

# Are You My Mother?

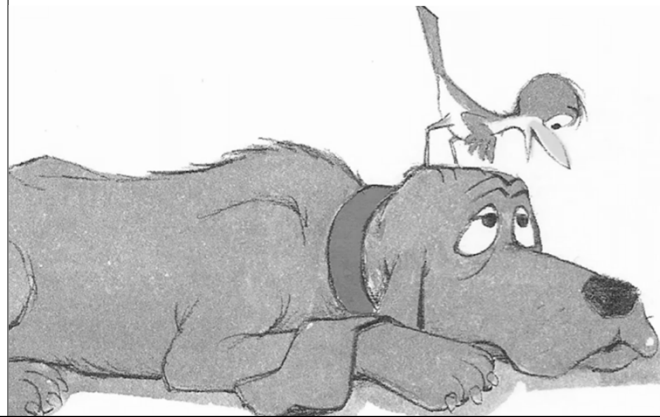
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## You Must Clearly Identify the 'Parent':

- Under the federal definition several individuals may qualify
- Identify people who are showing up for the student on a regular basis
- Confirm parental authority by consulting the student's permanent file
- Ask additional questions of 'Family' and campus personnel

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## Whose responsibility is it to determine who has parental rights?

- Start with a presumption that there are two parents who have decision making authority
- Responsibility of the parent to notify the school district of any situation to the contrary

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## Are We Allowed to Assume that What the Family Says Is True? [On the Issue of Parental Rights]

- Generally speaking, Yes
- When paperwork doesn't match parent explanation, it's time to start looking harder
- In Texas, these issues tend to be addressed upon enrollment

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## IDEA Definition of “Parent”: 34 CFR 300.30

- Biological or adoptive parent;
- A foster parent
- A guardian: generally authorized to act as the parent or make educational decisions
- An individual acting in the place of a biological or adoptive parents (including a grandparent, stepparent, or other relative)
  - *with whom the child lives OR*
  - *An individual who is legally responsible for the child’s welfare*
- Surrogate parent

## Texas Definition of ‘Parent’ Specifies Who Is NOT a Parent: Texas Education Code (§)26.002

- A “parent is anyone standing in parental relation
- A parent does NOT include:
  - A person as to whom the parent/child relationship has been terminated
  - A person who is not entitled to possession or access by court order;

# Issues Involving Biological Parents

- Identification of biological parents is easier
  - If the couple is heterosexual and legally married or
  - If biological parents are heterosexual and have been formally divorced
- If A couple has never been married:
  - Identifying mom is the easy part
  - Identifying father can be challenging
- Same Sex couples where one parent is a biological parent
- Termination of parental rights

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# Divorce Court: Do We Need to Be Concerned About These Issues?

- No fault divorce
- Sole managing conservator
- Joint managing conservators
- Possessory conservator
- Visitation rights
- Non-payment of child support
- What about kids who move back and forth every other week between parents—who makes educational decisions?

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## Statutory Presumption In Federal Definition of 'Parent': 34 CFR 300.30(b1)

- The biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child when:
- The biological or adoptive parent is attempting to act as parent and
- When more than one party is qualified to act as parent.

## When Is a Biological Parent NOT the Parent?

- Wisconsin parents adopted elementary age child from Child Protective Services In Texas
- At age 17, adopted child was allowed by adoptive parents to return to Texas to her biological mother who had previously had her rights terminated for abuse and/or neglect
- Adoptive parents provided a Power of Attorney to biological mother
- Query: Is Biological Mom a Parent?

## When Parents Do Not Agree On The IEP and/or Placement:

- In the absence of a court order to the contrary, both parents are generally allowed to participate in the development of the IEP
- Who can disagree with an evaluation?

## What About Dad's New Girlfriend, Buffy?

- Can she look at school records?
- Can she attend a parent/teacher conference?
- Can she participate in an ARD meeting?
  
- Rule: It only takes one parent to authorize dad's girlfriend to act on dad's behalf

## Can a Foster Parent Be a A 'Parent' in Texas? Tex. Education Code 29.015

- A foster parent may act as a parent if:
- The Department of Family and Protective Services (DFPS) is the temporary or permanent managing conservator;
- Foster parent agrees to participate in making educational decisions
- Foster parent agrees to complete a training program
- Foster parent has no interest that conflicts with the child's interest
- The foster parent completes the training program before the next ARD meeting, but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions
- the rights and dates of the DFPS to make decisions regarding education provided to the child have not been limited by court order;

## Can the school deny a foster parent the right to serve as the child's parent?

- Yes. If a school denies a foster parent the right to serve as a parent, the school must provide the foster parent a written notice of such denial in 7 calendar days after the date on which the decision was made.
- The written notice must specifically explain why the foster parent is being denied the right to serve as the child's parent and inform the foster parent of the right to file a complaint with TEA.

# Who Can Act As A Legal Guardian?

- Generally Requires An Appointment by the Court
- Formal Guardianships Make Things Easy
- Guardian's Rights Are Spelled Out in the Paperwork
  
- Query: Is a Power of Attorney The Same Thing?

# Remember: In the Event of a Judicial Court Order or Decree:

- If the decree or order identifies specific person or persons to act as the parent or to make educational decisions on behalf of the child
- Then the person or persons identified in the decree or court order shall be determined to be the parent



## Can A Guardian Ad- Litem Be The Child's Legal Guardian?

- The role of the guardian ad- litem is limited to representing the best interests of a child in court proceedings and acting as advisor to the court on behalf of the child
- The authority of the ad litem is more limited than a surrogate

## Who is "A Person Acting As a Parent"?

- Should be interpreted literally
- An entity does not qualify
- Person must live with the student
- Have a relationship with the student that can be characterized with a universal familial-type label (guardian, stepparent, other blood relative)

## Clear Example of Person 'Acting As a Parent'

- Biddeford Sch. Dept., 44 IDELR 87 (SEA ME 2005):
- Student's aunt cared for him on a daily basis, fed him, put him to bed, and made sure he got to school.
- Court's Holding:** Hearing Officer found that aunt was legally responsible for student's welfare and properly considered a 'parent'. Therefore, School District could rely on her consent to evaluate and place the student.

## Can grandparents act as parents?

- Yes. In fact, the US census data shows that 2.3 million grandparents are responsible for their grandchildren. About 1/3 of the grandchildren are younger than 6.

# When Are Surrogate Parents Required?

- When Parents are not known;
- When District cannot locate parents
- After reasonable effort
- When child is a ward of the state
- When the child does not reside in a foster home setting
- When the foster parent is unwilling or unable to serve as a parent
- When the child is an unaccompanied homeless youth

# Restrictions on Appointment of Surrogate Parents

- Cannot Be an Employee of:
  - Your school district
  - TEA
  - Any agency involved in care or education of the child
  - A person of any interest that conflicts with the interest of the child
- Cannot be the state itself

## Can A Foster Parent Be a Surrogate?

- Yes
- School Districts in Texas Must Give Preferential Consideration to a Foster Parent of a Child with a Disability When Assigning a Surrogate

## Is A Child Always A Ward When Child Protective Services Has Intervened?

- No. CPS may offer family- based services
- CPS can be considered temporary or permanent managing conservator
- Child may be in foster care or living with extended family while parents work a service plan
- Recommendation: when it is unclear whose in charge of the child, call the caseworker

## Students in Residential Treatment Facilities:

- Not all children residentially placed are wards of the State

## Parents of Adult Students Texas Education Code (§) 29.107

- Transfer of rights from parent to student generally occurs at the age of 18
- Unless student has been deemed incompetent under state law
- However, parents of adult students are still entitled to any notice required under 20 USC (§) 1415. However the notice does not constitute an invitation to or create a right for the parent to attend the meeting.

## What happens if the student is challenged, but the parent has not obtained guardianship?

- An adult student can execute a supported decision – making agreement or power of attorney after the transfer of parental rights.

## A Lawyer Says “Do Not Communicate Directly with Parents. They Are Represented By Counsel”

- Query: What Now??
- Are We Prohibited From Communicating with the Parents?
- Can We Convene An ARD Meeting?
- Who Gets the Required Notice Now?

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