



# Special Education Decision-Making for Children of Incarcerated Parents

It is important to ensure that a parent is contacted and involved in the decision-making process regarding a child's receipt of special education services. This handout provides helpful tips for how **NYC Administration for Children's Services (ACS) and foster care agency staff** may assist the NYC Department of Education (including the school, Committee on Special Education (CSE) or Committee on Pre-School Special Education (CPSE)) in locating and contacting an incarcerated parent to involve him/her in the special education decision-making process.

Initiating efforts by ACS and foster care agency staff to locate and contact an incarcerated parent should begin as soon as possible in all cases. Efforts by ACS and foster care agency staff to contact an incarcerated parent must go through ACS Children of Incarcerated Parents Program (CHIPP) at **(212) 487-8274/ 8577**.

## **STEP 1: Help the school, CSE or CPSE determine who has the right to make special education decisions for the child**

**8274/ 8577.**

When a child is referred for special education evaluations or when a child receives an initial recommendation for special education services, the school, CSE or CPSE must first determine who the "parent" is so they can begin outreach efforts to contact the parent. **The school, CSE or CPSE may be contacting the ACS or foster care agency caseworker for assistance in locating and contacting the child's parent.**

For the purposes of special education decision making, the term "parent" means:

- A birth or adoptive parent;
- A legally appointed guardian;
- A person in parental relation to the child; (see below)
- An individual designated as a person in parental relation;
- A surrogate parent; or
- A foster parent (only if the child's birth parents are deceased or parental rights have been terminated or surrendered).

The term parent does **NOT** include an employee of any agency involved in the education or care of the student when the student is a ward of the state. This means that employees of the Administration for Children's Services (ACS), foster care agency or other social service agency may **NOT** consent to special education evaluations or services for a child in their care.<sup>1</sup>

**Section 3212 of the NY State Education Law specifically addresses situations where a parent is imprisoned.** According to the legal definition of "person in parental relation," the term includes:

- A father or mother, by birth or adoption;
- A step-father or step-mother;
- A legally appointed guardian; or
- **A custodian:** a person who has assumed the charge and care of a child because the child's parents
  - Have died, are **imprisoned (sentenced)**, or are mentally ill;
  - Have been committed to an institution;
  - Have abandoned the child, are living outside the state, or their whereabouts are unknown; or
  - Have designated the person as a person in parental relation to the child.

**NOTE:** A foster parent is **not** considered to be a custodian or "person in parental relation" to the child.

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<sup>1</sup> For unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as **temporary** surrogate parents until a surrogate parent with appropriate qualifications can be appointed.

Please note that the law makes a distinction between the term *imprisoned* and *incarcerated*. Legally, a parent who is incarcerated but has not yet been sentenced because they are awaiting trial is “*incarcerated*.” However, a parent who has been convicted of a crime, plead guilty and been sentenced is “*imprisoned*.”

If a **child is in foster care** and the birth or adoptive parent is *imprisoned* but parental rights are still intact, then the parent retains the authority to make education decisions about his/her child. The foster parent is **not** considered to be a custodian or person in parental relation to the child. Outreach efforts to contact the parent by the school, CSE or CPSE are required (including at least two attempts by telephone and a letter) unless the parent's rights have been terminated or surrendered.

If a **child is not in foster care** and is living with someone else because the birth or adoptive parent is *imprisoned*, the school, CSE or CPSE is **not** required to contact the parent. The child's caregiver may be considered the custodian and can sign necessary consents. If the parent is incarcerated but has **not** yet been sentenced – that is, s/he is awaiting trial, or the trial is in progress – the school, CSE or CPSE **must** contact the parent. Even if the children's caregiver has authority to sign consent as a custodian, it may be in the child's best interest to contact the incarcerated parent to involve him/her in educational planning for the children

**STEP 2: Help the school, CSE or CPSE locate the incarcerated parent and determine if he or she is “imprisoned”**

In order for you to assist the school, CSE or CPSE in locating an incarcerated parent, the first challenge will be to locate the parent within the criminal justice system. In order to find the parent through an online/ internet search, you will need the parent's name, particularly the last name, and his/her date of birth or year of birth, if known. If a parent has been incarcerated under an alias, it is helpful to know the alias; you may still be able to locate the parent with a date of birth. If you find out the parent is being processed and/or serving their sentence under an alias, keep a record of this name.

Once you have the parent's name and date of birth, you can go online to determine the facility where the parent is incarcerated and the contact information for the facility. The website [www.theinmatelocator.com](http://www.theinmatelocator.com) has links to all online locators within the federal, state, and local systems. You may need to check all three systems in order to find the parent. Once you have determined the facility, ACS CHIPP must be contacted for further assistance in contacting the incarcerated parent. ACS CHIPP can also assist in coordinating case conferences with incarcerated parents.

\*\*All three websites include an address and phone number for facilities within their system.

**NYC Correctional Facilities (including Rikers Island):** <http://a072-web.nyc.gov/inmatellookup/>  
For parents incarcerated in NYC correctional facilities, this website will identify in which facility the parent is located and provide you with a NY State Identification (NYSID) number. Include this number on any correspondence sent to the parent. The website will also indicate whether the parent has been sentenced, and is therefore imprisoned.

**NY State Correctional Facilities:** <http://nysdocslookup.docs.state.ny.us/> or call 518-457-8126  
For parents incarcerated in a NY State correctional facility, this website will identify in which facility the parent is located and provide you with a Department Identification Number (DIN#). Include this number on all correspondence sent to the parent. **If you locate a parent in the NY State system, then the parent has already been sentenced and is considered imprisoned.**

**Federal Correctional Facilities:** [www.bop.gov/inmate\\_locator/index.jsp](http://www.bop.gov/inmate_locator/index.jsp)  
For parents incarcerated in a federal correctional facility, this website will provide you with a Register Number. This number must be included on all correspondence sent to the parent. In order to find out if a parent has been sentenced, call the correctional facility where the parent is located and ask to speak with the parent's correctional counselor. Contact information for the two federal facilities in NYC is listed below.

Incarcerated parents are often transferred from one facility to another with little or no advance notice. They may not be able to make calls or write letters while this is happening. Particularly in the beginning of a NYS sentence, the parent may frequently be moved between several facilities. If you and ACS CHIPP are *unable* to locate the parent in any of the correctional facilities then the school, CSE or CPSE will need to appoint a surrogate parent for the child.

**STEP 3: Contacting the incarcerated parent**

When incarcerated parents have not been sentenced, and for many incarcerated parents whose children are in foster care, the school, CSE or CPSE is **required** to contact the parent to involve them in special education decision-making. Attempts should be made to contact the parent by mail and by phone. Once you have located the parent, ACS CHIPP must then be contacted for assistance.

**Within NYC (including Rikers Island) or NY State Correctional Facilities:** ACS CHIPP will call the facility and speak with the parent’s correctional counselor. The correctional counselor should be able to set up conference calls, receive faxes, and/ or arrange for a notary for the parent. If you or ACS CHIPP are having trouble reaching or working with the correctional counselor, ask to speak with the facility’s senior guidance counselor or guidance unit.

**Within Federal Correctional/ Detention Facilities:** There are two federal detention centers in NYC, including MCC and MDC Brooklyn. You should have the parent’s name, commitment number (if you have it), and date of birth ready when you call, or send an email to the address below. The detention center should be able to help you schedule a visit with the parent to conduct a social history, sign necessary consents, and/or discuss designating someone to make educational decisions for the child in the parent’s absence. ACS CHIPP can make arrangements for phone and visit contact with parents at these federal correctional facilities but cannot provide transportation.

MCC NEW YORK  
METROPOLITAN CORRECTIONAL CENTER  
150 PARK ROW  
NEW YORK, NY 10007  
Phone: 646-836-6300 | Fax: 646-836-7751  
E-mail address: NYM/EXECASSISTANT@BOP.GOV

MDC BROOKLYN  
METROPOLITAN DETENTION CENTER  
80 29TH STREET  
BROOKLYN, NY 1123  
Phone: 718-840-4200 | Fax: 718-840-5001  
E-mail address: BRO/EXECASSISTANT@BOP.GOV

**NOTE:** Please keep in mind that most incarcerated parents can only make collect calls. Many foster care agencies may not accept collect calls and many foster parents cannot afford to accept such calls. Furthermore, correctional facilities do not supply inmates with pads, pens, stamps or other items needed for correspondence. Many incarcerated parents cannot afford to purchase stamps, paper or envelopes while incarcerated or these supplies may not always be made available to them. Make sure to include self-addressed, stamped envelopes in your correspondence to incarcerated parents if you are requesting that a document be returned to you.

## Designating a person in parental relation

In some cases, an incarcerated parent may want to designate a specific person to make educational decisions on his/her behalf. Depending on the circumstances, you, the school, CSE or CPSE may want to speak to the incarcerated parent about designating someone else to make decisions for their child.<sup>2</sup> The parent can revoke the designation at any time. This designation must be in writing, signed by the parent and dated, and must include the name of the parent, child, and the designee. Designations for a period of more than 30 days must also:

- Include an address and phone number for the parent and the designee;
- Include the child's date of birth;
- State the date or event upon which the designation begins;
- Contain the written consent of the designee and a statement that no court order currently in effect prohibits the parent from making the designation; and
- Be notarized.

A designation that meets all these requirements will be effective for 180 days, unless a shorter period is specified. A period longer than 180 days (six months) may not be specified, so it may be necessary for an incarcerated parent to complete a designation more than once. Once the designation period expires, the right to make educational decisions will return to the parent. A designation form or "caregiver consent form" is available online at the NYS Permanent Judicial Commission on Justice for Children's website in nine languages: [www.courts.state.ny.us/ip/justiceforchildren/incarceratedparents.shtml](http://www.courts.state.ny.us/ip/justiceforchildren/incarceratedparents.shtml)

## Access to Records

The Family Educational Rights and Privacy Act (FERPA) grants all parents access to their child's school records unless a court order or other legal document specifically revokes these rights. The term "parent" means a birth parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian, and includes non-custodial parents. In NYC, all non-custodial parents, including incarcerated parents, have the right to review their child's records unless a judge has ruled otherwise. Records can be mailed to the parent (make sure to include the appropriate identification number), or in some circumstances may be faxed to the parent's correctional counselor. Please refer to Chancellor's Regulation A-820, which is available on the NYC Department of Education's website, for further information at: <http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations/default.htm>

## Further Questions

For questions regarding locating or working with incarcerated parents, contact ACS Children of Incarcerated Parents Program (CHIPP), at **(212) 487-8274 / 8577**. The ACS Parents and Children's Rights Unit may be contacted at **(212) 676-9421**.

If you have further questions regarding special education decision-making, or other educationally-related inquiries, please contact the Children's Services Education Unit at: [www.nyc.gov/html/acs/education](http://www.nyc.gov/html/acs/education)

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<sup>2</sup> A parent's right to designate someone as a "person in parental relation" comes from Article 5, Title 15-A of the General Obligations Law. That person (the "designee") would then fit the definition of parent included in Part 200 of the regulations of the State Education Department, which are summarized above in Step 1.