



The Rights of Parents of Children with Disabilities Involved in New Jersey’s Child Welfare System

FACT SHEET

Empowering families, professionals, and others interested in the well-being and education of children and youth

Children with disabilities involved in the child welfare system face many challenges in accessing a quality education, often including emotional trauma. Their parents often have difficulty remaining engaged in the decision-making process. Federal and state laws provide protections that can help address these challenges and improve outcomes.

Children involved in NJ’s child welfare system are the responsibility of the New Jersey Department of Children and Families (DCF). DCF includes the Division of Child Protection and Permanency (DCP&P), which has primary responsibility for children exposed to child abuse or neglect whether they are still living with you (their parent(s) or are in foster care, group homes, or other placements. Children with disabilities involved in the child welfare system continue to have the right to a free, appropriate public education in the least restrictive environment. Your child also has the right to “educational stability” (to stay in their current school if it is in their best interests). If you are the parent(s) of children with disabilities under DCP&P jurisdiction, you have rights to continue to make decisions for your children even if they are in an out-of-home placement.

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The Right to Make Special Education Decisions

The Individuals with Disabilities Education Act (IDEA) and New Jersey State Special Education Code (the Code) provide that, unless your parental rights have been terminated by a court, you retain all rights to make special education decisions for your child with disabilities whether they are living in your home, with a relative/kinship foster parent, or with a non-related foster parent. Your child’s school must continue to provide you with all

written notices about your child’s special education evaluation, eligibility; Individualized Education Program (IEP) development, services, placement, and implementation; records; and all other aspects of your child’s special education. Your child’s school must also get your written consent whenever it is required from any other parent (for example, for evaluations, for the initial IEP, etc.). *IDEA and the Code are very clear that no special education decisions can be made, or consented to, by any staff of the New Jersey DCP&P.*

Initial & Re-Evaluations

If your child had not been identified as eligible for special education prior to entering the child welfare system, or needs a re-evaluation either due to the three-year requirement for re-evaluation or because your child’s needs have changed, you are the only one who can consent to their initial or additional evaluations.

The district board of education must make reasonable efforts to obtain your parental consent for an initial evaluation. If, after reasonable efforts, the district (a) cannot find you, (b) your parent rights have been terminated, or (c) your parental rights have been “subrogated” for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual appointed by the court, your parental consent need not be obtained for the initial evaluation.

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Learn more:

The IDEA requirements for states to protect the rights of children involved in the child welfare system can be found at §300.111 Child Find (the state must ensure that “(a)(i) all children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state...are identified, located, and evaluated”); §300.145-147 Children with Disabilities in Private Schools Placed or Referred by Public Agencies (includes requirement to ensure provision of a free, appropriate public education in the least restrictive environment at no cost to the parents); and §300.149 Responsibility for General Supervision and Procedural Safeguards (includes a responsibility to students in programs operated by another state agency). Go to parentcenterhub.org/partb-subpartb. The rights of parents to make educational decisions for their child involved in the child welfare system can be found at 34 CFR 300.30 (defining “parent”); these rights remain unless parental rights have been terminated.

NJ State regulations defining “parent” can be found at NJAC 6A:14-1.3 (“Parent” means the natural or adoptive parent, the legal guardian, foster parent when willing to so serve, a surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2(a) through (i), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare). *Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter.*”)

If the district can find you, and your parental rights have not been terminated or “subrogated,” and you do not consent to an evaluation, your child’s district may request an impartial or due process hearing to persuade an administrative law judge that your child should be evaluated. However, DCP&P cannot get an Administrative Law judge to order a special education evaluation.

Consent for an IEP

If you refuse to provide consent for your child’s initial IEP, neither the district nor DCP&P can request a hearing to override that refusal to provide consent. However, the district will not have an obligation to provide a free,

appropriate public education under IDEA to your child. If you do provide consent for your child’s initial IEP, then that IEP must be implemented by your child’s school even if the foster parent disagrees with the IEP.

If your child is already receiving special education services before being placed in foster care, you must be invited to the annual IEP meeting, but the district may make changes to the IEP even if you disagree. Even if your child is in foster care, you have the right to request mediation or a hearing if you disagree with the district’s IEP decision. You may also revoke consent for your child’s placement in special education at any time.

More Information:

- Your rights as a parent of a child involved in New Jersey’s child welfare system with the *DCP&P Parents’ Handbook*:
nj.gov/dcf/families/dcpp/ParentsHandbook_English.pdf
nj.gov/dcf/families/dcpp/ParentsHandbook_Spanish.pdf
- *When Your Child is in Foster Care: A Guide for Parents*:
nj.gov/dcf/families/dcpp/ParentGuideFosterCare_English.pdf
nj.gov/dcf/families/dcpp/ParentGuideFosterCare_Spanish.pdf
- Your child’s rights to educational stability in *School Stability for Children in Resource Home Care*:
nj.gov/dcf/families/educational/stability/index.html.

The Role of the Student

Regardless of who has custody or the right to make educational/special education decisions, a student with a disability must be invited to any meeting in which transition to adult life will be discussed. Both parents and the child welfare system must work together to encourage and support the active development of self-advocacy skills. Early participation in the IEP process prepares students for the transition of decision-making rights to them once they turn age 18.

Additional Resources:

Resources for foster or adoptive parents of children with disabilities can be found at parentcenterhub.org/fosteradoptiv.

The Child Welfare Information Gateway has resources for families of children with disabilities involved in the child welfare system, including grandparents raising grandchildren, at childwelfare.gov/topics/systemwide/service-array/services-to-children-and-youth-with-disabilities/youth.

