGATE PARENT REQUIREMENTS

- Local school districts must have processes to:
 - Identify need for surrogate parent
 - Appoint surrogate parent within 30 days
- Surrogate parent:
 - Must not have personal or professional interest that conflicts with child's interests
 - Must have knowledge and skills for adequate representation
 - *Cannot be an employee of any state agency involved in education or care of child*

N.J.A.C. 6A:14-2.2; 34 C.F.R. 300.519



TAKE NOTE

A state agency worker responsible for the care or education of a child may NEVER serve as the child's "parent" or "surrogate parent" for special education purposes!

N.J.A.C. 6A:14-1.3, 2.2; 34 C.F.R. 300.519(d)(2)(i)

WHO IS THE CHILD'S "PARENT" FOR SPED?

- Has the court terminated parental rights?
- Has the court terminated parent's right to make educational decisions about the child (entered limited guardian order)?
- Can the child's parent be identified and located?
- Are there other persons who can act as the child's parent for special education purposes?
- If there are other persons who can act as the child's parent for special education purposes, is the child's parent "attempting to act as a parent?"
- If not, who is the child's parent for special education purposes?

*ALWAYS ENSURE A SPED PARENT IS IDENTIFIED AND ACTING

WHO MAY BE JONAH'S "PARENT"?

- Jonah lives with grandmother. Parental rights not terminated. Mother resides in home. Father unknown.
 - What if mother resides elsewhere?
- Jonah lives in resource family home. Parental rights not terminated.
 - What if Jonah lives in a group home?
- Jonah lives in group home. Parents deceased. No known family. Jonah very close with DCP&P worker.
- Jonah lives in resource home. Father incarcerated. Mother cannot be located.

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CASE STUDY OF JUAN

Juan is 10 years old and has been living with his maternal aunt since he was a toddler. His mother has a substance abuse history and visits Juan at her sister's apartment every few months. His father is deceased. Recently, Juan's teachers expressed concern about his lack of progress in math. The school suggests to Juan's aunt that he be evaluated by the district's Child Study Team.

Who can consent to this evaluation?

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REVIEW – "PARENT" FOR SPED

- Can a parent or legal guardian from whom child is removed serve as a child's "parent?" **Yes, if...**
- Can a relative serve as a child's "parent?" **Yes, if...**
- Can a resource parent serve as a child's "parent?" **Yes, if...**
- Can a favorite school teacher serve as a child's "parent?" **No**
- Can a law guardian serve as a child's "parent?" **No**
- Can a DCP&P worker serve as a child's "parent?" **No**

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SPECIAL EDUCATION SYSTEM AND PROCESS

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SPECIAL EDUCATION - PROCESS

- Child Find
- Referral
- Evaluation
- Eligibility and Classification
- Individual Education Plan (IEP)
- Placement
- Reevaluation

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SPECIAL EDUCATION

END OF DAY 1

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