

# LEADING WELL UNDER PRESSURE

2026 MASE Fall Leadership Conference

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# The Parent Puzzle: Identifying the Decision-Maker and Navigating Difficult Dynamics


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# Definitions

- Legal Custody
- Physical Custody
- Joint Legal and/or Physical
- Guardian
- Foster Care

**Takeaway:** “Parent” means different things in different statutes.

# Presumptions

- **Married Parents:** One parent's consent is enough
- **Divorced Parents:**
  - Access to information and copies of school records (unless removed by Court)
  - Informed by school officials about welfare, educational progress and status, and to attend P/T conferences
- **Stepparents:** No automatic right to make decisions; may access records with consent of parents

# Never-Married Parents

- Mother has sole legal and physical custody UNTIL COURT HAS ORDERED OTHERWISE
  - Mother can consent to access
- Father listed on birth certificate is not enough
- **Recognition of Parentage (ROP)**
  - Agreement between parents regarding who should be legally identified as father
  - No meaning until adopted by a court





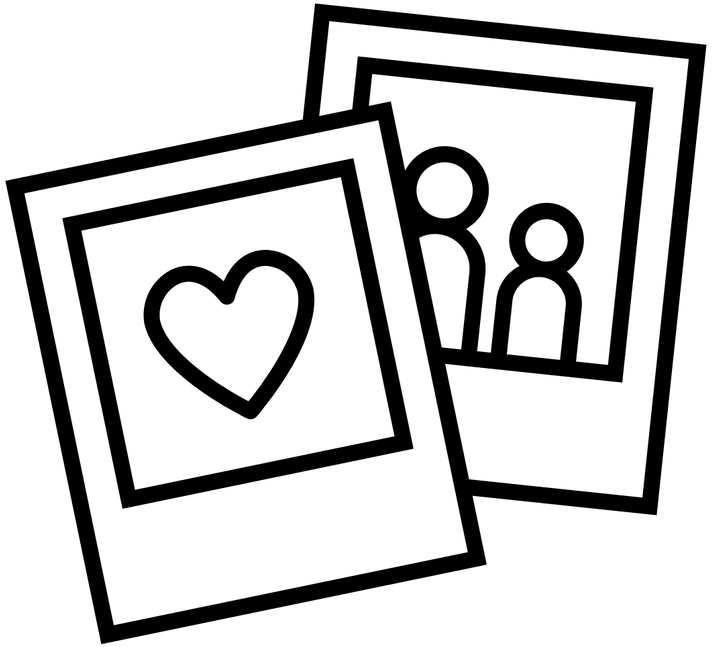


# Foster Care Placement

- Placement in foster care pending CHIPS determination
  - Parents may retain rights or temporary appointment of a County as Guardian
  - **No termination** – *Bio/Adoptive Parent is the Parent*
- Termination of Parental Rights ("TPR")
  - Commissioner of DCYF becomes "legal guardian" and child becomes "ward of the state"
  - Commissioner delegates authority to County Social Workers
  - Minn. Stat. § 260C.325: guardian with legal custody has the right to make educational decisions on behalf of the child

DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

# Special Education: Who is the Parent?



- Definition
  - Biological of adoptive parents
  - Foster parent, unless contrary to law or contract
  - Guardian generally authorized to make decisions, but not the state
  - Individual “acting in the place of” the parent
  - Appointed surrogate parent
- Biological or adoptive = first priority
- Court order designating a person or person(s) **by name**





# “Not the state…”

- **34 C.F.R. § 300.30.:** “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**).”
- Important Distinction
  - A county can be the “legal guardian” of a student while a CHIPS proceeding is ongoing. If parental rights have not been permanently terminated and the county is the guardian, they can likely serve as a parent
  - Once parental rights have been terminated, the student becomes a “ward of the state”
- If a ward of the state:
  - The Commissioner of DCYF is the “guardian”
  - Authority is delegated to counties to perform duties of guardian

**If parental rights have been terminated, County personnel are PROHIBITED from acting as guardians for IDEA purposes**





# “But the Court Order says the County is the guardian!”

- Express language in federal regulations that the state cannot serve as “parent” for this limited federal-law purpose takes precedence over general state law
- At least one Minnesota Administrative Law Judge has agreed with this interpretation
- DCYF position has three key flaws
  - Minn. Stat. 260C.201 allows county social services to be appointed as legal guardian, only *while CHIPS proceedings are ongoing*.
    - This does not apply after TPR when child becomes *ward of the state* and the Commissioner is the guardian
  - Assumes that Minnesota laws comply with IDEA
  - Ignores express, narrow prohibition in federal law that pre-empts state law

# Surrogate Parent: Requirements

- If the district cannot otherwise identify a parent after documented efforts, the district may need to appoint a surrogate parent
- Specific procedural requirements for appointment and removal
- Appointment required within 30 calendar days if:
  - No parent (as defined by IDEA) can be identified
  - Student is a ward of the state/ DCYF
  - Parent requests appointment in writing
  - Child is an unaccompanied homeless youth





# Surrogate Parent: Appointment/ Termination

- Make training available or appoint a surrogate parent who has all of the following:
  - Not employed by District or any agency with a role in care or education of the child;
  - a knowledge of state and federal requirements;
  - a knowledge of district structure and procedures;
  - an understanding of the nature of the pupil's disability and needs; and
  - an ability to effectively advocate for an appropriate educational program for the pupil
- Surrogate parent must be removed by the School Board if:
  - Failed to perform duties;
  - Conflict of interest by becoming an employee of an agency responsible for care and education
  - Actions threaten the well-being of the student
  - Student no longer needs special education or related services



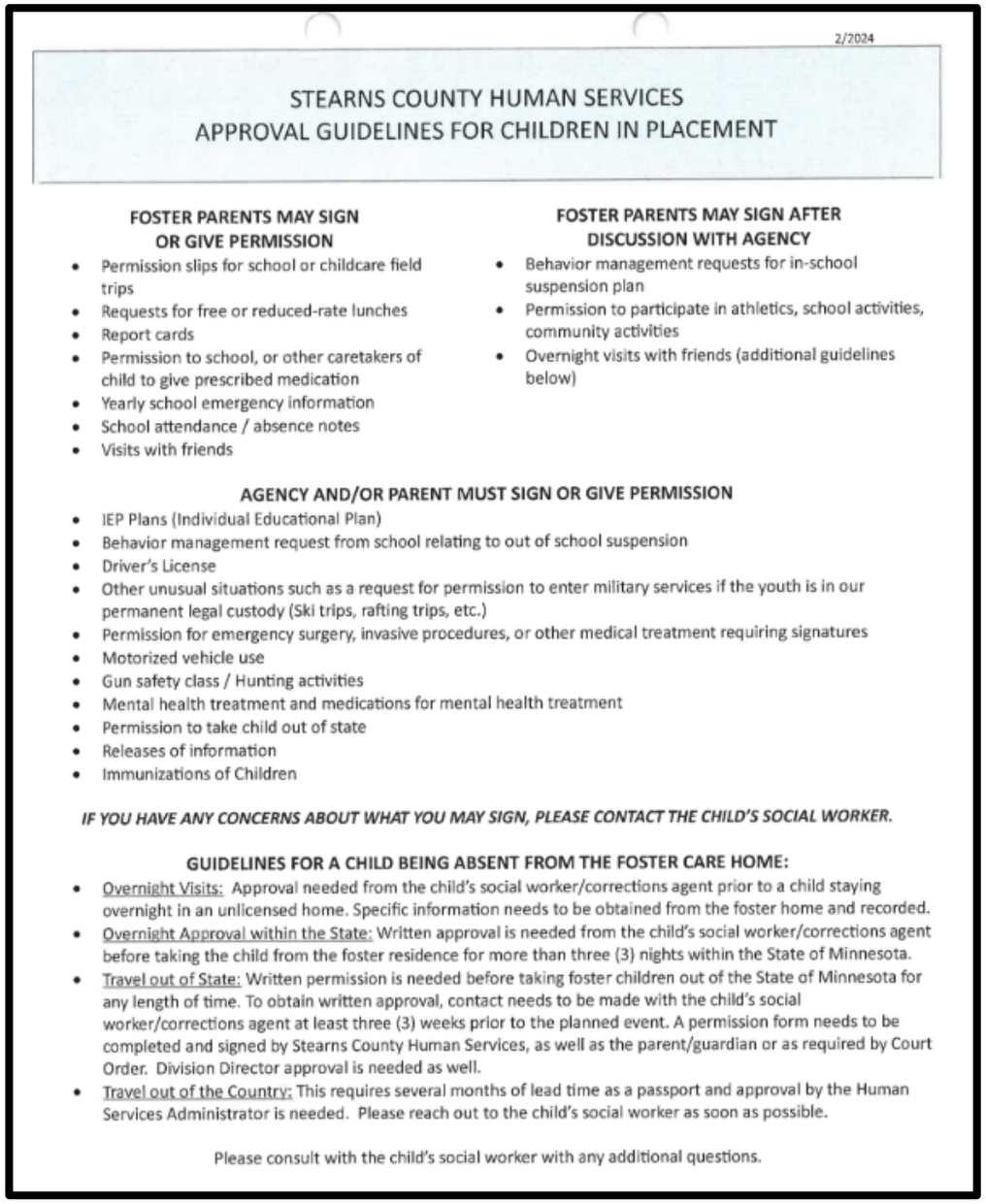


# District Situation

- Child was in foster care with a non-relative
- School identified that the student may be a child with a disability and therefore initiated the Child Find process.
- County social worker signed permission for the evaluation. Child qualified for services.
- During the evaluation process, foster parent changed from non-relative to a relative.
- Relative foster parent and county social worker did not agree that the child had a disability.
- County social worker filed a due process hearing request. Per federal law, a county social worker does not meet the definition of parent. See 34 C.F.R. § 300.30(a).
- Because the social worker did not meet the definition of parent, and only parent, school, and/or adult student can file a due process hearing request, the judge dismissed the hearing request.
- County social worker then filed a complaint.
- Findings were that the district needed to take corrective action in 2 areas:
  - Have the foster parent sign the permission form
  - Send out a memo to all special educators in the district regarding who meets the definition of parent

# Stearns County Conversation

- Initially reached out to the general email mailbox at Stearns County Children and Family Services
- The Human Services Director responded and we set up a time to meet virtually- He asked specifically what my concerns were:
  - *At a high level, our concern is about who can sign special education paperwork for students in foster care. Under the Individuals with Disabilities Education Act (IDEA), a biological or adoptive parent keeps educational decision-making rights unless a court order specifically gives that authority to someone else. If the biological or adoptive parent is not available or cannot be located, a foster parent can step in and provide consent, as long as there isn't a court order saying otherwise. Where we're running into confusion is around social workers signing special education paperwork. Unless a court order specifically names the social worker and assigns educational decision-making authority to them, they cannot sign consent for evaluations or services. In those situations, it would either remain with the biological/adoptive parent or shift to the foster parent (if appropriate), rather than the county. Our goal is simply to make sure we're all operating from the same understanding so there are no delays in evaluations or services for students. I look forward to talking this through together.*



2/2024

STEARNS COUNTY HUMAN SERVICES
APPROVAL GUIDELINES FOR CHILDREN IN PLACEMENT

**FOSTER PARENTS MAY SIGN OR GIVE PERMISSION**

- Permission slips for school or childcare field trips
- Requests for free or reduced-rate lunches
- Report cards
- Permission to school, or other caretakers of child to give prescribed medication
- Yearly school emergency information
- School attendance / absence notes
- Visits with friends

**FOSTER PARENTS MAY SIGN AFTER DISCUSSION WITH AGENCY**

- Behavior management requests for in-school suspension plan
- Permission to participate in athletics, school activities, community activities
- Overnight visits with friends (additional guidelines below)

**AGENCY AND/OR PARENT MUST SIGN OR GIVE PERMISSION**

- IEP Plans (Individual Educational Plan)
- Behavior management request from school relating to out of school suspension
- Driver's License
- Other unusual situations such as a request for permission to enter military services if the youth is in our permanent legal custody (Ski trips, rafting trips, etc.)
- Permission for emergency surgery, invasive procedures, or other medical treatment requiring signatures
- Motorized vehicle use
- Gun safety class / Hunting activities
- Mental health treatment and medications for mental health treatment
- Permission to take child out of state
- Releases of information
- Immunizations of Children

***IF YOU HAVE ANY CONCERNS ABOUT WHAT YOU MAY SIGN, PLEASE CONTACT THE CHILD'S SOCIAL WORKER.***

**GUIDELINES FOR A CHILD BEING ABSENT FROM THE FOSTER CARE HOME:**

- Overnight Visits: Approval needed from the child's social worker/corrections agent prior to a child staying overnight in an unlicensed home. Specific information needs to be obtained from the foster home and recorded.
- Overnight Approval within the State: Written approval is needed from the child's social worker/corrections agent before taking the child from the foster residence for more than three (3) nights within the State of Minnesota.
- Travel out of State: Written permission is needed before taking foster children out of the State of Minnesota for any length of time. To obtain written approval, contact needs to be made with the child's social worker/corrections agent at least three (3) weeks prior to the planned event. A permission form needs to be completed and signed by Stearns County Human Services, as well as the parent/guardian or as required by Court Order. Division Director approval is needed as well.
- Travel out of the Country: This requires several months of lead time as a passport and approval by the Human Services Administrator is needed. Please reach out to the child's social worker as soon as possible.

Please consult with the child's social worker with any additional questions.

# Stearns County Conversation

- We met, and he did not like what I had to say.
- He asked for additional information. I provided him with Liz's contact information as he said the Stearns County Attorney wanted to look at this information.
- Then…



- About a month later, he responded with a draft of a letter that would be going out to all superintendents in Stearns County school districts with updated information about the county's process.

# 2026 MASE FALL LEADERSHIP CONFERENCE


COUNTY OF STEARNS

**DEPARTMENT OF HUMAN SERVICES**

***Family & Children Services Division***

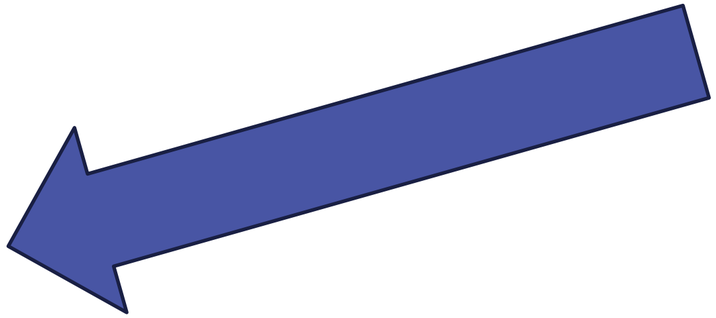
PO Box 1107, St. Cloud MN 56302

*Phone*: 320-650-5837

*TDD*: 7-1-1 MN Relay Service or your preferred relay service

Email: FamilyChildrens@stearnscountymn.gov

www.stearnscountymn.gov

03/12/2025

Dear Stearns County School District Superintendents,

I am writing to inform you of an immediate change in practice within Stearns County Human Services regarding consent and signatures for special education documentation under the Individuals with Disabilities Education Act (IDEA).

Effective immediately, Stearns County Human Services staff will no longer sign special education documents in place of a parent when a parent is unavailable or refuses to sign. This change is intended to ensure compliance with IDEA. Guidance from both the Minnesota Department of Education and the federal government is clear that consent authority must be held by a specifically identified individual acting in the appropriate role, rather than by an agency or a generalized position.

Please see our updated process below:

• Parent Consent First: Parents must always be given the opportunity to review and sign educational paperwork unless their parental rights have been terminated.

• Foster Parent as Surrogate: When appropriate, foster parents may serve as the surrogate educational parent consistent with IDEA provisions. Our policy delegates the foster parent as the surrogate for IDEA purposes when a parent is unavailable.

• Children in Facility Care: If a child is placed in a facility under agency care and a parent is absent, the County will seek court authorization naming a specific individual who may sign special education documents in the parent's absence.

• Parental Refusal: If a parent refuses to sign, schools must either respect the refusal or proceed through the formal procedures available under IDEA.

• Wards of the State: When a child is a ward of the state, the County will request that the court explicitly designate a specific individual as the authorized signer for special education matters.

Thank you for your partnership and collaboration in ensuring compliance with IDEA while supporting the educational needs of the children we jointly serve.

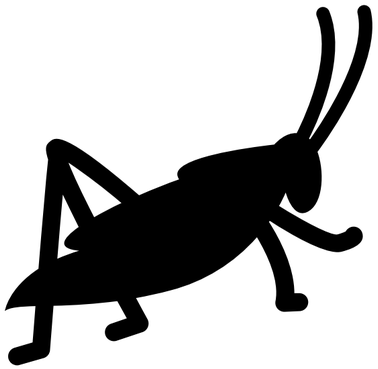
Respectfully,

Nick Henderson, Human Services Director

…and here we are!

At the same time this was going on, MASE members were trying to collaborate with MDE. This letter was written and brought to Commissioner Willie Jett and Assistant Commissioner Daron Korte by Erin Toninato and Valerie Dosland.

They met and the information was passed along to Tom Delaney.



# Conflicts between Parents

- Who has the final say?
  - Married parents?
  - Separated parents?
  - Divorced parents?
- Does the school need permission from both parents?

# Resolving Conflicts: Special Education

- Minnesota Court of Appeals has said that either parents' objection to initial evaluation or IEP means the district cannot proceed. *J.H. v. Northfield Public Schools.*
  - Court focused on fact that district cannot override "a parent's" objection or refusal to consent
- No court decision but likely court would look at similar language for non-initial and reach same conclusion
  - District will implement PWN unless "the child's parent" objects

# Resolving Conflicts: Enrollment

- **School Enrollment: District of Residence**
  - "Parent" = parent, guardian, or other person with legal custody
  - District of residence is where the parent lives 
  - Joint physical custody – parents designate resident district
    - No percentage of physical custody requirement
  - TPR: residence is where the student is living

- **School Enrollment within District of Residence:** District policies

- **Open Enrollment:** Student's "parent or guardian must receive approval of the board of the nonresident" and resident district





# Resolving Conflicts: Considerations

- **Field Trip Permission/Waiver.**
  - What is the nature of the objection?
  - If joint physical custody, who is child with at the time of the field trip?

- **Administration of medication.**
  - District policy?
  - Does the district have a doctor's order?

- **Initial Section 504 Plan.** Can the district implement the Section 504 plan and provide both parents with notice of their rights?

# THANK YOU!