

# Update on Educational Surrogate Parent and Counsel for Youth



With the passage of [HB22 1038 - Right to Counsel for Youth](#), Colorado law changed from a guardian ad litem model to a client-directed model for children and youth ages 12 and older who have a court-appointed attorney.

This memo updates and replaces guidance issued by the Colorado Department of Education (CDE) in March of 2023 to address the impact of HB22-1038 on the responsibility of Administrative Units (AU) to assign an Educational Surrogate Parent (ESP) to any IDEA-eligible student who needs one.

## **How does the new Counsel for Youth (CFY) affect the assignment of an ESP?**

The CDE has concluded that the youth-directed role and responsibilities of a Counsel for Youth (CFY) present a professional interest that conflicts with the responsibilities of an ESP. An ESP serves as the student's "parent" for purposes of educational decision making and is responsible for protecting a student's educational rights under the Individuals with Disabilities Education Act (IDEA) and the Exceptional Children's Educational Act (ECEA). A CFY, on the other hand, acts at the direction of the student. While the CFY may counsel the student about their educational rights, the CFY must ultimately advocate for what the student wants to happen. Assigning a CFY to serve as the student's ESP effectively puts the student in the role of parent.

The Special Education Director must ensure that the person they select and assign as an ESP has no personal or professional interest that conflicts with the educational interests of the child. I CCR 301-8, 2220-R-6.02(8)(e)(iii)(B). The CDE discourages the assignment of a CFY to serve as the student's ESP because the CDE has concluded that doing so presents a professional conflict of interest.

## **If a student is represented by a CFY, does the AU need to assign an ESP?**

It depends on whether the student needs an ESP because they do not have a parent or other individual authorized to make educational decisions on their behalf. The ECEA defines various individuals who may act as the student's parent for special education, including who is allowed to act as parent when more than one individual meets the definition. I CCR 301-8, 2220-R-2.33.

If a student has a parent, as defined by ECEA, the AU does not have the authority to assign an ESP. If a student does not have a parent, as defined by ECEA, the AU must assign a qualified ESP to protect the student's educational rights.

In determining if a student who is represented by a CFY has a parent or needs an ESP, the Director of Special Education should consider the following situations:

- Has a court order specifically ended the parents' decision-making authority? If not, the student's biological parents still have authority to make educational decisions. As long as parents can be reached, no ESP is needed.
- Is there another appropriate adult with whom the student lives or who is legally responsible for the student's welfare, such as a grandparent or other kin? If so, such an individual fits the definition of



parent under ECEA, and no ESP is needed.

- Is there a custodian or guardian, other than the state/department of human services, authorized to act as the youth's parent? If so, such an individual fits the definition of parent and is authorized to make educational decisions, and no ESP is needed.
- Is there a court order that has assigned educational decision making to a specific person? If so, this individual is authorized to act as the parent for purposes of educational decision making, and no ESP is needed.

### **May a Counsel for Youth (CFY) serve as the student's ESP if they have been appointed by court order?**

Yes. There are two situations in which a court order might grant a CFY authority to make educational decisions for their client.

- 1) If there is a court order appointing the CFY to serve as the student's ESP, the AU may assign the CFY to serve as the ESP. In this situation, the AU must also report the assignment to CDE.
- 2) Alternatively, a court order may permit the CFY to make educational decisions on behalf of the student. In that case, the CFY is determined to be the parent for purposes of IDEA/ECEA decision making, and no ESP should be assigned.

**If the student does not have a parent as defined by the ECEA and the CFY does not have one of the above court orders, then the AU must assign an ESP other than the CFY. The assignment must be consistent with the requirements described in I CCR 301-8, 2220-R-6.02(8)(e), and the assignment must be reported to CDE.**

For more information about ESP assignments, please follow this link for [CDE's complete ESP Technical Assistance and Training Manual](#). Contact [Katherine Rains](#) with any additional questions.

PEAK Parent Center provides six ESP trainings a year for those interested in serving as ESPs in your district - <https://www.peakparent.org/node/4554>