

DCF	COMMONWEALTH OF MASSACHUSETTS ~ DEPARTMENT OF CHILDREN AND FAMILIES	
	Policy Name: Education Policy for Children Birth through 22	
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EDUCATION POLICY FOR CHILDREN BIRTH THROUGH 22

INTRODUCTION

The Department of Children and Families is committed to supporting the educational needs and attainment of all children with whom it becomes involved – from birth through higher education. In so doing, the Department adheres to the requirements of applicable federal statutes, including the No Child Left Behind Act of 2001 (PL 107-110), the Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351) and the McKinney-Vento Homeless Education Improvements Act of 2001 (PL 100-77). The Department supports children with disabilities in acquiring a “free and appropriate public education” as provided for in the federal Individuals with Disabilities Education Improvement Act of 2004 (PL 108-446), Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (PL 110-325). The Department also adheres to state education laws found at MGL c. 15; MGL c. 69, §1B and MGL c. 71B and applicable state and federal regulations.

I. POLICY: GENERAL

The Department expects and will support, through its policies and work with families, children to be prepared to enter school, to be attending regularly and on time, to be making educational progress, to be benefitting from extra-curricular activities and supports as they are available and suited to them and to graduate high school with a plan for post-secondary education, training and/or employment. For children who enter Department care or custody, the Department promotes educational continuity and educational setting and placement stability as central to improving educational outcomes and fostering positive educational experiences.

Meeting these challenges requires the Department to:

- set high expectations for all children and youth;
- identify and meet the individual needs of each student; and
- partner effectively with families (including foster/pre-adoptive family resources), students, schools, child care, early education and other community based-programs.

Compulsory school attendance is required by Massachusetts law for all children age 6 to 16. Most children are educated in **regular education** programs in local public schools.

When the Department believes that a child has a disability which prevents her/him from being able to progress effectively in regular education (i.e., to make documented growth in acquisition of knowledge and skills, including social/emotional development, within regular education according to chronological age and individual potential of the child), the Department coordinates with the parent or any other adult involved with the child in a care-giving or professional role concerned with the child’s development to obtain education support services as follows:

- For a school-age child, the Department may request the local school district (i.e., local education agency or “LEA”) to conduct a **special education** or “Team” evaluation.
- For a child age 3 or 4 (or age 2½ if she/he is receiving Early Intervention services), the Department may request a pre-school screening for special education from the local school district.
- For a child under age 3, the Department may complete a referral for Early Intervention services.

If a school-age child is found to have a disability as defined by the Department of Elementary and Secondary Education (ESE) special education regulations at 603 CMR 28.02 (7), an Individualized Education Program (IEP) is written and implemented for provision of her/his special education and related services. Federal and state laws require that students receive their special education in the least

restrictive educational environment, and be integrated with regular education students in public school settings as much as possible. For additional information about and assistance with educational planning, Department staff may consult the Education Coordinator affiliated with the Area Office.

Child Care: The Department refers children for child care and early education services to promote children's growth, development, health and well-being. The Department's ability to access child care for children and families is enhanced by the following programs:

- **Head Start and Early Head Start:** Children in Department care or custody are automatically eligible and are referred based on the child and family's need and program availability.
- **Supportive Child Care:** The Department can a referral for a family or center-based child care program as part of a plan to prevent placement, assist in a child's return home from placement or support a child's placement.

For information about accessing supportive or other child care or early childhood education programs for a family, see *Policy #91-006* and/or consult the Child Care Coordinator affiliated with the Area Office.

Principles for Supporting Educational Achievement of Children Involved with the Department

The following principles guide the Department's work to support educational attainment for children, youth and their families:

- High-quality early childhood education, especially for at-risk and low-income children, is critical to later school and life success.
- Engaging families and their support systems as partners is vital to children's educational attainment.
- Educational stability and continuity are key to maintaining critical relationships and academic attainment for Department children and youth.
- Children deserve access to the highest quality education, including access to assessments and services delivered by knowledgeable and skilled professionals.
- Understanding and communicating the developmental, cultural and environmental context of a child and family are necessary to fully support a positive educational experience.
- Children benefit from participating in educational programming in the least restrictive environment that meets a range of academic and social needs, and receiving academic credit for the work they do.
- Out-of-school time and summer activities, including arts, sports, drama as well as academic supports, are critical opportunities for supporting and sustaining educational attainment.
- Children who enter Department care or custody deserve to have the same access to education and support services as children not in Department care or custody; and to have full and complete records of their educational experiences and attainments maintained, utilized in planning to meet their needs and provided to them or their caregivers when they leave.
- Children benefit from the involvement of a caring adult who is consistently attentive to their educational strengths and needs and provides continuous, supportive guidance at key junctures, whether or not they are in Department care or custody.

DEFINITIONS

Department of Elementary and Secondary Education (ESE): The state education agency responsible for providing oversight and support and direction to local school districts.

Department of Early Education and Care (EEC): The state agency responsible for licensing and providing oversight to early education and care programs. EEC also oversees early childhood special education funding.

Early Intervention: Programs and services to families of children under 3 years of age who have a developmental delay due to a disability and/or other birth or environmental circumstances; federal law requires the Department to refer to Early Intervention programs families in which a 51B investigation is supported on a child who is under 3 years of age (see *Policy #2011-01, Early Intervention Policy*).

Educational Decision-Maker: A person(s) empowered to make educational decisions on behalf of a child in Department care or custody.

Effective Educational Progress: Making documented growth in acquisition of knowledge and skills, including social/emotional development, within regular education according to chronological age and individual potential.

Individualized Education Program: A written statement, developed and approved/signed by the school district representative and parent, foster/pre-adoptive parent or other designated special education surrogate parent (the Department Social Worker cannot sign), in accordance with federal special education law in a form established by ESE, that identifies a student's special education needs and describes the services a school district will provide to meet those needs and the kind of setting where those services will be delivered.

Local Education Agency (LEA): A Massachusetts municipal school department or regional school district acting through its school committee or superintendent of schools, which has programmatic and financial responsibility in accordance with ESE's special education regulations.

School-Age Child: A child ages of 3 through 21 (inclusive) without a high school or equivalency diploma (see MGL, c. 71B, § 1).

Section 504 Plan: A plan, developed in accordance with Section 504 of the federal Rehabilitation Act of 1973, which: establishes civil rights for children with handicaps in federally funded programs and activities (including Head Start and Early Head Start); includes reasonable accommodations to enable the child, age 3 to 21, with a qualifying handicap (i.e., a physical, health or mental impairment which substantially limits a major life activity, or is regarded as handicapped by others – including conditions such as being HIV+ or having asthma) to receive education comparable to non-handicapped students; needed accommodations are included in the "504 plan."

Special Education Surrogate Parent (SESP): An individual appointed by the SESP Program to be the child's special educational decision-maker when: (1) the child has IEP or is being referred for a "Team evaluation" due to a suspected disability which is preventing her/him from progressing effectively in regular education; (2) the child's parent is not the designated educational decision-maker, and (3) the child is placed with a foster/pre-adoptive family but the foster/pre-adoptive parent has not become the child's special education decision-maker due to a conflict of interest or other reason or the child is placed in community-connected residential treatment. *NOTE: The Department's Social Worker cannot be the special education decision-maker or SESP for a child who has an IEP or is being referred for a special education Team evaluation.* When a SESP is needed, the Department's Social Worker must request the assignment of a SESP from the ESE's Special Education Surrogate Parent Program (SESP Program)

Special Education Surrogate Parent Program (SESP Program): The program, administered by ESE, that is responsible for assigning Special Education Surrogate Parents for children in Department custody.

Team Evaluation: The evaluation completed by a multidisciplinary team to consider a child's need for special education that is arranged by the LEA upon the consent of the parent, foster/pre-adoptive parent or SESP, within 30 school/working days after the referral.

Team Meeting: The multidisciplinary school-based meeting that occurs no later than 45 school/working days after a school district receives parental/SESP consent for a child's special education evaluation, the purposes of which are to review the evaluation data, determine eligibility for special education services and develop an IEP in accordance with state and federal special education laws.

II. POLICY: CHILDREN NOT IN DEPARTMENT CARE OR CUSTODY

For all families involved with the Department, including those where the child remains in the custody of her/his parent(s)/guardian(s), the Department determines that, at a minimum, each child age 6 up to age 16 is enrolled in and is attending a public school or approved private school or is being home schooled in a program that is approved by the school district/LEA. If a child age birth up to age 18 is not enrolled in a qualified program or is not attending her/his school, early education or child care program regularly, the Department provides support and guidance to the parent(s)/ guardian(s) in addressing the child's educational needs. When the family is homeless, federal law stipulates that the child is entitled to access to the same free, appropriate education provided to other students in her/his school of origin, if at all possible, to maintain educational stability. (For additional information, see Appendix E – Educational Planning Resources for Department Staff) For children not yet school age, the Department assesses the

child's developmental status and considers referrals for specialized assistance to help address any identified needs.

III. PROCEDURES: CHILDREN NOT IN DEPARTMENT CARE OR CUSTODY

1. **Access Child's Educational Information.** After a family is screened in for Department services, the Social Worker determines through contacts with the parent/guardian and collaterals the educational and developmental status and needs for each child. To conform with federal and state confidentiality requirements the following procedures are followed:
 - ***During the response to a report of child abuse or neglect or when the child is in Department custody but living at home,*** the Department may request and obtain information from a child's educational setting to assist in determining whether the child was abused and/or neglected or may be at risk.
 - ***When the child is not the subject of a child abuse and/or neglect report or the response to such a report is concluded or the child is not in Department care or custody,*** the Department's Social Worker seeks a release of information signed by the child's parent or other legal guardian to forward to the principal/director/designee of the child's educational program, in order to obtain access to the child's record.
2. **Verify School Enrollment, Attendance and Educational Progress.** While the Department adheres to the principles specified above for supporting educational achievement for all children with whom it becomes involved, its responsibility to intervene on behalf of the education of children who remain in the custody of their parent(s)/guardian(s) varies depending upon their age:
 - ***For each child age 6 up to age 16,*** at a minimum, the Social Worker verifies that the child is enrolled in and attending school in conformity with state law and works with the parent(s)/guardian(s) to identify and address educational obstacles when a child:
 - is not enrolled in or is enrolled but is not attending daily a school/educational program that meets her/his educational needs or
 - is enrolled in and attending school daily but failing to progress effectively in regular education.
 - ***For each school-age child not covered by Massachusetts compulsory school attendance laws (i.e., those age birth through 6 and age 16 and older),*** the Social Worker works with the parent(s)/guardian(s) and school to address the child's educational and developmental needs to promote an educational plan to assist that child in reaching her/his full educational potential.
 - For any child under age 6 who is not yet enrolled in child care, early education program or school, the Social Worker considers with the family referrals to:
 - Early Intervention for a child under age 3 (*NOTE: Policy #2011-01, [Early Intervention Referral Policy](#), requires a referral to Early Intervention for all children under age 3 who are the subject of a supported report of child abuse or neglect.*);
 - Supportive child care which can be accessed through the Area Office Child Care Coordinator; and/or
 - Head Start or Early Head Start, where available.
3. **Document Educational Information.** The Social Worker enters, and maintains up-to-date information, in the electronic case record, including but not limited to:
 - the name of the school or program where the child is enrolled and attending,
 - her/his grade level or child care/early education program type and
 - any other information and documents gathered regarding her/his educational circumstances, strengths and interests as well as any educational obstacles and how they have been or are being addressed.

IV. POLICY: CHILDREN IN DEPARTMENT CARE OR CUSTODY

The Department regards meeting the educational needs of children who enter Department care or custody as one of its highest priorities for their well-being. The Department continues to involve the parent in educational decision-making, unless the parent is unable or unavailable or her/his parental rights have been terminated. The educational setting decision is made by the child's clinical team which, for this

purpose, includes the Social Worker and Supervisor, parent and/or foster/pre-adoptive parent, a representative from the school district and the student. The final decision is made by the Department except when the parent(s)/guardian(s) retains educational decision-making authority. The decision-making process and decision are documented in the electronic case record.

Meeting Children’s Educational Needs during Placement

When a child is placed out-of-home, the Department works with the family, placement provider and school to support the child’s educational needs and maintain, whenever possible, her/his educational and placement stability. Supporting educational attainment and success for children in placement includes:

- reviewing and maintaining up-to-date information on the child’s educational placement, attendance and performance; and
- describes efforts made to place the child close to home so that the child can remain in her/his existing school, child care or early education program. .

When a school-age child must change her/his out-of-home placement, the Department will work with the child’s school district to enable the student to continue to attend the school (or child care/early education program) she/he was attending prior to each placement unless it is determined that is not in the child’s best interest. In making the educational setting decision, the Department prioritizes enabling the child to finish a semester, term or other learning period in the current setting, which may include working with the school district, the placement provider, the child’s family or others to arrange for transportation. When it is not in the best interest of the child to continue in the same educational setting, the Social Worker plans for and supports the child’s transition to the new educational setting, in coordination with her/his parents or other designated education decision-maker, placement provider, school district representatives and other relevant representatives (e.g., guardian ad litem, attorney). This activity includes arranging for all records to be transferred quickly to the new school district to facilitate enrollment without delay. For more information, see Section V. Procedures: Children in Department Care or Custody, Procedure 3, and Appendix E – Educational Planning Resources for Department Staff.

Determining Educational “Best Interest” for Children Entering Foster Care or Community-Connected Residential Treatment Placements: Factors that should be considered when making a “best interest” decision about child’s educational setting include, but are not limited to:

1. ***student’s age and grade level (or child care or early education program type)***
2. ***student’s preference***, when age appropriate
3. ***time of year and academic performance***
4. ***current educational goals and services, IEP***
5. ***individual skills, needs and social connections***
6. ***anticipated length of time in placement and whether reunification is the family goal***
7. ***number of placements to date***
8. ***ability to maintain family relationships and engagement***
9. ***clinical/behavioral and developmental issues***
10. ***safety issues***
11. ***distance/length of time to educational setting***
12. ***availability of transportation (NOTE: Supportive child care includes transportation.)***

Determining Educational “Best Interest” for Children Placed in Short-Term, Transitional Programs:

Children who are placed in an emergency or temporary setting may be considered homeless under federal law. This means that, in accordance with the child’s best interest and to the extent feasible, the school district must continue to educate the child in the child’s school of origin (i.e., the program the child attended, or was enrolled in, before becoming homeless). The only exception to this general rule is when doing so would be contrary to the wishes of the child or the child’s parent/guardian. If a homeless child is temporarily living in a different location within her/his school district of origin, the school district must provide or arrange transportation to the school of origin. The Department will work with the child, child’s parent/guardian or other designated educational decision-maker, placement provider, school district representatives and other relevant representatives (e.g., guardian ad litem, attorney) to determine the child’s best interest and her/his or the parent/guardian wishes and support her/him in exercising

her/his rights under the circumstances. (See Appendix A – DCF Children Placed in Short-Term, Transitional Programs: Access to Educational Services which presents Departmental guidance clarifying the McKinney-Vento Homeless Education Improvement Acts of 2001.)

Assessing Educational Placement and Progress

During the first 6 weeks after a child enters placement (if not before), the Department gathers information regarding her/his educational strengths and needs. During the required 6 week placement review, the Department, the placement provider, the child's parents and the child's designated educational decision-maker (if not the parent or the Department):

- gather and review information from school and/or Early Intervention records (including report cards, results of standardized tests and IEPs);
- consider the continued appropriateness of the child's current educational placement;
- arrange for educational services and school-related activities to be set up and for records to be provided to the placement provider if not previously done;
- initiate the development of a sound strategy for promoting her/his educational success at the highest level of achievement of which she/he is capable that is incorporated into the Department's assessment and case planning;
- consider supporting the child's participation in early childhood education or post-secondary educational and vocational programs that are suited to her/his age and abilities; and
- when post-secondary goals are identified, consider financial, housing and social support resources available to the youth (see *Policy #2013-01, Permanency Planning Policy*).

Prior to the beginning of each school year, the Social Worker, in consultation with his/her Supervisor, reviews the educational and developmental needs of each child in Department care or custody and works with the parent [or whoever is identified as the education decision-maker; if the child has an IEP, this will be the special education decision-maker who may be a Special Education Surrogate Parent (SESP) – for further information, see Procedure V-A-4 below and Appendix B – Guidance on Appointment of Special Education Surrogate Parents], placement provider and the child, as appropriate, to address any concerns that may affect the child's attendance, participation and success in her/his educational program. The results of this shared review are considered in Department case planning, and the Social Worker documents actions taken, decisions made and information obtained in the electronic or physical case record, as applicable.

When the Department suspects that a child in Department care or custody may have a disability which prevents her/him from being able to progress effectively in regular education, the Department coordinates with the parent or other adults involved with the child to make sure that a special education (or Team) evaluation is requested from the school district/LEA, and if needed, an IEP is developed. Under federal and state law and regulations, the Department's Social Worker may request a special education evaluation but may not consent to the evaluation or sign the IEP. These steps must be completed by the parent or special education decision-maker who may be a SESP.

For children in Department care or custody, the Department is authorized to communicate with the child's child care, early childhood program or school regarding her/his education. Throughout the child's placement, the Department maintains regular communication regarding the child's educational progress with the child care, early childhood program or school, the placement, the child's parents and any adjunct resources that are supporting the child educationally such as a therapist or tutor. Information from these sources informs case planning to meet the child's educational needs and is considered during Foster Care Reviews. As changes occur in the child's life that may affect her/his educational attendance, participation and performance, the Department's case planning with the family and school/program personnel addresses the child's needs to achieve her/his full educational potential. Together, tasks, resources and responsibilities for meeting the child's educational objectives are identified and documented in the electronic case record, including tasks for the child as appropriate to her/his age and abilities.

V. PROCEDURES: CHILDREN IN DEPARTMENT CARE OR CUSTODY

A. GENERAL EDUCATIONAL PLANNING

1. **Obtain Child's Educational Information.** The Social Worker obtains educational information after providing written documentation to the principal/director/designee that the child is in Department care or custody.

At a minimum, the Social Worker requests the following information if not already known:

- the name, address and contact information of the child's child care, early childhood program or school;
- the child's educational status [grade level or program type, teacher, attendance record, School Assigned Student Identification (SASID) number and any discipline information/documents];
- if child has been evaluated for special education and/or has an Individualized Education Program (IEP), a copy of the evaluation and the IEP, if completed.
- for youth in high school, the amount of credits earned towards graduation.

The Social Worker should also request copies of transcripts, progress reports, report cards, results of standardized tests such as the MCAS and any assessments, evaluations or Section 504 plans, as needed to plan effectively to meet the child's educational needs..

The Social Worker arranges for the information obtained to be documented in the electronic and physical case records.

2. **Complete Educational Planning for Children in Department Care or Custody who Enter Placement.** At the 6 Week Placement Review meeting, the Social Worker, in conjunction with the Supervisor, parent, foster/pre-adoptive parent or other placement provider, educational decision-maker or SESP – if the child has an IEP or has been referred for special education – and others who may be present use the information about the child's educational strengths and needs to plan for the child's educational stability and for meeting her/his educational needs while in placement as required by federal law. Educational information is:

- incorporated into any plan written with the family, youth and/or young adult, where needed,
- documented in the electronic case record and
- updated each time a child changes placement that results in an educational setting change.

Educational planning must:

- **Identify the child's educational decision-maker:** Every school-age child who is in Department care or custody must have an educational decision-maker [i.e., a person(s) empowered to make educational decisions on her/his behalf]. See Procedure V-A-4 below for information on how to identify the child's educational decision-maker. *NOTE: Children under age 3 receiving Early Intervention services who are in the Department's custody will have a "surrogate parent" appointed by the court or the Department of Public Health, if needed.*
- **Address the appropriateness of the current educational setting, educational stability, continuity of attendance and minimizing educational disruption:** When placement is needed and when a child changes placement, the Social Worker, in consultation with the Supervisor, coordinates with the parent or other educational decision-maker to develop a plan for placement that meets the child's educational needs and, unless it is not in the best interest of the child, provides for the child to continue in the same school district/local education agency (LEA) consistent with federal requirements.
 - When the child is entering foster care or community-connected residential treatment placements: Educational planning reflects the factors that led to the educational best interest determination described above in the Section IV, Policy: Children in Department Care or Custody.
 - When the child is placed in a short-term, transitional program (e.g., STARR or TCU): Educational planning includes benefits for which the child may be eligible. By agreement with ESE, this includes children who are in Department short-term placements (e.g., STARRs) and temporary care units (TCUs) and may include those being placed in a foster home on an

emergency and temporary basis. Transportation may be accessed through the LEA to enable the child to continue to attend the school in which she/he was enrolled before entering the setting except when this would be contrary to the wishes of the child or her/his parent(s)/guardian(s). If distance or the child's best interests necessitate attendance in the school district where the placement is located, enrollment will be immediate and can be accomplished without records being provided at the time of enrollment. The Social Worker may contact the "homeless coordinator" in the LEA to facilitate record transfer. In limited circumstances, it may be necessary or prudent for the child to receive her/his education at the placement such as when she/he has an illness or injury, or the Department has documented concerns about the child's safety. The Director of Areas/designee approves such an arrangement.

- **If the child does not speak English**, what advocacy with the school might be needed by the Department and others to determine whether the child needs referral to a linguistically appropriate program or other support services provided by the school.

3. **If Needed, Enroll a Child in a New Public School District/LEA and Arrange Records Transfers.**

When the Department determines that it is in the child's best interest to enroll in a new school district/LEA, the child's Social Worker arranges for the current school district/LEA principal/director/designee to be informed at least 2 weeks prior to the move or as soon as possible, and for a request to be made to transfer the child's school record by completing the *Notice to LEA* form. The Social Worker updates these activities in the electronic case record along with any changes in the educational goals for the child and/or family.

The Social Worker arranges for the student to be registered in the new school. Documentation necessary to enroll a child in a new public school system generally includes, at a minimum:

- current immunization record (based on current state requirements); if this cannot be obtained, the Department works with the LEA to obtain necessary documents/health records and enable swift enrollment;
- birth record or birth certificate;
- current and previous transcripts, including MCAS or other assessments;
- special education documents (IEPs, assessments, progress reports, etc.), if applicable;
- discipline records;
- attendance records;

and as applicable:

- copy of the mittimus;
- foster/pre-adoptive parent's proof of residence;

NOTE: The Social Worker is advised to check with the school, child care or early education program in which the child is being registered for specific information about the documentation needed and where to enroll the child. For children who are considered homeless by ESE, enrollment is immediate; the "homeless coordinator" in the LEA will access records and facilitate enrollment.

Educational settings will sometimes allow, if not encourage, a **pre-placement visit to the school/program** for the Social Worker and/or the child to support a smooth transition. During such a visit or upon enrollment, a meeting should be held to review the child's performance in the educational setting to date and address any academic, social or behavioral concerns. Support services can be arranged such as after school recreation and sports activities, programs and tutoring, and transportation; and communication links should be established. The Social Worker works with the parents, placement provider and school district, when necessary, to support completion of transitional activities and support services.

4. **Identify the Educational Decision-Maker or Special Education Decision-Maker; When Needed, Request a Special Education Surrogate Parent (SESP).** The Social Worker documents, in the electronic case record, determinations about who will make educational decisions for the child based on the factors described below and in greater detail in Appendix B – Guidance on Appointment of Special Education Surrogate Parents.

NOTE: The SESP can carry out the same rights and responsibilities as a parent, e.g., consenting to an evaluation, accepting or rejecting an IEP and placement, requesting an independent evaluation, asking for a hearing, etc.

When the child is in Department care or custody, the Department determines who will make education decisions for the child based on her/his legal status, placement setting, age, court action and her/his need for special education services, as described below:

Legal Status

- When the **child is in Department care**, the Department works with the parent to determine whether the parent, foster/pre-adoptive parent or Social Worker will be the educational decision-maker. If the child has an IEP or is suspected of having educational needs, the Social Worker cannot be the educational decision-maker (see "Placement Setting" and "Note on Social Worker Role" below for additional information).
- When the **child is in Department custody under the Child Requiring Assistance statute (MGL c. 119, §39G)**, the parent remains the educational decision-maker even when the child has an IEP or is suspected of having special education needs, unless the court identifies another individual as the education decision-maker (see "Court Action" below). If the parent is unavailable, the foster parent may be the educational decision-maker, including for special education decisions, if she/he agrees and has no conflict of interest.
- When the **child is in Department custody as the result of a Care and Protection petition (not under the Child Requiring Assistance statute)**, the Social Worker, in consultation with the Supervisor, may identify the parent as the child's educational decision-maker, including special education services decision-making. Such a decision may be appropriate if:
 - the child has a permanency plan goal of reunification,
 - the parent has demonstrated in the past the capability to make educational decisions that were in the child's best interests,
 - the child's anticipated length of stay in placement with the Department is time-limited and
 - the parent is willing.

Placement Setting

- When the child is placed **with a foster/pre-adoptive family**, the Social Worker, in consultation with her/his Supervisor, first determines whether the parent will make educational decisions for the child. If the parent will not be the educational decision-maker, federal law and state regulations provide for the foster/pre-adoptive parent to be the education decision-maker for the child if she/he agrees and has no conflict of interest. This is true even if the child is being evaluated for special education services or has an IEP and may be arranged at the time of placement. The Social Worker:
 - discusses with the foster/pre-adoptive parent the role and responsibilities of the education or special education decision-maker, as applicable;
 - determines whether she/he is willing to assume the role; and
 - documents the outcome of this discussion in the Child Placement Agreement and in the electronic case record.

NOTE: The Social Worker requests appointment of a SESP by the SESP Program for a child who is being evaluated for special education services or has an IEP and is placed with a foster/pre-adoptive family only when: (1) the parent is not the special education decision-maker; and (2) the foster/pre-adoptive parent has a conflict of interest (usually due to her/his status as a contracted foster/pre-adoptive parent or employment status) or is otherwise unavailable or unable to make education decisions for the child.

- When the child is placed **in a community-connected residential treatment setting**, the Social Worker is the educational decision-maker, unless the parent has remained the educational decision-maker. When the parent is not the educational decision-maker and the child is being evaluated for special education or has an IEP, the Social Worker requests the SESP Program to appoint an SESP.

Court Action

- When the ***court identifies an individual to act in education matters*** on behalf of a child in Department custody who has an IEP or suspected special education needs, the Social Worker, in consultation with the Supervisor and, when necessary, the Department Attorney, reviews the court order to determine whether that person has been given educational decision-making rights or has been appointed as an “educational advocate” only. *NOTE: The SESP Program will not consider the person to be a SESP until she/he has complied with program requirements. The Social Worker contacts the SESP Program to determine whether the individual has applied.*

Age

- If the ***child is 18 years of age or older*** and no court action has been taken to designate a guardian, the child is presumed competent to make her/his own educational decisions. Students 18 years of age or older may request the continuation of the SESP to act as an advisor for the purpose of educational decision-making but this occurs outside the purview of the SESP Program.

NOTE ON PARENTAL ROLE: The appointment of an SESP does not prevent parents from participating in their child’s education. Parents can and, when in the child’s best interest, should be encouraged to attend Team meetings and any other school meetings and to work with the child’s SESP.

NOTE ON SOCIAL WORKER ROLE: The Social Worker can refer any school-age child (i.e., ages 3 to 21) for a special education evaluation; however, the Social Worker does not have authority to consent to a special education evaluation, sign an IEP, make educational decisions for a child who has an IEP or file a special education appeal. (See Section V-B, Procedures 7 through 11 below for information on special education.)

NOTE ON FOSTER/PRE-ADOPTIVE ROLE: The foster/pre-adoptive parent supports the child’s educational plan in important ways unrelated to whether or not she/he is the child’s educational or special education decision-maker. She/he partners with the child, family and Department to identify the child’s individual learning needs and to set and achieve high educational expectations, makes sure the child attends her/his school, child care or early education program regularly and on time, supervises her/his completion of homework, is usually the first to learn of upcoming activities and concerns at the educational program and facilitates her/his participation in all school-related activities that address her/his goals, interests and capabilities. The Department encourages the foster/pre-adoptive parent to be actively engaged in supporting the child/youth’s education and involvement in all educational program-related activities. Under the agreement the foster/pre-adoptive parent signs upon licensing, she/he agrees to authorize appropriate educational program-related activities such as registration and field trips and to notify the Department of educational activities she/he has authorized.

5. **Monitor and Document Educational Progress.** The Social Worker contacts the school, child care or early education program of the child on a regular basis, and as needed, to assess and document whether the child is attending daily and how she/he is progressing towards educational goals.

The Social Worker works with the parent(s), placement provider, child (as appropriate to her/his age) and child care, early childhood program and/or school district to address any concerns that are identified. She/he regularly documents her/his activities and updates, as needed, education data in the electronic and physical case records, including but not limited to:

- copies of education information received [e.g., transcripts, IEPs (including the signature page)],
- assessments and evaluations,
- progress reports/report cards,
- MCAS reports or results of any other standardized testing and
- correspondence with school district personnel.

6. **Consider Referring Child for Determination of a Section 504 Qualifying Handicap.** When the Social Worker, in consultation with the Supervisor, is concerned that a child in Department care or custody has, or has had, a physical or mental impairment which substantially limits participation in school or obtains information that the child is considered impaired by others, she/he may refer the

child for a Section 504 evaluation, reasonable accommodations and special services, when she/he is not eligible for special education.

B. SPECIAL EDUCATION (See Appendix C – Special Education Team Evaluation Flow Chart)

7. **Request a Team Evaluation.** According to ESE regulations, a determination of eligibility of a child for special educational services must be based upon a finding that a child is unable to progress effectively in regular education (i.e., to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within regular education according to chronological age and the individual educational potential of the child) and requires special education services in order to successfully develop the child's individual educational potential, due to a developmental delay or an intellectual, sensory, neurological, emotional communication, physical specific learning or health impairment, or a combination of these factors. For further information about special education disabilities, see ESE regulation 603 CMR 28.02(7) and federal regulation 34 CFR §300.541.

For a school-age child who is in Department care or custody and has suspected or documented special education needs, the Social Worker, the educational decision-maker, the parent or any adult involved with the child in a care-giving or professional role concerned with the child's development may request a Team evaluation. *NOTE: A foster/pre-adoptive parent who suspects that a child placed with her/him has an educational disability is encouraged to confer with the Social Worker before requesting a Team evaluation.* The Social Worker requests a Team evaluation by completing the *Notice to LEA* form and sending the form to the LEA responsible for the child. For help identifying the appropriate LEA for the child, see Appendix D – ESE Guidelines to Identify the Local Education Agency (LEA).

The Administrator of Special Education for the LEA arranges for the assessments of the child to be completed within 30 school/working days after the date the school district receives the written consent for the evaluation from the parent or SESP. Federal law prohibits the Social Worker from signing the evaluation consent form. The Social Worker has a right to receive these assessments 2 days prior to the Team meeting and must request them from the LEA.

8. **Attend Team Meetings.** The LEA's Administrator of Special Education is responsible for scheduling the Team meeting and inviting the designated SESP or other educational decision-maker and the Social Worker. The Team meeting is required to occur no later than 45 school/working days after the date the school district receives consent for the evaluation and/or annually when the child already has an IEP. If the child is in Department care or custody, the Department must be represented at the meeting. The Social Worker or Department's designated representative attends the Team meeting, during which the child's eligibility for special education and related services is determined and an IEP is developed or revised as needed. The role of the Department's representative at the Team meeting is to share information about the child's circumstances and history relevant to educational planning. Parents can and, when consistent with the Department's case planning, should be encouraged to attend the Team meeting and any other educational program meetings and to work with the child's SESP.

When the child's needs are complex and cannot easily be addressed in a general education setting, the Administrator of Special Education may convene a separate placement meeting within 10 school/working days after the Team meeting.

Upon acceptance of the IEP, services are to begin immediately.

If an SESP assignment is not made in time to provide consent to the evaluation and to sign necessary release forms, the school district/LEA makes temporary decisions regarding special education evaluation, and begins providing the child with the services indicated on the plan. These services must be affirmed or rejected by the SESP upon assignment.

The Social Worker or Department representative documents the date the meeting occurred, who attended, decisions made and actions completed or planned in the electronic case record.

9. **Obtain the Individualized Education Program (IEP).** The Social Worker requests that the Special Education Evaluation Team Leader or principal from the school district send a copy of the completed and signed IEP in order to keep the Department informed about the child's current educational program. The Social Worker reviews the IEP to determine that it specifies the kind and level of

special education and related services the child is to receive. These services are to be clearly described and listed as goals and objectives with measurable outcomes.

NOTE ON IEP APPEAL RIGHTS: The parent, foster/pre-adoptive parent or SESP has the right to reject the IEP or finding of no special needs and can request mediation and/or a hearing within the ESE's Bureau of Special Education Appeals. Federal law prohibits the Social Worker from signing the IEP and from requesting an appeal; however, when the Social Worker, in consultation with her/his Supervisor, has concerns that the IEP does not meet the child's needs, she/he may encourage the parent or SESP to request an appeal.

The Social Worker documents in the electronic case record all aspects of the IEP and how it was developed and places the copy of the IEP and any related documents (e.g., evaluations, consent forms) in the child's physical record.

10. **Coordinate an Out-of-Home Placement for a Child in Department Care or Custody with an IEP.** When the Department is considering an out-of-home placement for a child with a current IEP, the Social Worker or Supervisor provides written notice 2 calendar weeks prior to the planned placement, if possible, to the Administrator of Special Education/designee and the SESP/other designated educational decision-maker. Whenever possible, the Social Worker works with the LEA to maintain the student in her/his current educational program or locates an out-of-home placement that will enable the student's special educational needs to be met in the least restrictive educational environment to meet requirements of federal law.
11. **Resolve Concerns about Timely Provision of Special Education Programs or Services for a Specific Child.** The Social Worker first addresses these concerns with the designated educational decision-maker (parent, foster/pre-adoptive parent and/or SESP) and special education liaison at the LEA. If the concerns cannot be resolved through these contacts, the Social Worker or Supervisor contacts the Program Quality Assurance (PQA) Division of ESE to request assistance with non-compliance concerns. When unable to resolve the concerns locally, the Social Worker, in consultation with the Supervisor, works with the parent or SESP to develop a written complaint for the approval and signature of the parent or SESP which is filed with ESE.

C. ONGOING EDUCATIONAL NEEDS

12. **Review Education Needs at Foster Care Reviews (FCRs).** In preparing the information she/he will present at the FCR, the Social Worker reviews the child's educational status and performance. The Social Worker or Supervisor may invite the principal/designee, guidance counselor, educational setting Social Worker or Team chairperson (for children with IEPs) of the child's school, child care or early education program; the SESP or other designated educational decision-maker; and the placement provider to the child's FCR meetings. (See *Policy 86-009, Foster Care Review Policy*)

If recommendations of the FCR meeting affect the education of the child and educational setting personnel have not been present at the meeting, the Social Worker informs the school principal/director/designee of potential changes.
13. **Inform Educational Setting of Change in Location or Legal Status of Child in Department Care or Custody.** When a child in Department care or custody changes her/his location or placement or a child with special education needs enters Department care or custody or changes her/his custody status, the Social Worker informs the child's school principal/director/designee and the child's educational decision-maker (parent, foster/pre-adoptive parent and/or SESP) by completing the *Notice to LEA* form and sending it to them.
14. **Plan for Educational Needs in Community-Connected Residential Treatment Placement.** When placement in community-connected residential treatment is anticipated, the Social Worker or other Department authorized designee informs the school district and works with them to plan for meeting the child's educational needs and to request an update to the IEP as needed. The Social Worker or Department's authorized designee must obtain prior authorization before committing any Department resources or services for a child who is anticipated to be entering community-connected residential treatment.

15. **Resolve Educational Concerns.** The Social Worker documents educational concerns that may occur and how they are addressed in the electronic case record and places any related written materials received or sent in the child's physical record. Such concerns include, but are not limited to:
- **Concerns about the child's educational setting or her/his performance:** The Social Worker or Supervisor and the educational decision-maker (parent, foster/pre-adoptive parent and/or SESP) first contact the child's teacher, principal/director or an administrator from the local school district/LEA.
 - **Child is hospitalized:** The Social Worker notifies the principal/director and requests that the school arrange tutoring services as soon as it is established that the student will require hospitalization for not less than 14 school/working days. When appropriate to meet the educational needs of the child, the Social Worker, in consultation with the Supervisor, invites the LEA to participate in treatment planning and discharge meetings. The Social Worker also works with the hospital, the educational setting, the family and the placement provider to develop a plan for transitioning the child smoothly back to school following the hospitalization.
 - **Child is being disciplined, suspended or expelled:** The Social Worker contacts the principal/director to identify the steps which must be taken to maintain the child's rights and address her/his needs and request copies of any written notifications provided to the child and designated educational decision-maker. She/he consults with the Supervisor to determine what actions need to be carried out and documents information received and actions taken in the electronic case record.
 - **Child wishes to quit school:** According to Massachusetts law, a child may not quit school before her/his 16th birthday without obtaining written parental permission. When a child in Department care or custody indicates that she/he wishes to quit school at age 16 or older, the Social Worker works with the child, family, placement provider and school to identify and address the reasons why the child wishes to quit school with the goal of maximizing the child's educational attainment. The Department expects and will support every child/youth in Department care or custody to remain enrolled in an academic or vocational school or program, to graduate from secondary school and to have a plan for post-secondary/vocational education.

VI. POLICY: CHILDREN LEAVING DEPARTMENT CARE OR CUSTODY

As plans are developed for a child to leave Department care or custody, through reunification with her/his parents, guardianship, adoption or reaching young adulthood, the Department reassesses the child's educational achievement and her/his potential. The Department works with the anticipated caregiver, the child, as appropriate to her/his age and abilities, and the educational setting to develop a transition plan that addresses the child's educational needs, maintains educational continuity to the greatest extent possible and promotes her/his highest level of educational achievement, including participation in post-secondary academic or vocational programs, possibly with financial assistance through the Department when she/he has been in Department placement and is determined eligible. See *Policy #2013-01, Permanency Planning Policy*, for information about:

- planning for children's educational needs related to the circumstances under which they are leaving Department care or custody (e.g., reunification, guardianship, adoption or reaching young adulthood);
- readiness assessments and reassessments, preparing adolescents for young adulthood and support for continuing education;
- sustaining the Department's connection with youth over age 18, including those who are incapacitated; and
- reopening with the Department for services for youth whose cases closed at age 18 or older.

LEAs are responsible for completing a 688 referral for transitional planning for any young adult with severe disabilities who has had an IEP to receive special education services 2 years prior to the youth's graduation from secondary school or turning age 22, whichever comes first. The 688 referral does not guarantee services; advocacy by the Department may be required to assure that eligible young adults who are in Department care or custody are offered every opportunity to access the services they need and require (See *Policy #86-012, Transitional Planning for Young Adults with Disabilities*)

VII. PROCEDURES: CHILDREN LEAVING DEPARTMENT CARE OR CUSTODY

1. **Provide Copies of Child's Department Educational Records.** Prior to case closing, the Department arranges for each child who leaves Department care or custody to be provided with copies of her/his educational records maintained by the Department, including:
 - a list of the schools/educational programs (with names, addresses and contact information) the child attended while in Department care or custody;
 - all transcripts documenting attainment of credits;
 - the child's grade level/program type upon leaving; and
 - copies of any evaluations, standardized test results, (e.g., MCAS), IEPs and school district correspondence.

(See *Policy #2013-01*, *Permanency Planning Policy*, *Policy #86-007*, *Case Closing Policy*, and *Policy #84-012*, *Policy for Closing Court-Involved Cases*)

APPENDICES:

- A. DCF Children Placed in Short-Term, Transitional Program: Access to Educational Services
- B. Guidance on Appointment of Special Education Surrogate Parents
- C. Special Education Team Evaluation Flow Chart
- D. ESE Guidelines for LEA Identification
- E. Educational Planning Resources for Department Staff

Appendix A

DCF Children Placed in Short-term, Transitional Programs: Access to Educational Services¹

(Guidance Memorandum – Revised and Reissued August, 2009)

Guiding Principles

To the maximum extent possible and appropriate, school-age children in placement will:

- participate in educational programming in the same manner and to the same extent as children who are not in placement;
- have access to curriculum that meets state standards and affords the opportunity to participate in MCAS testing on an equal footing with their peers;
- receive academic credit for the school work they do;
- benefit from parental participation in their education; and
- remain connected to their communities of origin, particularly when placed in a different community on a temporary basis.

For these reasons, when DCF places a child in a STARR program or TCU, the presumption is that the child will continue to attend the school in which he or she was enrolled before entering the STARR/TCU². There may be instances in which the distance to the school of origin is so great that attendance there is not feasible or is not otherwise in the child's best interest. In these cases, the child will be enrolled in the school district in which the STARR/TCU is located. The final decision for a child with an IEP will be made by the IEP Team. For a child receiving general education, the decision is made by the LEA in consultation with the DCF worker and program.

In limited circumstances discussed below, it may be necessary or prudent for the child to receive his/her education at the program. Whatever the reason, if a child does not leave the program for school, he or she must be provided an academic program that meets state curriculum standards. Additionally, arrangements should be made for the child to receive academic credit for the work they perform. In cases in which the child is receiving tutoring, the program will negotiate with the responsible school district academic credit for work performed by child. The negotiation regarding academic credit should take place while the tutoring is being arranged, rather than when tutoring ends.

Exceptions to School Attendance in the Community

There are limited exceptions to the general rule that children will leave the STARR/TCU to attend school. They include:

- the child has a short term illness (less than 14 days);
- a medical doctor has determined that the child cannot attend school and must remain at home for 14 days or more for medical reasons; or
- DCF determines that the child should remain at the program for documented safety reasons.

¹ This guidance memo applies to children residing in short-term, transitional programs. The memo should be read in conjunction with the MA Department of Elementary and Secondary Education's *Homeless Education Advisory 2004-9: Children and Youth in State Care or Custody and Homeless Education Advisory 2007-9A Addendum* which may be found at <http://www.doe.mass.edu/mv/>. The Advisories discuss the McKinney Vento Homeless Education Assistance Act and its application to children placed by DCF in emergency and transitional placements. It explains that children in STARR programs are homeless for purpose of the law, and as such, are entitled to attend the schools they attended before becoming homeless even if living in a different community or neighborhood. The law also created other related educational benefits, such as the right to transportation back to their schools of origin.

² For the sake of discussion, the school attended by the child before coming into placement will be referred to in this document as the "school of origin."

Short term illness

If a child is not feeling well, the STARR/TCU has discretion not to send the child to school. The STARR/TCU should inform the school of the child's illness and make arrangements to pick up school work if the child will be out for more than a couple of days. The STARR/TCU must inform the Area Office if the child's absence from school will exceed a single day.

Long term illness/injury (14 days or more)

A child may receive educational services in the program when the child's physician states in writing that the child cannot attend school and must remain at home for 14 days or more for medical reasons. In such cases, Massachusetts law requires the principal of the child's school to provide educational services in the "home", which would include a STARR/TCU setting. The services need to be provided "with sufficient frequency to allow the student to continue his or her educational program, as long as such services do not interfere with the medical needs of the student." See 603 C.M.R. 28.03(3)(c); see also, MA Department of Elementary and Secondary Education's *Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital*, Issued February 1999 and Revised January, 2002, found at http://www.doe.mass.edu/pqa/ta/hhep_qa.html. The requirement applies to regular education students as well as special education students. It should be noted that the child is entitled to receive these educational services as soon as the doctor determines that it will be necessary to remain out of school for 14 days or more.

If a child appears to be eligible to receive educational services under this provision, STARR/TCU staff, after discussions with the DCF worker and other DCF staff as appropriate, will contact the responsible school district to arrange for the services to which the child is entitled.³ STARR/TCU staff should confirm that the child will receive academic credit for the work completed while being tutored.

Threats to child's safety

There may be limited circumstances in which it would not be safe for a child to leave the program for school, either the child's school of origin or the school in the town where the program is located. For example, there may be a threat of kidnapping, assault or other bodily harm against a child that would put a child at risk in traveling to and from school, or otherwise engaging in community activities. Threats may come from a variety of sources, such as gang or criminal activity or estranged family members.

If circumstances suggest that it would not be safe for the child to leave the program for school⁴, the DCF worker, supervisor, area program manager, the child's family, if appropriate, and the program provider will discuss the child's educational and clinical history. If the recommendation is that the child will remain in the program for safety reasons, this recommendation, including the relevant facts and rationale, will be presented to the Director of Areas on an expedited basis who will make the final decision on whether the child will remain at the program for educational services. The final decision will be recorded in FamilyNet. Whenever possible, this decision-making will occur before the child is placed in the program.

There also may be occasions in which a child is attending school in the community but the program provider subsequently identifies safety issues that warrant a review of the decision to leave the program for school. When this occurs, the program provider will contact the child's social worker. The social worker will review the information with his or her supervisor and present the recommendations to a DCF manager who will decide whether circumstances warrant the child remaining in the program.

When there is agreement between the program and DCF that the child should not leave the program for school, the program will inform the child's responsible school district and request information and assistance in crafting a program that will meet the child's educational needs on an interim basis and result in academic credit. The Department of Elementary and Secondary Education may be of assistance in facilitating this discussion. However, it is important to remember that when DCF and the program choose to remove the child from the school environment for reasons unrelated to school, there is no clear legal

³ This discussion assumes that DCF and program staff have determined that the child's medical needs can be met at the program.

⁴ If safety issues exist due to the child's need for a particular type of special education program and the child cannot or should not attend school until an appropriate special education program is found, the child is entitled to educational services from the school district pending placement in an appropriate program.

obligation on the part of the child's school district to provide educational services to the child in the "home" setting. The responsibility to assure that the child accesses educational services while in the program is ultimately with the program provider. If the school district refuses to provide educational services at the program under these circumstances, the program should focus on developing an adequate interim plan for educating the child at the program. Ideally, the plan will include input from the school district.

Conclusion

As a general rule, children placed by DCF in STARRs and TCUs will continue to attend the school they attended before entering the program, or, if such attendance is not feasible or in the child's best interest, will attend the public school in the city or town in which the program is located. In limited situations, they may remain at the program and receive tutoring that meets state curriculum standards. Program providers will arrange tutoring and negotiate academic credit with the responsible school district whenever a child receives tutoring.

If you have questions, please contact Susan Stelk, DCF Education Services Manager, 617 748-2340, or call the school district's homeless liaison for the city or town in which the program is located. You may also contact Sarah Slautterback, the Homeless Coordinator at the Department of Elementary and Secondary Education at 781 338-6330.

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Appendix B

Guidance on Appointment of Special Education Surrogate Parents

Revised January 2013

This guidance updates and replaces guidance jointly developed by the Massachusetts Department of Elementary and Secondary Education (ESE) and Massachusetts Department of Children and Families (DCF)⁵, and issued in 2002. It reflects current federal policy as well as the policy of both agencies concerning the needs of children in DCF care or custody who are eligible for special education services, who can make special education decisions for such children and when a Special Education Surrogate Parent (SESP) must be appointed for them.

This guidance:

1. Describes the framework for the Special Education Surrogate Parent Program (SESP Program);
2. Clarifies the circumstances under which the SESP Program will assign a Special Education Surrogate Parent (SESP) to children in the care or custody of DCF;
3. Defines the relationship between such children and their SESP when the child attains the age of majority (18 years of age) under Massachusetts law; and
4. Addresses the issue of judicial appointments of special educational decision-makers.

Please note that a revised referral form requesting appointment of an SESP is attached.

I. Background: The Framework for the Special Education Surrogate Parent Program

The SESP Program exists in response to federal special education law, the Individuals with Disabilities Education Act (IDEA). The IDEA requires states to implement procedures to protect the rights of children entitled to special education services who are in the custody of a state agency (a “ward of the state”), or whose parent or guardian cannot be identified or located.

ESE is the state agency responsible for assuring that this requirement is implemented. It does so through the SESP Program by appointing individuals,⁶ called Special Education Surrogate Parents (SESPs), to act in special education matters on behalf of children in certain circumstances in which DCF has obtained care, custody or guardianship of the child. The SESP Program recruits and trains volunteers to act as decision-makers in special education matters for those students, ages 3 – 22, whose parents are unable or unavailable to fulfill their responsibilities in this regard. Neither a parent’s lack of expertise in special education issues nor lack of fluency in English is a basis to seek appointment of an SESP for a student. An SESP has the same rights and responsibilities as a parent for purposes of special education decision-making. This means that the SESP has authority to, among other things, review the child's educational records, consent to special education evaluation, accept or reject an Individualized Education Program (IEP), request an independent evaluation and request mediation or a hearing to resolve special education disputes.

ESE operates its SESP Program under contract with 2 private entities that are its agents for this purpose.⁷ The SESP Program matches eligible students with SESP. Once a match is made, the SESP

⁵ At that time, the agencies were named the Massachusetts Department of Education and the Massachusetts Department of Social Services, respectively.

⁶ Individuals may also be appointed by the Juvenile Court or the Probate and Family Court. *See Section IV.*

⁷ As of this writing, the address and telephone number of the SESP Program for purposes of obtaining an SESP is 167 Lyman Street, P.O. Box 1184, Westboro, MA, 01581; tel: 508-792-7679; fax: 508-616-0318. Information about the SESP Program can also be obtained by visiting <http://www.sespprogram.org> or emailing contactus@sespprogram.org

Program issues an appointment letter to the SESP formalizing the relationship between the individual and the student. The SESP Program sends copies of the appointment letter to the responsible school district(s), the child's DCF worker and to other identified professionals involved with the student. The assigned SESP then has authority to provide consent for evaluations and make other decisions regarding special education matters.

The primary mission of DCF is to protect children who have been abused or neglected in a family setting. In carrying out this mission, DCF may remove a child from his or her home and place the child in foster, group or residential care, until the child can be returned home safely or another permanent living arrangement, such as an adoptive home, can be provided. Although, in most cases, DCF receives **custody** of a child through a Care and Protection (C&P) petition alleging parental abuse or neglect, it may also obtain custody through a "Child Requiring Assistance (CRA)" (formerly "CHINS") petition, based on the child's behavior, or as a result of a private custody dispute (e.g., a divorce or other custody proceeding). Children also enter DCF **care** through voluntary agreements between their parent(s) and the agency.

Under federal and state special education law, a parent generally has the authority to make special education decisions for his/her child. Similarly, a foster parent may have authority to make special education decisions on behalf of a foster child placed with the foster parent, if appropriate (see II-D below). A SESP having special education decision-making authority must:

1. Be older than 18 years of age;
2. Not be an employee of a public agency involved in the care or education of the specific student;
3. Have no interest that might conflict with the interests of the student; and
4. Have adequate knowledge and skills to represent the student.

Since DCF workers are "involved in the care...of the specific student" and there are potential conflicts of interest, DCF employees may not make special education decisions for children in DCF care or custody nor can they be appointed as SESP. However, this provision does not bar DCF workers from referring a child for a special education evaluation if the child appears to be a student who may have educational disabilities.⁸ In cases where referral for evaluation is appropriate, the DCF worker should simultaneously refer the child to the SESP Program for immediate appointment of an SESP *if appropriate* under this guidance document.

II. Determination of the Special Education Decision-maker for a Child in Placement

While DCF can refer any child for special education services, it does not have the authority to consent to special education evaluation, sign an Individualized Education Program (IEP), make special educational decisions for a child who has an IEP, or file a special education appeal. The following provides guidance for DCF staff in determining when the parent or foster parent will make special educational decisions for DCF-involved children who require a special education evaluation, or who are identified as eligible for special education and require IEP services, and when it may be necessary to request appointment of an SESP by the SESP Program.

A. General Principles

In general, DCF's decision to seek the appointment of an SESP for a child will be made as follows:

- **Voluntary Placement Agreements and DCF Custody – "Child Requiring Assistance (CRA)" (formerly "CHINS" custody):** When a child is in the **care of DCF**, as opposed to custody, the parent retains the right and responsibility to make decisions related to special education. In such cases the child has generally entered placement primarily to address his/her issues rather than as a result of concerns regarding the parent's caretaking. DCF has care of a child in situations where the parent

Recruitment, training and support of SESP is conducted by the Recruitment Training and Support Center (RTSC) for Special Education Surrogate Parents. The RTSC is located at the Federation for Children with Special Needs, The Schrafft Center, 529 Main St., Suite 1102, Charlestown, MA 02129; tel: 617-236-7210; fax: 617-241-0330. Information about the RTSC also may be obtained by visiting www.fcsn.org/RTSC or emailing: rtsc@fcsn.org.

⁸ It is also important to emphasize that this restriction only applies to special education matters. It does not restrict the authority of DCF workers in general education matters.

has either signed a voluntary placement agreement with the Department or has entered into a care and responsibility agreement with DCF in the Probate and Family Court. While DCF may receive custody of a child through a **“Child Requiring Assistance (CRA) (formerly “CHINS”) proceeding**, that proceeding is similarly based upon the child’s issues, and in such cases the parent will consequently retain the right and responsibility to make decisions related to special education.

- **DCF Custody – Placement with a Foster Family:** When a child is in the **legal custody of DCF** through an order of either the Juvenile Court or Probate and Family Court (with the exception of “Child Requiring Assistance” matters), is living in a foster home, and DCF determines that the child’s parent should not continue in the role of educational decision-maker, the DCF social worker will request the child’s foster parent to act in this role unless a conflict of interest is identified. When the child’s foster parent agrees to assume this responsibility, federal law provides for **the child’s foster parent** to have authority to make decisions related to special education, and no appointment by the SESP Program is necessary, nor is there a need to request an SESP.
- **DCF Custody – Placement in Congregate Care:** When a child is in the **legal custody of DCF** and living in a congregate care setting (for example, a group home or residential placement) and DCF has determined that the child’s parent will not continue in the role of special educational decision-maker, DCF will seek the appointment of an SESP to make special education decisions on behalf of the child.

Manner of DCF Placement	Usual Special Education Decision-Maker
Voluntary Placement Agreement - Care and Responsibility (where parent and DCF mutually agree to voluntary placement of the child with a foster parent or in a congregate care setting)	Parent
DCF Custody – “Child Requiring Assistance (CRA)” (formerly “CHINS” custody)	Parent
DCF Custody – Placement with a Foster Family (including a contracted “intensive foster care” family)	Foster Parent (if parent does not maintain role, foster parent agrees to it and has no conflict of interest – see II-D below)
DCF Custody – Placement in Congregate Care (such as a group home or residential school)	SESP (if parent does not maintain role)

Unusual circumstances may occur that would warrant departure from the general principles outlined above. In such cases, a referral may be made to the SESP Program with an explanation of the basis for the requested appointment. The SESP Program will consider these requests on an individual basis after consultation with the child’s DCF social worker or other appropriate DCF representative.

B. Responsibilities of the DCF Social Worker

A DCF social worker is not allowed to act as a child’s special education decision-maker under federal special education law [see 34 CFR 300.519 (d)(2)]. This means that a DCF social worker does not have authority, for example, to sign an IEP, evaluation consent forms, or request a special education hearing on behalf of a DCF child. However, a DCF social worker may refer a child for a special education evaluation if the social worker believes that the child may have a disability that interferes with the child’s ability to make progress in school. If appointment of an SESP appears appropriate under the principles set out above, the DCF social worker should refer the child to the SESP Program at the same time, using the attached referral form. In some situations, a child who is eligible for an SESP will have an immediate need for a special education decision, such as consent for an initial evaluation, before an SESP is available. In such cases, the SESP Program will appoint a consultant as a temporary SESP who would be able to authorize the school district to proceed with the child’s initial evaluation. The SESP Program will assign an individual as soon as possible to be the ongoing SESP.

When referring a child to the SESP Program, DCF social workers are strongly encouraged to suggest individuals meeting the eligibility criteria whom they know to be interested and available to act as that child’s SESP.

Once an SESP is appointed for a child, the DCF social worker should make sure that the SESP Program and the SESP are informed in a timely manner any time the child changes his/her placement, address or legal status.

In situations where an SESP has been appointed for a child in DCF custody, and the child then leaves DCF custody, DCF will notify the SESP Program that the child has left DCF custody. Upon receiving the notice, the SESP Program will end the appointment of the SESP.

C. Parents Remaining as Special Education Decision-makers

As noted in Subsection A above, DCF may determine that it is in the child and family's best interest for the parent to remain the child's special education decision-maker even though the child is in DCF custody. In making such a decision, the DCF social worker and supervisor consider relevant factors including, but not limited to:

- the child's anticipated length of stay in placement with DCF;
- the past involvement of the parent in education decision-making for the child;
- the permanency plan goal for the child; and
- the willingness of the parent.

If the DCF social worker and his/her supervisor determine that it would best serve the child's interests, special education decision-making may remain with, or be delegated back to, the parent. The DCF social worker shall note this decision and the reasons in support of it in the DCF electronic record and inform the parent, the responsible school district, and, if an SESP has been appointed, the SESP Program, in writing.

If at some point DCF and/or the parent determine the parent will no longer serve as the child's special education decision-maker, the DCF social worker will inform both the parent and responsible school district in writing. Upon such a change, when the child is placed with a foster family, the child's foster parent will have special education decision-making authority, ***provided the foster parent agrees to assume this role and has no conflict of interest*** (see II-D below). Otherwise, if appropriate (see circumstances above), the DCF social worker will make a referral to the SESP Program for the appointment of an SESP.

D. Foster Parents as Special Education Decision-makers

When a child is placed in a foster home and DCF determines that the child's parent will not continue as the special education decision-maker, the child's special education decision-maker will be the child's foster parent, if the foster parent agrees to assume this role and has no conflict of interest. Examples of circumstances when a foster parent has a conflict of interest include:

- the foster parent is an employee of a placement agency, in addition to being a foster parent for that agency (e.g., Jane is a caseworker for Valley Services and is also a foster parent for that agency); or
- the child is being considered for enrollment in a collaborative or day school program operated by the same agency that licensed the foster home (e.g., the student has been referred to Valley Services' Day School and is living in Jane's Valley Services' foster home).

A foster parent may act as a child's special education decision-maker without having to be appointed by the SESP Program or a court (see 34 CFR 300.30). Since the foster parent has the right to act as special education decision-maker without appointment, the DCF social worker should only need to make referrals to the SESP Program on behalf of a child in a foster home for an SESP in limited circumstances. The DCF social worker should discuss with the foster parent the responsibilities attached to assuming the role of special education decision-maker and document the decisions from that conversation, in writing, ***in the Child Placement Agreement*** and in the electronic record.

Foster parents may obtain information and other assistance regarding special education decision-making by contacting their local school district, the district's Parent Advisory Council (PAC) on special education or the Federation for Children with Special Needs (FCSN) at 800-331-0688.

E. Role of Parent vs. Role of SESP

The appointment of an SESP does not preclude a parent or parents from participating in their child's education. In most cases, the parent(s) can and should be encouraged to attend their child's educational

team meetings, as well as other school meetings, and to work with the SESP on behalf of their child. This is particularly appropriate when the child is expected to return home and transfer of special educational decision-making from the SESP to the parent is anticipated. The SESP should consider the concerns and wishes of the parent in special education decision-making, but is not bound by parental preferences. If the parent has concerns or questions about the role of the SESP, the DCF social worker should assist in responding to them.

An SESP's responsibility and authority is to make decisions regarding a child's special education in the place of a parent. To that extent, an SESP should not be an active participant in other educational and non-educational decisions made by DCF as custodian of the child, such as permission for school field trips or change in residence decisions. [NOTE: Like a parent, the foster parent who is the child's special education decision-maker has the authority to act in both roles.] This limitation on the authority of the SESP does not preclude an SESP from meeting with DCF representatives, at their invitation, to listen and understand decisions made by DCF on behalf of the child, since many of these decisions will affect the special education of the child.

III. Appointment of Special Education Advisors for DCF Student Youth over Age 18

According to Massachusetts law, a student who has reached the age of majority (18 years of age) is an adult, and is therefore presumed competent to make his or her own decisions. This presumption of competence extends to students age 18 and older who continue to be in the care of DCF. Such students are no longer eligible for an appointed SESP. The SESP Program will inform both the student and SESP that the SESP's appointment is terminated.⁹

On occasion, DCF has custody, or is the legal guardian, of an individual 18 or older who was in DCF care or custody as a minor and has been adjudicated incompetent. In such cases, an SESP will be appointed as soon as the DCF social worker provides documentation to the SESP Program of the guardianship appointment or continued custody order. An adult student who has been adjudged incompetent will continue to have the right to an appointed SESP until the student is no longer eligible to receive special education services or the guardianship/custody has been terminated, whichever comes first.

IV. Judicial Appointments of Special Education Decision-Makers

Judges of the Juvenile Court or the Probate and Family Court may also make appointments of surrogate parents. Such appointments are contained in written orders. The court order expressly specifies that the individual guardian ad litem (GAL) is appointed as the child's educational decision-maker for special education purposes. A copy of the court order will serve as confirmation of the appointment and should be provided to the appropriate school officials and DCF.

If a GAL is appointed by the court in another role (Extraordinary Medical Treatment, Legal Rights, Evaluator, Competency), but without express authority as the child's decision-maker for special education purposes, the GAL may be appointed by the SESP Program as SESP in addition to the court appointed role if the GAL is willing and has met the requirements of the SESP Program.

Students who have a court appointed education decision-maker should not be referred to the SESP Program because the court appointment is sufficient to act in the place of the parent in special education matters under the federal IDEA. [See 34 CFR 300.519(c).]

It should be noted that if a court appoints a GAL with education decision-making authority and the parent, foster parent or SESP had been making special education decisions for the child up to that point, the parent, foster parent or SESP no longer has the right to consent to evaluations, sign an IEP, or to ask for mediation or a hearing to resolve special education disputes. By appointing the GAL and conferring education decision-making authority on that individual, the court effectively takes away from the parent, foster parent or SESP any authority he/she may have had to act on behalf of the child in this area.

⁹ If, despite the termination, the former SESP volunteers to continue to assist the student, the SESP is doing so on his/her own, i.e., is not acting under the direction, guidance, or with the support of the SESP program.

V. Obtaining Additional Information

Questions regarding the assignment of an SESP should be directed to the Program Director, at 508-792-7679 or www.sespprogram.org. Questions regarding recruitment, training and support should be directed to the Recruitment, Training and Support Center for Special Education Surrogate Parents at the Federation for Children with Special Needs, at 617-236-7210 or www.fcsn.org/RTSC. Questions regarding DCF-related issues should be directed to the DCF Manager of Education Services, at 617-748-2340 or susan.stelk@state.ma.us.

Special Education Surrogate Parent Program

P.O. Box 1184, Westboro, MA 01581-6184

Phone (508) 792-7679

Fax (508) 616-0318

<http://www.sespprogram.org>

contactus@sespprogram.org

Student Referral

Instructions: Please print using blue or black ink. Send a copy of the completed form to the student's Local School District. Send the original form to the Special Education Surrogate Parent Program.

1. STUDENT INFORMATION		Date:
Last Name:	First Name:	Middle Name:
Gender: <input type="checkbox"/> Female <input type="checkbox"/> Male	Date of Birth (mm-dd-yyyy):	Age:
Current Residence (name of congregate care program):		
Address (Street, City, State and Zip Code):		
Telephone Number: ()	How long at this address?	
Reminder: For eligible children in foster homes, the foster parent who agrees to make Special Education decisions for a child placed with her/him has the authority to do so upon placement. No request for appointment is necessary.		

2. SCHOOL INFORMATION	
Current Educational Placement (name and address of school):	
Name and Title of Contact Person:	
Telephone Number: ()	School District:

3. SPECIAL EDUCATION STATUS (Select a or b & fill in the corresponding information.)	
<input type="checkbox"/> a. The student is currently receiving special education services.	
Type of Services <input type="checkbox"/> Inclusion <input type="checkbox"/> Day School <input type="checkbox"/> Other (please specify): _____ <input type="checkbox"/> Substantially Separate <input type="checkbox"/> Residential	Next Team Meeting date (mm-dd-yyyy):
<input type="checkbox"/> b. An initial referral for a special education evaluation has been requested.	
Date:	School District:

4. CUSTODY STATUS	
<i>Voluntary Placements are not eligible for the Special Education Surrogate Parent Program and should not be referred. (Exceptions may be addressed on a case-by-case basis.)</i>	
The student is in the legal custody of DCF through:	
<input type="checkbox"/> Care and Protection (C&P) Proceeding <input type="checkbox"/> Child Requiring Assistance (CRA) Petition*	<input type="checkbox"/> Protective Probate Court Custody <input type="checkbox"/> Non-Protective Probate Court Custody**
* In general, an SESP is not required for a student in custody due to a CRA (formerly "CHINS") petition.	**Reason for referral (Non-Protective Probate): _____ _____
<i>Neither a parent's lack of expertise in Special Education nor lack of fluency in English is a basis for an SESP Appointment.</i>	
Please attach letter explaining your request.	

5. Family member or other adult (i.e.: GAL or Visiting Resource) is willing to make educational decisions:

<input type="checkbox"/> Yes (If yes, please complete information below) <input type="checkbox"/> No	
Last Name:	First Name:
Address (Street, City, State and Zip):	
Telephone Number: ()	
Relationship to Child:	
Has this person previously applied to this program to become a Special Education Surrogate Parent? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	

6. CHILD'S SOCIAL WORKER

Name:	Telephone Number: ()
Agency:	Email:
Address (Street, City, State and Zip):	
Supervisor's Name:	Telephone Number: ()

7. REFERRAL SUBMITTED BY: (Complete Only if Other Than the Social Worker)

Name:	Title:
Agency:	Telephone Number: ()
Address (Street, City, State and Zip):	

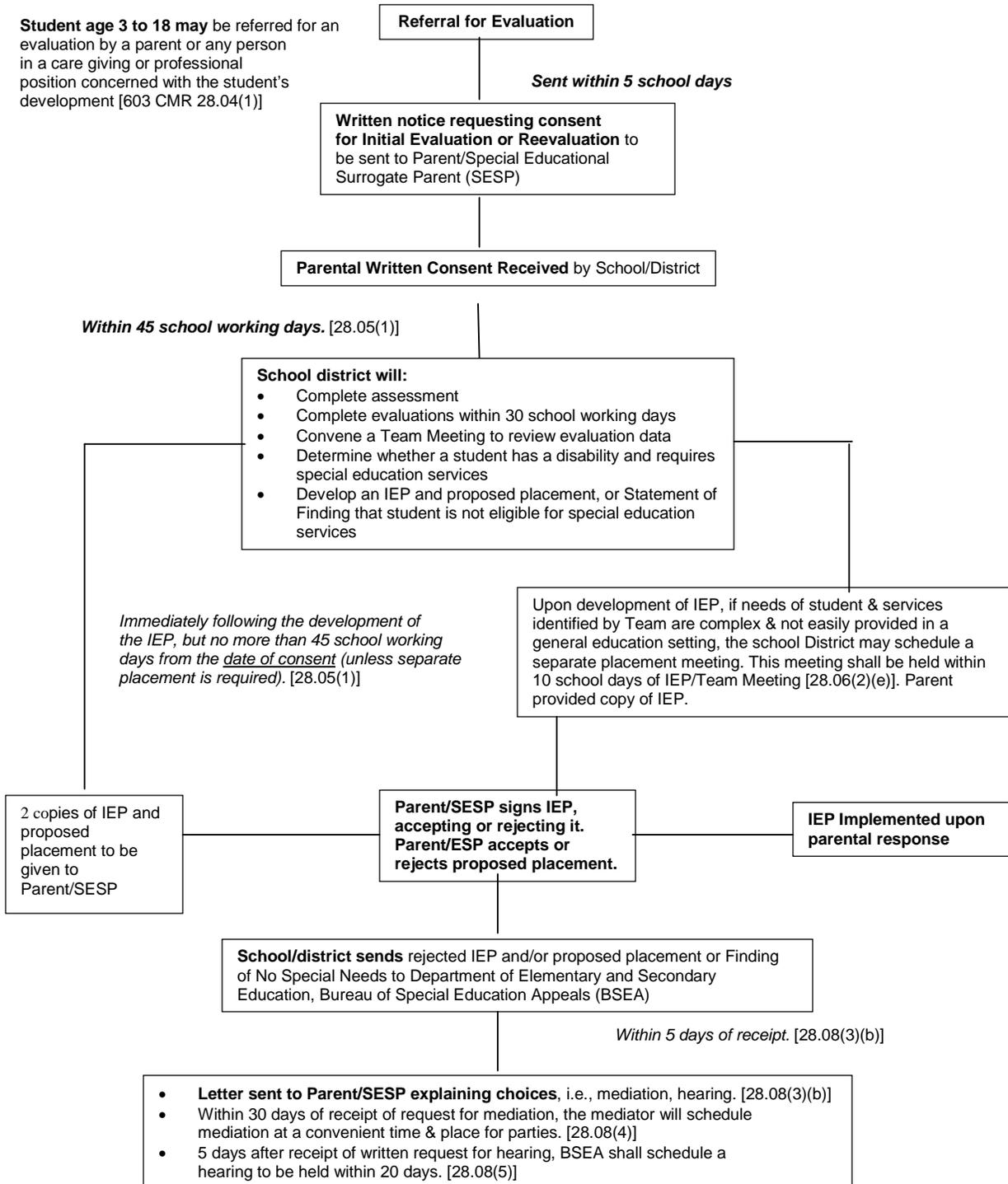
Please Note: A Case Coordinator from the Special Education Surrogate Parent Program will be contacting you to verify the information provided on this referral.

Signature of person completing referral:

<p>Did you –</p> <ul style="list-style-type: none"><input type="checkbox"/> Fill out the form completely?<input type="checkbox"/> Attach a list of all persons to be notified of the Special Education Surrogate Parent appointment?<input type="checkbox"/> Send a copy of this form to the student's school district? <p>Mail Original To: Special Education Surrogate Parent Program P.O. Box 1184 Westboro, MA 01581</p>
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Appendix C

Special Education Team Evaluation Flow Chart



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Appendix D

ESE Guidelines to Identify the Local Education Agency (LEA)

The Local Education Agency is responsible for developing and providing the services in a child's Individualized Education Program (IEP). The LEA is determined in accordance with Department of Elementary and Secondary Education (ESE) regulations (603 CMR 28.00). The chart below is provided to assist Department staff in identifying a child's LEA. To request any needed clarification or the assignment of an LEA, contact the **ESE LEA Assignment Program** at the Department of Elementary and Secondary Education. When the address of the parent(s)/guardian is not known or cannot be verified, or if a disagreement arises regarding the responsible LEA, the child's Social Worker completes the ESE's "Request for Clarification or Assignment of School District" form to request ESE to determine the responsible LEA.

Student Circumstances	Residence and Custody	Programmatic and Financial Responsibility
Responsibility based on student residence – 603 CMR 28.10(2)		
<p>Student's special education program may vary across all types of educational placements, except residential placements.</p> <p>Student residence may also vary. Student:</p> <ul style="list-style-type: none"> • May reside with one parent or both parents, or • May reside in a foster/pre-adoptive home, or • May be age 18 or older and have established her/his own residence as an adult. 	<p>May include:</p> <ul style="list-style-type: none"> • Both parents reside together and share custody. • Parents reside in different districts and student resides with both parents in both districts. • Parents reside in different districts and student resides with one parent. • Department has custody and has placed student in a foster home. • Student is an adult. 	<p>Both programmatic and financial responsibility will most often rest with the district where the student actually resides and is enrolled, including those in "in-district" special education placements, regardless of custody considerations.</p> <p>Responsibility will only be shared with 2 districts if:</p> <ul style="list-style-type: none"> • student is in an out-of-district placement, and • parents reside in 2 different districts, and • student resides with both of them, not just during school vacation periods but actual residence. <p>Shared responsibility does not result simply from residence of the parents in 2 different school districts.</p>
Responsibility based on residence of the parent(s)/guardian(s) – 603 CMR 28.10(3)		
<p>Student may be in a:</p> <ul style="list-style-type: none"> • pediatric nursing home, or • special education residential school, or • residential facility operated by a state agency. 	<p>Whether the student is in the custody of her/his parent(s) or a state agency is NOT a factor in determining responsibility in these circumstances.</p>	<p>Both programmatic and financial responsibility will most often rest with the school district(s) where the parent(s)/guardian(s) resides.</p> <p>Exception: If one parent has sole physical custody or had sole physical custody before the student entered state custody, responsibility will rest with the district where that parent resides.</p>

Shared school district responsibility – 603 CMR 28.10(4)		
<p>Student's living situation may include:</p> <ul style="list-style-type: none"> • living with a relative, or • living in a foster home outside of Massachusetts, or • living in a group home, or • being in a crisis or respite facility. 	<p>Although most students in this group are in the custody of the Department or another state agency, some may be uninvolved with a state agency.</p>	<p>Programmatic responsibility: School district where the student resides.</p> <p>Financial responsibility: School district(s) where the student's parent(s)/guardian(s) resides.</p> <p>If the student's placement is out-of-district, the programmatically responsible district may agree to transfer programmatic responsibility to the financially responsible district but it is not required to do so. If such an agreement is made, it must be documented and signed by both districts.</p>
Responsibility for homeless students – 603 CMR 28.10(5)		
<p>Student is in a living situation that is considered "homeless" under the McKinney-Vento Act and may be receiving special education services in any type of placement.</p>	<p>Custody may be with the parent(s) who is also homeless or with a state agency.</p>	<p>School district that had programmatic and financial responsibility prior to the student becoming homeless remains responsible unless the student is enrolled where she/he is temporarily residing. In such case:</p> <ul style="list-style-type: none"> • if the student is receiving in-district services, the programmatic and financial responsibility switches to the school district where the student is enrolled. • if the student is receiving out-of-district services, programmatic responsibility switches to the school district where the student is enrolled, but financial responsibility remains with the former district until the student is no longer homeless.

Appendix E

Educational Planning Resources for Department Staff

Department of Children and Families

- Susan Stelk, Education Manager 617-748-2340
- Bethanie Glass, Early Childhood Program Coordinator 617-748-2209
- Sujata Ghosh, Early Childhood Policy Analyst 617-748-2287
- Michelle Banks, Adolescent Services Program Coordinator 617-748-2430
- Lead Agency Education Coordinators Lead Agency for Area Office

Early Intervention Program Information

- Family Ties of Massachusetts 1-800-905-8437
www.massfamilyties.org

Assistance re: IEP Evaluations & Services

- Program Quality Assurance (PQA) Division 781-338-3700
Department of Elementary and Secondary Education

Special Education Surrogate Parent Decision-Making

- To obtain a Special Education Surrogate Parent:
Special Education Surrogate Parent Program 508-792-7679
www.sespprogram.org
contactus@sespprogram.org
- To obtain SESP recruitment, training & support:
Recruitment, Training & Support Center 617-236-7210
Fax: 617-241-0330
www.fcsn.org/RTSC
rtsc@fcsn.org
- 13. To obtain decision-making support:
Local Education Authority Parent Advisory Council
or
Federation for Children with Special Needs 1-800-331-0688

Assistance re: McKinney-Vento Homeless Education Improvements Act Benefits

- McKinney-Vento Homeless Education Assistance
Improvements Act of 2001, Frequently Asked Questions Intranet/General Links/
FAQs
- For ESE information www.doe.mass.edu/mv/
- First Resource: Local Education Authority
Homeless Education Liaison Local Education Authority
- For LEA contact information: State Coordinator,
ESE Office for the Education of Homeless Children & Youth 781-338-3000