

Consent – Special Education (Preschool and School-age)		
Decision-maker	Authority*	Conditions / Circumstances
Parent	§200.1(ii)	<p>Parent means a birth or adoptive parent, a guardian, a person in parental relationship to the child (as defined in Education Law §3212), an individual designated as a person in parental relation (under the General Obligations Law), or a surrogate parent. Term does not include the State if the student is a ward of the state.</p> <p>A foster parent may act as a parent unless State law, regulations, or contractual obligations prohibit this</p> <p>Unless there is a judicial decree or order identifying a person to make educational decisions, when one or more party meets the definition of parent, the birth or adoptive parent is presumed to be the parent unless the birth or adoptive parent does not have legal authority to make educational decisions.</p> <p>If a judicial decree or order identifies a specific person(s) to act as the parent or make educational decisions on behalf of the student, then such person(s) is considered the parent (note: a public agency that provides education or care for the student, or a private agency that contracts with a public agency for such purposes cannot act as the parent).</p>
Birth or adoptive parent	§200.1(ii)(1),(3) §200.1(l)	<p>Takes precedence over other qualified persons unless parent lacks legal authority for educational decisions</p> <p>Consent is informed, voluntary, in writing and revocable</p>
Guardian	§200.1(i)(1)	
Person in parental relationship	§200.1(ii)(1) and Education Law, §3212	Birth or adoptive parent, stepparent, legally appointed guardian, custodian (considered a custodian if person has assumed care for child because parent or legally appointed guardian is deceased, imprisoned, mentally ill, committed to institution, or because parent or legally appointed guardian has abandoned child, is living out of state or whereabouts are unknown)

* Unless otherwise indicated, sections referenced are in 8 NYCRR, Part 200, regulations promulgated by the NYS Education Department with authority from Article 89 of the Education Law.

Individual designated as a person in parental relation	§200.1(ii)(1), General Obligations Law, Title 15-A	Parent may appoint person in parental relation
Person appointed to act as parent or make educational decisions by judicial decree or order	§200.1(ii)(4)	Public agency (or private agency under contract w/ public agency) providing education or care shall not act as parent
Surrogate parent	<p>§200.1(ccc), §200.5(n)(1)</p> <p>§200.5(n)(3)(iii)</p> <p>§200.5(n)(3)(v)</p> <p>§200.5(n)(2)</p> <p>§200.5(n)(3)(iii),(v),(vi)</p> <p>§200.5(n)(3)(ii)</p>	<ul style="list-style-type: none"> ▪ Parent/guardian cannot be identified ▪ Whereabouts of parent or guardian unknown after reasonable efforts to locate ▪ Student is unaccompanied homeless youth ▪ Student is ward of state** and has no parent or person in parental relationship ▪ Rights of parent/guardian to make educational decisions have been subrogated by judge <p>For wards of state, reasonable efforts to locate whereabouts of parent shall be made in consultation with ACS designees</p> <p>Foster parent may be appointed surrogate</p> <p>Surrogate may not have conflicting interest or be employed by agency providing care or education, must have appropriate skills and knowledge</p> <p>Appointment shall be from list maintained by district, <u>unless</u> it is foster parent or person appointed by judge</p> <p>Notice of possible need for surrogate must be sent to child’s residence and parent’s last known address.</p>

Exceptions to Consent Requirement:

- Consent is not required for initial evaluation if child is ward of state and, despite reasonable efforts, whereabouts are unknown, parental rights have been terminated, or right to make educational decisions has been subrogated. §200.5(b)(5)
- Consent for reevaluation is not required if district can demonstrate record of reasonable measures to obtain consent and lack of response by parent. §200.5(b)(1)
- For school-aged students only, if parent refuses consent for initial evaluation or reevaluation, district may pursue due process, including Impartial Hearing. §200.5(b)(3) District may not pursue due process if consent for services is refused after evaluation. §200.5(b)(4)

** “Ward of state” includes children in foster care. §200.1(kkk).

EARLY INTERVENTION CONSENT & SURROGACY HANDOUT

Who Can Consent for Early Intervention Services & Evaluations	Legal Authority*	Conditions/ Circumstances
Birth or adoptive parent	§69-4.1(ag) §69-4.1(x) §69.4.16(a) §69-4.16(b)	Informed consent is voluntary, in writing, revocable, & follows complete disclosure. The EI official must make every effort to protect the right of parents, which includes persons in parental relation, to make decisions about a child’s receipt of EI services. If parent’s availability is limited due to “life circumstances” (including distant residence, commitment to institution, or child’s placement in foster care), EI official must facilitate the parent’s involvement, as appropriate.
Persons in “parental relationship,” includes: <ul style="list-style-type: none"> • Legal Guardian • Custodian • Person acting in place of parent with whom child lives & who is responsible for care 	§69-4.1(ah)(1)(2) §69-4.1(ah)(3) §69-4.1(ah)(4) §69-4.1(ah)(5)	<ul style="list-style-type: none"> • Court appointment • Has assumed care & charge because parent or guardian is deceased, mentally ill, imprisoned, committed to institution, or has abandoned child • IE: grandparent, stepparent • <u>Excludes</u> any foster parent
Surrogate Parent	§69-4.16(c) §69-4.16(c)(2), (3) §69-4.1(am) (defines “ward of the state”)	Appointed by EI official after “reasonable efforts” to discover parent’s whereabouts. For children in foster care, EI official shall determine availability of parent & appoint a surrogate in consultation with ACS designee. “Ward of the state” means a child whose custody & guardianship have been transferred to the local social services official pursuant to a voluntary surrender by the child’s parent or by a family court or surrogate’s court with the termination of parental rights of the child’s parent. The EI official shall appoint a qualified surrogate parent for any eligible or potentially eligible child when the child is a ward of the

* All sections referenced are in 10 NYCRR, Part 69, regulations promulgated by the New York State Department of Health with authority from Article 25 of the Public Health Law. This chart paraphrases the regulations; please consult the regulations for the full text.

NOTE: All sections referenced may change due to the recent amendments to federal disabilities law, the Individuals with Disabilities Education Improvement Act (IDEIA).

<p>Surrogate Parent, continued</p>	<p>§69-4.16(d)</p>	<p>state, or when the child is not a ward of the state but his/her parents by birth or adoption are unavailable, after reasonable efforts to facilitate their participation & the child has no person in parental relation.</p>
	<p>§69-4.16(f)</p>	<p>A surrogate:</p> <ul style="list-style-type: none"> • May not have any interest that conflicts w/ the child's • May <u>not</u> be an employee of EI service provider, ACS or foster care agency • Must have adequate skills & knowledge to represent the child • If available & appropriate, is a relative who has an ongoing relationship with the child or is a foster parent with whom the child lives. <p>Parent may appoint surrogate in writing</p> <p>Surrogate has the same due process rights as the parent</p>
	<p>§69-4.16(e)</p>	
	<p>§69-4.16(g)</p>	