

**The Ohio Association of Pupil  
Services Administrators**

# **Custody Issues & IDEA**

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# Identifying the Parent is Important

- “Parent” must consent for initial services and change of placement.
- “Parent” can file a due process complaint.
- “Parent” can initiate a hearing to amend education records.



## Who is a “Parent”?

- (a) A biological or adoptive parent of a child but not a foster parent of a child;
- (b) 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);
- (c) 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; or
- (d) A surrogate parent who has been appointed in accordance with rule 3301-51-05 of the Administrative Code.

## Who is a “Parent”?

- (e) When more than one party qualifies as a “parent” under this rule, then the biological or adoptive parent takes precedence.
- Except when the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- (f) If a judicial decree or order identifies a specific person or persons under paragraphs (B)(44)(a) to (B)(44)(c) of this rule to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

## Who is the Parent? (Scenario 1)

- A child moves to your district from California.
- The child's father is unknown and the child's biological mother is still in California.
- The child is living with his Aunt in her apartment located within your district.
- The Aunt brings a previous ETR and IEP from California (both signed by the biological mother).
- The Aunt also brings a handwritten note (purportedly signed by Mom) stating "my sister can make education decision for my child."



## Who is the Parent? (Scenario 2)

- A child has been in your district for 5 years.
- Her parents have split and are in the process of getting a divorce.
- The temporary custody order and parenting plan states “Both parents shall have authority to make education decisions. Disputes shall be resolved by the Court’s mediator.”
- Dad wants to change the Student’s placement to an ED unit (threatens DP).
- Mom wants to keep the child in the regular classroom and offers to medicate the student (threatens DP).



## Who is the Parent? (Scenario 3)

- An unidentified Student has been in your district for 2 years.
- His Mother is a single parent who recently was diagnosed with brain cancer.
- The Mother signs a Power of Attorney granting her best friend authority to make education decisions in her stead.
- The Student is referred for an initial evaluation by a teacher.
- The Friend signs to consent to the evaluation.



## Who is the Parent? (Scenario 4)

- A child has been in your District for 8 years.
- His parents have been divorced for 4 years.
- 2012 Shared Parenting Order: “Both parents have authority to make education decisions.”
- 2015 Court Order: “terminates the Shared Parenting Order” and designates the Mother as “the sole residential parent.”
- Dad sends a letter to the District revoking consent for the continued provision of special education and related services.



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**Questions?**