



## *Special Education Law Update*

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### WHO HOLDS EDUCATIONAL RIGHTS?

Educational rights are the rights of a "parent," "adoptive parent," "guardian," or another court appointed individual to make educational decisions on behalf of a minor child. Educational rights include the right to:

- » Decide on any and all educational issues a student has, including the right to assess the child for special education;
- » Be notified about school information;
- » Agree or disagree with a proposed educational placement pursuant to an IEP; and
- » Agree or disagree with a proposed Section 504 Plan.

### THOSE WHO HOLD EDUCATIONAL RIGHTS

#### Natural Parent:

The Legislature has used the term "natural" to mean "biological" parent. Natural or biological parents hold a child's educational rights.

#### Adoptive Parent:

Once an adult adopts a minor child, the order of adoption transfers to the adoptive parent the right to make educational decisions on behalf of the child.

#### Guardian:

An adult can be appointed by the Superior Court to be the guardian of the "person" of a minor child. The order appointing an adult as a minor child's guardian is insufficient on its own. The Court must also issue "Letters of Guardianship," which contain the specific order granting guardianship. A guardian can be appointed by a Juvenile Court, through dependency or wardship proceedings, or a Superior Court, through probation proceedings. Letters "issued" from the Court appointing an adult to be a minor's guardian carry with them certain rights.

Specifically, according to California Probate Code section 2351(a), a child's legal guardian has the right to the care, custody, and control of, and **has charge of the education of, the ward or conservatee**. Therefore, once a guardian is appointed for a child and Letters of Guardianship have issued, the legal guardian holds the child's educational rights (the child's parent no longer holds educational rights).

### Other Individuals:

Under the California Welfare and Institutions Code, the right of a parent or guardian to make educational decisions for a child can be limited by the Superior Court or the Juvenile Court. Once a parent's or guardian's right to make educational decisions on behalf of a child is limited, the Court can order that a foster parent, relative caregiver, nonrelated extended family member, or other responsible adult may represent the child in all general and special education matters. If the Court cannot identify a responsible adult to make educational decisions for the child, it can refer the child to the local educational agency ("LEA"). If that occurs, the LEA must make reasonable efforts to appoint a surrogate parent for the child. The Court, on its own, can even make educational decisions for the child. Therefore, other individuals who are appointed by the Court can hold a child's educational rights.

## CONCLUSION

To summarize, a child's natural parent initially holds the right to make educational decisions on behalf of a child. An adoptive parent holds the right to make educational decisions on behalf of the child once the adoption order has issued from the Superior Court. An adult who becomes a child's legal guardian holds the right to make educational decisions on behalf of the child once Letters of Guardianship have been issued by the Superior Court. Finally, other persons can be appointed by the Superior Court to make educational decisions on behalf of a child once a parent's, adoptive parent's, or legal guardian's right to make those educational decisions has been limited by the Court.

I hope this helps demystify who holds educational rights for each child. Feel free to call us if you have questions involving a specific situation.

– STACY L. INMAN

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*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies, and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*

