

Delaware's

LEGAL HANDBOOK

For Grandparents and Other
Relatives Raising Children



A legal Resource for People
Caring for the Children of a
Relative

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INTRODUCTION

The responsibility of caring for a relative's child touches every aspect of the caregiver's life. One of the most important concerns that weaves throughout all other issues for the caregiver is trying to provide stability in a young life that has experienced a great deal of instability. One step toward stabilizing the child's life is for the caregiver to know, understand, and be able to access legal options through the state court system.

The goal of *Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children* is to give caregivers a basic background on some of the legal issues that may become part of their lives. That background and the knowledge of how the system works will hopefully ease caregivers' concerns, since they will know their options and what to expect. *Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children* does not provide all information there is on any covered topic.

Under no circumstances should *Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children* be considered legal advice. Delaware Health and Social Services Division of Services for Aging and Adults with Physical Disabilities and the Community Legal Aid Society of Delaware intend this document as a beginning point and not legal counsel.

Legal Help Link is a main number that the public can call to contact the three legal service providers in Delaware – Community Legal Aid Society, Inc.; Delaware Volunteer Legal Services, Inc.; and Legal Services Corporation of Delaware, Inc. These three legal assistance organizations offer their services at no charge for eligible clients. Besides other factors, eligibility also depends on the particular area of legal assistance needed. Legal Help Link assures that callers are referred to the appropriate legal services organization or to a private attorney for assistance. For detailed legal advice, you can contact the Legal Help Link at **(302) 478-8850**.

Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children is set up to make

Information as easy as possible to use. The Contents page lists the Chapters. The beginning of each Chapter lists the information in that Chapter and the specific number of the question where that information can be found. Cross-references are in the text so that a question that just touches on an area will refer the reader to where the subject is covered in more depth. The Glossary will help you understand legal terms. Chapter 4, Third Party Custody and the Dependency/Neglect Process, contains more legal terms than any other chapter. Therefore, some terms used in Chapter 4 are listed at the beginning of the section to make the reading easier. Those terms are also in the Glossary.

After the Glossary, you will find a Resource List of the various agencies and their phone numbers. These agencies may be able to help you in your search for legal answers to your questions and services for your grandchild.

The section following the Glossary is Legal Forms, which have been mentioned in the text of Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children. The final section is the Index, which will help you to locate exactly what you are trying to find.

Relative caregiving knows no boundaries. Relative caregivers can be great grandparents, grandparents, aunts, uncles and cousins. To acknowledge the variety of caregivers and gender of the children they care for, you will find a variety of terms used for the caregiver and also for the gender of their children.

Our hope is that caregivers will find this document useful and that those who support them will find it beneficial in their work for grandparents and relative caregivers. If you have comments or suggestions, please send an e-mail to the Division of Services for Aging and Adults with Physical Disabilities at DelawareADRC@state.de.us or call the Division at **1-800-223-9074**.

What Family Court Does

1. What issues does Family Court handle?

Family Court in Delaware handles issues about who is the father of a child (paternity), child custody and visitation, child support, divorce, protection from domestic violence, juvenile delinquency matters, adoptions, terminations of parental rights, guardianships, criminal matters involving family members, and other matters relating to families.

2. Does the Family Court charge fees?

Yes, Family Court charges a filing fee for most of the petitions filed. If a person cannot afford to pay the fee, he or she can file a Motion to Proceed In Forma Pauperis, which is an application to have the fee waived. There is no fee for filing a Petition for Order of Protection From Abuse within the Family Court system.

3. Can I see my records at Family Court?

Yes, you may view the Family Court records that are about you or the child in your care. Those records are available in the Records Unit at the Family Court. Family Court may charge for photocopies of records. At this time, a person is not allowed to see records about other people, unless the case is open to the public.

4. What is the court resource center?

Family Court buildings have resource centers that have materials written in everyday English to help people learn about and file petitions in Family Court.

The centers are also staffed with Court employees who can direct people to the appropriate materials. However, they do not provide legal advice.

5. Where can I find the Family Court?

There is a Family Court facility located in each county:

New Castle County – 500 N. King Street, Wilmington:	(302) 255-0300
Kent County – 400 Court Street, Dover:	(302) 672-1000
Sussex County – 22 The Circle, Georgetown:	(302) 855-7400

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GRANDPARENT VISITATION

For Information On:

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**General Visitation Statute — Title 13 Delaware Code, Chapter 7 Web
address: <http://www.delcode.state.de.us/>**

Introduction

You may find that your family's relationships are not as open and friendly as you would like, but you have a relationship with your grandchildren and would like to continue visiting. If you wish to visit with your grandchildren, you should first contact the children's custodian. Parents are considered to be joint natural custodians over their children, but if the Family Court has removed the children from their parents' custody or one parent has sole custody of the children, you should contact the person or agency given custody rights by the Family Court. If your grandchildren's custodian is not willing to allow you to visit with your grandchildren, you may file a 3rd Party Visitation Petition (see Forms) in the Family Court. This chapter is about the petition filing process in Delaware and the use of Visitation Centers.

Grandparents and any other adult person who has a substantial and positive prior relationship with the child may apply for visitation rights under the general visitation statute, Title 13 Delaware Code, Chapter 7. You can access the Delaware law on the Internet at <http://www.delcode.state.de.us/> or at the resource center your county's Family Courthouse.

Filing a Petition

1. Who has standing (legal position) to file a visitation petition in the Family Court?

Natural parents and any adult person who (1) is a grandparent, aunt, uncle or adult sibling of the child or (2) has a substantial and positive prior relationship with the child have standing to file a Family Court petition for visitation with a child. Adoptive parents and the parents of adoptive parents (the adoptive grandparents) also have standing to file a Family Court petition for visitation with a child. Parents who have lost their parental rights through a termination of parental rights proceeding do NOT have standing to file a petition for visitation unless (1) more than three years have passed since the termination of their parental rights and the child has not been adopted or (2) the adoptive parent(s) previously entered into a written, notarized agreement or court appointed agreement for visitation and a copy of the agreement is attached to the petition. This also applies to the relatives of parents who have had their parental rights terminated.

2. What is the role of Family Court?

Delaware has statutes (laws) that govern visitation and guide the decisions of the Family Court. Under those statutes, a grandparent may visit a grandchild in many circumstances. The Family Court is not allowed to grant visitation to a grandparent when the parents of a child live together as husband and wife and both parents object to visitation between the grandparent and that child unless the court finds that such visitation is in the child's best interest and (1) the parent(s) objection is, by clear and convincing evidence, unreasonable and (2) by a preponderance of evidence such visitation will not substantially interfere with the parent/child relationship.

3. Where do I go to file a visitation petition?

The grandparent must file a visitation petition in the Family Court in the county where the child lives.

Family Court locations:

Kent County	Dover	(302) 672-1000
New Castle County	Wilmington	(302) 255-0300
Sussex County	Georgetown	(302) 855-7400

In each county, Family Court has resource centers where Family Court staff provide people information on available reliefs. Staff will also provide forms and assists with filing.

4. Is there a fee to file a visitation petition?

At the date of the publication of Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children, the filing fee for a visitation petition is \$95. If the petitioner has little or no income and cannot afford the filing fee, the petitioner may file a fee waiver application. However, if that request is denied the fee must be paid or the petition will be dismissed.

5. What is mediation?

Mediation is a process, which Family Court uses to help people settle disagreements before they are heard by a judge. It is often the case that people involved in a visitation disagreement can resolve their differences through discussion and compromise. The Court's mediators are trained to assist in that process. A mediator from the Court will meet with the petitioner and the child's custodian(s) to try to work out a visitation schedule. If the parties can agree to a visitation schedule, they will sign a written agreement. The mediator will deliver it to a judicial officer, who will review the agreement. If the agreement is approved, the judicial officer will enter the agreement as an order of the court.

6. What happens if the mediation process fails?

A dispute that is not settled through mediation is scheduled for a hearing. Hearings in the Family Court are conducted by judges and commissioners (see Glossary). Although there are differences in the way a party may appeal the decision of a judge or a commissioner, the authority of each of these judicial officers is very similar.

7. What if one of the parties violates the visitation order?

Once an order requiring visitation is entered, that order must be obeyed by all of the parties. If one of the parties disobeys the order, another party may return to the Family Court and ask that the violating party be held in contempt, of court (see Glossary). To ask the Court to hold someone in contempt a Petition for a Rule to Show Cause must be filed (see Forms). In this petition, you must state the way in which the other party has disobeyed the order. Typically, the Family Court will hold a hearing during which you will need to explain how the other party has disobeyed the order and present any evidence you have. The Family Court will hold someone in contempt as a way of forcing that person to obey the order.

Visitation Centers

8. What are Visitation Centers?

In certain cases, such as where a parent has committed acts of domestic violence against a child, or against the parent or custodian of the child, the Family Court may order that visitation between the offending parent and the child take place in a professionally supervised environment. These places, called Visitation Centers, are located throughout the state of Delaware (see Resources for contact numbers and locations). The Visitation Centers are located at certain State Service Centers. A center staff person supervises visits that take place in a Visitation Center.

The Visitation Center may also be used to transfer the child between the custodian and the person with visitation rights. This eliminates contact between the two parties and is often used when domestic violence is an issue.

Visitation Centers are open during regular business hours and by appointment on weekends and holidays. The Family Court may also, depending on the circumstances, use third parties or other family members to supervise visitation.

9. Is there a fee to use a Visitation Center?

Yes, there is a charge for use of the Visitation Centers. It is a sliding-scale fee based on income. Unless the Court orders otherwise, the parent visiting the child pays this fee.

2

REPORTING CHILD ABUSE OR NEGLECT

For Information On:

Abuse and/or neglect
Anonymous reporting
Division of Family Services

Foster care placement
Placement with a relative
Reporting
Response time
Safety of children

See Question #:

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3
Introduction 3, 5, 6, 8, 9, 10, 11,
12
10, 11, 12
11, 12
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8
9

Delaware Law – <http://www.delcode.state.de.us/>

Introduction

If you have concerns that your grandchild or minor relative is being neglected or abused by his or her parents or custodians, help is available. In Delaware, the Division of Family Services (DFS) is the agency responsible for receiving and investigating reports of child abuse or neglect, and all persons are required by law to report suspicions of child abuse or neglect of any child, from birth to age 18, to DFS. If you know or reasonably suspect a child may be abused or neglected, please contact the 24-hour, toll-free DFS Report Line number immediately at **1-800-292-9582**. In addition, you may make a report online at ISeetheSigns.org. Online reporting is not for all allegations of abuse or neglect, but the online reporting tool will give you guidance about whether an immediate call to the DFS Report Line is needed. DFS also investigates allegations that a child is dependent or at risk of abuse or neglect. This chapter provides definitions for child abuse and neglect and helpful information about making a report, and it explains the role of the Division of Family Services in protecting Delaware's children.

Definitions

1. What does abuse and/or neglect of a child mean?

The Delaware Code defines abuse as "any physical injury to a child by those responsible for the care, custody and control of the child, through unjustified force, emotional abuse, torture, sexual abuse, exploitation, maltreatment or mistreatment." Neglect, as defined in Delaware Code, means "the failure to provide, by those responsible for the care, custody, and control of the child, the necessary care with regard to food, clothing, shelter, education, health, medical or other core services necessary for the child's emotional, physical or mental health or safety and general well-being or fails to provide necessary supervision appropriate for a child when the child is unable to for that child's own basic needs or safety. You can read the law on the Internet at <http://www.delcode.state.de.us/> or at your county courthouse resource center.

2. What is a dependent child or a child at risk of abuse or neglect?

The Delaware Code defines dependency as "a person, who has care, custody or control of a child and who does not have the ability and/or financial means to provide for the care of the child, fails to provide necessary care with regard to: food, clothing, shelter, education, health care, medical care or other care necessary for the child's emotional, physical or mental health, or safety and general well-being." This includes a child living in the home of an adult individual who fails to meet the definition of relative on an extended basis without an assessment by DSCYF, or its licensed agency.

Risk of abuse or neglect refers to circumstances where, although the child has not yet experienced harm and there have been no clear-cut abusive or neglectful actions, it can reasonably be concluded that if the circumstances continue without change, significant harm will likely result in the near future due to the abusive or neglectful actions of a parent or guardian.

Contacting the Division of Family Services

3. How do I make a report?

To make a report, call the DFS Report Line at 1-800-292-9582 or make a report online at www.ISeetheSigns.org.

4. What information is needed to make a report?

Reporters will be asked to provide the following:

- Known information about the parents or siblings;
- Known information about the alleged child victim's physical health, mental health, educational status;
- Information regarding medical attention that may be needed for injuries;
- Any information you have about the way the caregiver's behavior is impacting the care of the child; and
- Known information that could put the child's or DFS worker's safety in peril such as the presence of alcohol, drugs, weapons, dangerous animals or criminal behavior.

5. What information can DFS share with reporters?

In general, DFS will share information only when there is a signed release of information (informed time limited consent).

6. Can the call to DFS be made anonymously?

Callers may remain anonymous when making a report to the DFS Report Line. However, it is helpful for DFS to know the name and phone number of the caller in case additional information is needed about the child or family. In addition, since all persons have the obligation to report under the law, the called is encouraged to provide her or her name to serve as documentation that a report was made. Also, federal law requires DFS to keep the caller's name confidential and the law only allows DFS to reveal the name of the caller to agencies such as law enforcement and the courts.

7. Can I be held liable about make a report of child abuse or neglect?

By law, anyone who makes a report in good faith shall have immunity from civil or criminal liability.

8. How quickly will DFS respond to a report of abuse or neglect?

DFS will make a decision about the response time base on factors such as the age of the child and the seriousness of the allegations. Situations needing urgent response will be responded to immediately, up to within 24 hours. Other situations will be responded to within ten calendar days.

What the Division of Family Services Does

9. What does the DFS investigation process include?

The DFS investigation process includes, but is not limited to:

- Conducting interviews with the children and/or observing children who are non-verbal.
- Interviewing the parents, custodians or other adults with caregiving responsibilities.
- Observing the living conditions within the home.
- Obtaining information from a minimum of two other sources who have knowledge about the child, such as the child's physician or schoolteacher.
- Obtaining criminal background information about the adult caregivers.
- Evaluating the child's safety in his or her home.
- Determining whether abuse or neglect occurred.

10. What happens to the children if DFS finds they are being abuse or neglected?

If DFS determines that the children are not safe in their own home, a caseworker will try to develop a plan with the parents or custodians to fix the problem. If such a plan is not possible, DFS will seek out other relative caregivers, and as a last resort, obtain custody of the children for placement in a safe environment, such as a foster home.

11. Will DFS allow the children to stay with a relative?

If the children must be removed from the home, DFS will ask the parents or custodians to provide the names of any relative caregivers. Before permitting a relative caregiver, DFS will conduct background checks on all persons in the home and complete a home assessment. The background check will consider prior DFS involvement and criminal history. Interviews will also be conducted to explore the relative caregiver's willingness and financial ability to care for the children's educational, physical and mental health needs.

The living conditions will be inspected to determine if the children have an appropriate sleeping space and to ensure the home is free of objects and conditions, which constitute fire and/or safety hazards. Once the children are placed with relative caregivers, DFS will conduct regular visits with the relative caregiver and children to ensure monitor their safety while DFS continues to work with the parents or custodians.

12. My grandchild was place in foster care without my knowledge. Why didn't DFS notify me, a concerned relative?

While DFS attempts to explore relative caregivers before placing a child in foster care, the parents or custodians do not always provide DFS with the their names. Therefore, if you know the children have already been removed from the home, placed in foster care, or that DFS is otherwise involved with the family, call the DFS Report Line and share that you are willing to be a placement resource for the child.

3

PROTECTION FROM ABUSE ORDERS

For Information On:

See Question #:

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Relief	8, 10, 11
Trial	10, 14
Witnesses	7, 11

Introduction

You or the child for whom you are caregiver may be a victim of abusive conduct from a relative or a member of the immediate household. It may be necessary for the threatened party to apply to Family Court for a Protection From Abuse Order (PFA).

This chapter will explain the nature of a Protection From Abuse Order, to whom it applies, and how to obtain one from the Family Court.

PFA Defined/Who Can Apply

1. What is a Protection From Abuse Order?

A Protection From Abuse (PFA) Order is a civil protective order to prevent violence between family members and to enable victims of domestic violence to live without abuse. Through the PFA law, the abuser can be ordered to stay away and not have any contact with the victim (see Forms).

2. Who is protected by the Protection From Abuse Act?

In general, the Protection From Abuse (PFA) Act protects a victim of domestic violence. In Delaware, the people protected by the PFA include:

- Former and current spouses;
- A man and woman living together but not legally married (at the time of the abuse) with or without a child in common;
- A man and woman living separate and apart with a child in common;
- Persons who are or were involved in a substantive dating relationship and
- Family members, including mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son, daughter, son-in-law, daughter-in-law, grandfather, grandmother, grandson, granddaughter, stepfather, stepmother, stepson and stepdaughter.

Applying for a PFA

3. Where can I get a PFA?

You, the victim, must file a Petition for Protection From Abuse Order with the Family Court. You can file the petition in any county where one of these conditions apply:

- Where you live
- Where the accused offender lives
- Where the abuse took place
- Where you are temporarily located to avoid the domestic abuse.

Family Court

New Castle County

500 King Street
Wilmington, DE 19801
(302) 255-0300

Kent County

400 Court Street
Dover, DE 19901
(302) 739-6500

Sussex County

22 The Circle
Georgetown, DE 19947
(302) 856-5601

4. Where do I go in the Family Court?

Go to the Intake Unit in the county courthouse. All PFA petitions are handled in the Intake Unit to give petitioners more privacy.

5. How do I prove that I am being or have been abused?

Applying for a PFA Order (cont).

In order to obtain a Protection From Abuse (PFA) Order from the court, the victim must prove the offender abused him or her in at least one of the following ways:

- Intentionally or recklessly caused or tried to cause the victim physical injury or sexual offense;
- Intentionally or recklessly placed or attempted to place the victim in reasonable fear of physical injury or sexual offense;
- Intentionally or recklessly damaged, destroyed, or took the property of the victim;
- Acted in a course of alarming or distressing conduct, in a manner likely to cause the victim fear or emotional distress, or provoked a violent or disorderly response from the victim;
- Trespassed on or in the property of the victim;
- Child abuse;
- Unlawful imprisonment, kidnapping, interference with custody and coercion;
- Any other conduct which a reasonable person under the circumstances would find threatening or harmful.

6. How can I prove to the Court that these abuses happened and that the abuser caused them?

You may testify yourself concerning the abusive act(s) and you may call witnesses to testify. The Court will listen to testimony, which are statements made in the courtroom by witnesses. The Court will listen to witnesses explain what they saw or heard. For example, a neighbor who overheard an argument or threat can testify about what he or she heard. A police officer who saw a bruise or cut can testify about what he or she saw.

It may be necessary to subpoena witnesses and police officers. This must be done in advance.

7. What relief can I request when filing the petition?

There is broad relief available to a victim (which the victim **MUST REQUEST** when filing the petition) to effectively intervene and help end the abuse. The final order can:

- Forbid the offender from committing any other act of abuse against the victim;

- Forbid the offender from contacting the victim by mail, phone, or any other means, including third-party contact;
- Forbid the offender from coming within 100 yards of the victim, the victim's residence, or the victim's workplace or school;
- Grant the victim exclusive use and possession of the parties' residence, regardless of how the property is titled (this does not affect ownership of the property);
- Award the victim temporary possession of certain personal property (for example, cars, keys, checkbooks);
- Award temporary custody of the parties' children to the victim and provide for supervised visitation with the perpetrator;
- Order the offender to pay child support or spousal support;
- Award the victim damages for losses suffered as a direct result of the domestic violence (for example, property that was destroyed, medical costs, loss of earnings);
- Forbid the offender from transferring, putting conditions on the use of the property, or hiding any property in which the victim has an interest;
- Require the offender to attend counseling;
- Require the offender to give any guns in his or her possession to the police; and/or
- Provide any other relief the Court decides is reasonable.

8. I need protection as soon as possible. What can I do?

When you file the Petition for Protection From Abuse Order, you can ask the Court for an emergency order, also called an ex parte order. It can take an hour or two to get into a courtroom. The victim must explain to the Court why he or she needs an emergency order. If the Court feels there is sufficient reason, it will issue a temporary emergency order that day.

Emergency PFA

If the Court issues the temporary emergency order, a full hearing on the petition will be held within 10 days. If the Court does not issue a temporary emergency order, a full hearing will take place within 30 days.

The PFA Hearing

9. Must there be a PFA hearing if the accused person agrees to the terms of the PFA?

On the day the full hearing is scheduled to take place, the accused offender will be asked by Court staff if he or she wishes to agree to a PFA. If he or she agrees, there will be no need for an evidentiary hearing and there will be no finding of abuse against the accused offender. The order will include all the relief to which the parties agreed. The order will be as enforceable as any order obtained through a full hearing.

If the accused agrees to a PFA, the victim does not have to risk losing a trial and having the petition dismissed. The victim may still request a trial. Keep in mind that a finding of abuse against an abuser can result in the abuser having a more difficult time getting custody of children, if any are involved.

10. What if the accused offender does not agree to the order?

If the accused offender does not agree to the order, then the victim must prove the offender abused the victim, as accused in the petition, through a full hearing. The complete PFA hearings are heard on the day scheduled, and the victim must have all witnesses present for the hearing. If needed, subpoenas must be served in advance of the hearing. If the victim proves the alleged abuse occurred, then the PFA will be awarded. The relief granted to the victim will depend on what is necessary to prevent further violence.

11. How long is the PFA in effect?

Regardless of whether the order is issued by consent or through a full hearing, the order can be in place for as long as two years from the date it is issued. The terms of the order may be modified or the order may be extended for an additional period of up to six months upon a motion filed by either party. Under certain circumstances, relief can be granted for a period not to exceed two years or as long as reasonably necessary to prevent further acts of abuse or domestic violence up to a permanent order.

The PFA Hearing (cont.)

12. Who enforces the PFA?

Enforcement of the PFA is largely the responsibility of the protected victim. The victim is the first to know when the order has been violated. Therefore, if the offender violates the order (for example, contacts the victim or further abuses the victim), the victim must immediately call the police and report the violation. Victims should keep a copy of the order with them at all times.

13. What will happen if the offender violates the PFA?

Certain violations of the order are criminal misdemeanors. Violations reported in this fashion will generally result in the perpetrator being arrested and criminally charged with a violation of the protective order. The violation must be proven at a criminal trial. Repeated criminal convictions for violating the protective order may result in jail time for the offender.

14. What should the victim do if the offender violates the PFA?

The victim should call the police, particularly if the offender is violating an order to stay at least 100 yards away or to have no contact. Police can arrest the offender for criminal contempt.

15. What if the offender doesn't pay court-ordered support or breaks a custody or visitation order?

The victim can also file a motion for a civil contempt of the PFA in Family Court. The victim would have to prove in court that the offender committed the violation.

4

THIRD PARTY CUSTODY AND DEPENDENCY/ NEGLECT PROCESS

For Information On:

See Question #:

Abused	Introduction, 2, 6
Best interest factors (Glossary)	5, 15
Children's needs	12
Community Legal Aid Society, Inc. (Resources)	20
Court Appointed Special Advocate (CASA) (Resources)	21, 23
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Introduction

As a grandparent, you are considered a third party if you go to court to get guardianship of your grandchild. As discussed in Chapter 2, if you believe your grandchild is dependent, neglected or abused you must report it to the Division of Family Services. You may also decide to file a dependency/neglect petition in Family Court (see Forms). Chapter 4 explains the dependency/neglect petition filing process.

Chapter Glossary

(These terms also appear in the Glossary at the end of this Legal Handbook)

Abused- A child who has suffered from anyone (1) sexual abuse or (2) has suffered has suffered from physical injury, emotional abuse, torture, exploitation or maltreatment/mistreatment by someone responsible for their care custody or control.

Adjudicatory Hearing- A Family Court hearing to determine (adjudicate) whether the child is dependent, abused or neglected as specified in the statute.

Care, Custody, and Control - A person or persons in a position of trust, authority or supervision over a child including a parent, guardian or custodian, other family members or household members, or persons temporarily responsible for the child's care.

Dependent child – A child whose physical, mental or emotional health and well-being is threatened or harmed because of inadequate care and protection by the child’s custodian, who is unable to provide for the child whether or not caused by the child’s behavior. [10 Del. C. §901\(8\)](#)

Dispositional Hearing – A Family Court hearing held 30 days after the Adjudicatory Hearing. At this hearing, the judge reviews the placement of the child and the conditions of that placement and the parents sign a case plan.

Hearsay evidence – A statement made out of court and which is offered to prove the truth of the information in the statement.

Law citations – As you read about the law, you may see references that look like this: [13 Del. Code § 1103](#). These are legal citations that direct you to the specific part of the law in question. The first number (in this case, the 13) is the title of the law in the Delaware Code. The Delaware Code is the name for the entire set of state laws. The number that follows the symbol "§" (in this case, the 1103) is the section or subsection of that law.

Neglected child – A child whose physical, mental or emotional health and well-being is threatened or harmed because of inadequate care and protection by the child’s custodian, who has the ability and financial means to provide for the care but does not or will not provide adequate care.

Petitioner – One who files an action in court.

Preliminary Protective Hearing – A Family Court hearing which occurs after a child has been removed from the custody of a parent or guardian on an emergency basis and placed with the Division of Family Services or in the care of a guardian.

Respondent- the party against whom an action is filed.

Note: These definitions apply in the context of family law only.

Overview

1. What is custody?

Custody, or the right to care for and maintain a child, is usually the right of the birth parents. If there have been no legal proceedings each parent automatically holds joint natural custody. If there has been a court proceeding, the Court can either award one parent sole custody or continue joint custody with both parents. In cases where one parent is awarded sole custody, that parent is responsible for making all decisions concerning the child. In cases where the Court has awarded joint legal custody to both parents, then both parents are responsible for making joint decisions concerning the child. Residential custody can also be awarded by the court. Residential custody can be shared (usually half with each parent) or primary with one parent and visitation for the other parent.

2. What is third-party custody?

Custody to a third party means custody granted to the Division of Family Services because of an emergency situation. It is intended to be temporary. The Division of Family Services must show that the child is dependent, abused, or neglected (see Chapter 4 Glossary). While the intent is for custody to be temporary, the individual or the state agency that holds custody can get a court order to keep custody until the child reaches adulthood.

3. What is the difference between custody and guardianship?

The difference between the definition of custody and guardianship is that custody describes the rights and duties between a parent and a child, whereas the term guardianship is used for someone other than a parent and a child.

4. How does the Court decide to grant custody or guardianship?

Whether the petitioner seeks custody or guardianship, a parent can only be deprived of custody if the Court determines that the parent cannot provide "necessary care" for the child. If the Court so determines, then the Court will decide what custody, arrangement or placement is in the child's best interest.

5. What is meant by "the best interest factors" for a child?

The Court determines the custody and residential arrangements for a child by focusing upon the child's "best interest." Factors the court considers in determining the child's best interest include but are not limited to:

- wishes of the parent;
- wishes of the child;
- relationship of the child with other people living in the household;
- child's adjustment to the home, school and community;
- mental and physical health of all individuals involved;
- past and present compliance of both parents with their rights and responsibilities;
- evidence of domestic violence; and
- the criminal histories of the parents.

Filing a Dependency/Neglect Petition

6. How can I file a dependency/neglect petition?

Anyone who believes a child is dependent, neglected or abused can file a dependency/neglect petition. (See Forms or <http://courts.state.de.us/forms/>).

7. How do I file a dependency/neglect petition?

Go to Family Court in the county where the child currently lives. Staff will help you complete the form.

Family Court Locations:

New Castle County

500 N. King Street
Wilmington, DE 19801
(302) 255-0300

Kent County

400 Court Street
Dover, DE 19901
(302) 739-6500

Sussex County

22 The Circle
Georgetown, DE 19947
(302) 856-5601

The Hearing Process

8. What is a Preliminary Protective Hearing?

Once the Division of Family Services removes the children from their home, a hearing is scheduled in Family Court within 10 days. This hearing is called a Preliminary Protective Hearing, and its purpose is to determine whether probable cause (reasonable belief that certain facts and circumstances exist) existed to remove a child from his/her parents. The parents will be notified of this hearing, if possible, and they may have an attorney present. If they cannot afford one, an attorney will be appointed to represent them. The petitioner has to show probable cause that the child is dependent or neglected (see Glossary) and that he or she will suffer certain harm if not removed from the parents' care. Any information, including hearsay evidence (see Chapter 4 Glossary), is allowed at this time.

9. What is the Adjudicatory Hearing?

After the Preliminary Protective Hearing, the Adjudicatory Hearing (see Chapter 4 Glossary) is scheduled within 30 days in Family Court. At this hearing, the petitioner must prove by clear and convincing evidence that the child is still dependent or neglected and that they need to remain in the care of the Division of Family Services.

Throughout the legal proceedings, DFS should be developing a plan with the parents, which gives the details about what DFS will require the parents to do before the children can be returned to them and spells out the services DFS will offer the parents.

When appropriate DFS can provide many services to the family such as mental health services, substance abuse treatment, housing assistance, employment services, financial assistance, parent aide services to assist with parenting skills, individual and family counseling, intensive home-based services, and/or transportation to appointments and visitation. DFS also can help the family get connected with other service providers in the community if the family has other needs.

If Family Court continues custody with DFS at the Adjudicatory Hearing, a Dispositional Hearing is held approximately 30 days after the conclusion of the Adjudicatory Hearing.

10. Only first-hand evidence is allowed at the Adjudicatory Hearing.

What is first-hand evidence?

All testimony must be first-hand at the Adjudicatory Hearing. Hearsay evidence is NOT admissible and may be excluded by the Court. For example, at the Preliminary Protection Hearing, the DFS worker can testify that the day care worker saw bruises on the child, which is hearsay evidence. At the Adjudicatory Hearing, the day care provider who actually saw the bruises must testify himself or herself to what he or she saw.

11. What is the next step if Family Court allows DFS to continue custody?

If Family Court continues custody at the Adjudicatory Hearing, a Dispositional Hearing is held 30 days after the conclusion of the Adjudicatory Hearing. At the Dispositional Hearing, the judge reviews the placement of the child and the conditions of that placement.

12. What happens at the Dispositional Hearing?

The Court will look to see that the parents are working with DFS, that the temporary caretaker is meeting all of the children's needs, and that the appropriate services are being offered to the parents. A case plan will be signed by the parents. DFS' workers are required to meet with the parents on a regular basis.

13. What services can DFS provide during the Dispositional Hearing and Adjudicatory Hearing?

The Dispositional Hearing is the time when the case plan is made part of the court order. In developing this plan and during the Adjudicatory Hearing, DFS will begin to make referrals for many services to the family such as financial assistance, parent aide services to assist with parenting skills, individual and family counseling, intensive home-based services, and transportation to appointments. DFS also can also help the family get connected with other service providers in the community if the family has other needs. The plan will be reviewed at each subsequent Review Hearing.

14. How often are Review Hearings held?

Review Hearings are scheduled approximately every three months, starting from three months after the date of the Dispositional Hearing. The progress of the family is discussed at these hearings. If the parents are cooperating and following the plan, DFS should be expanding the children's visitation with the parents and looking toward returning them home.

The Hearing Process (cont.)

15. How much time are the parents given before their parental rights are terminated?

Once children have been removed from the parents' custody, the parents must be actively working toward reunification (bringing the family back together) with the children. Otherwise, the Division of Family Services (DFS) will explore alternative permanency plans such as guardianship, termination of parental rights and adoption, or another permanent planned living arrangement (see Chapter 7).

When children have been in foster care for 9 months, the DFS worker is required to present the case to the Division of Family Services' Permanency Planning Committee. The Permanency Planning Committee is an internal committee within DFS that is responsible for reviewing the progress that a family is making in addressing the issues that resulted in the children being removed from the home.

If the parents are making progress on their plan and it looks like reunification is likely to occur in the near future, the DFS worker continues to work with the family. However, if the parents are not making progress on their plan and reunification does not look promising, the Permanency Planning Committee may recommend that the DFS worker ask the court to change the permanency plan from reunification to Termination of Parental Rights (TPR) or some other permanent goal. Family Court must give final approval before DFS can officially discontinue reunification efforts. At the next regularly scheduled review hearing, DFS will present its case, describe the parents' lack of planning, and request that the goal change from reunification to termination of parental rights or some other permanent goal such as Another Planned Permanency Living Arrangement or long term foster care (APPLA), guardianship or permanent guardianship

Federal law requires DFS to proceed to a permanency plan by twelve months of the child entering foster care. If a child is less than six months old when they enter care the law allows DFS to proceed to an alternate permanency plan sooner than twelve months. However, there are circumstances in which DFS may seek to terminate parental rights before the six-month or one-year point (13 Del. Code §1103). DFS must show that one of the conditions in the Delaware's Domestic Relations Code (13 Del. Code § 1103) has been met and that it is in the best interest of the children for the parents' rights to be terminated. You can read the law on the Internet at <http://www.delcode.state.de.us> or at your county courthouse resource center.

Emergency Custody

16. How do I obtain emergency guardianship?

To obtain emergency custody of a child, you must go to Family Court in the county where the child lives and file an emergency dependency/neglect petition (see Forms). You **MUST** provide the court with the last known addresses for **BOTH** parents, even if one parent has not had contact with the child. Staff at Family Court will help you complete the necessary paperwork.

17. What does a grandparent or other relative have to prove to qualify for emergency custody?

In order to qualify for emergency custody, the petitioner must show that the child will suffer immediate and permanent harm unless emergency custody is awarded. If the petitioner can show that those conditions exist, the Court will award the petitioner ex parte custody. An emergency custody order is only valid for 10 days.

18. What happens once the 10 days of the emergency custody order are over?

If Family Court has awarded emergency custody to DFS, a Preliminary Protective Hearing will be held within 10 days of the emergency custody ruling. Non-DFS litigants will get a PPH also if they are granted an Ex Parte Order. At the Preliminary Protective Hearing, the petitioner and the parents present their cases to the Court. At the end of the Preliminary Protective Hearing, the Court will decide whether custody should remain with DFS or go back to the parents. If Family Court continues custody with DFS, an Adjudicatory Hearing (see Chapter 4 Glossary) will be held within 30 days of the Preliminary Protective Hearing.

19. What is the fee to file for emergency custody?

There is an \$85 filing cost at the time of this publication. If the petitioner has little or no income and cannot afford the filing fee, he or she may file a fee waiver application. If the request is denied, the fee must be paid within thirty days or the petition will be dismissed.

Legal Representation

20. Who is involved in the dependency/neglect proceedings?

A Deputy Attorney General is the attorney for the Division of Family Services (DFS). The DFS worker involved in the case appears at the hearings to inform the attorney what is happening and what DFS believes is best for the child. Family Court may appoint an attorney to represent the parent if they cannot afford one. If the parents have differing positions in the case, each parent may have his or her own attorney.

21. Can the children have their own attorney?

Yes. The children can be represented by a Child Attorney or a court appointed special advocate (CASA). This is an attorney who is appointed to represent the children's interests.

22. How is a Child Attorney appointed?

The Division of Family Services, the Court, or anyone else who believes that a child needs representation can contact the Office of the Child Advocate at **(302) 577-6830**. Once the Office of the Child Advocate receives a referral, staff evaluates the case and decides whether they will ask the Court to appoint a Child Attorney and/or CASA for the child. The Court then signs an order appointing a Child Attorney to the case. Attorneys with the Office of the Child Advocate represent the best interest of the child (see Glossary) in court.

23. What is the role of the Court Appointed Special Advocate (CASA)?

The best interest of the children is usually expressed to the Court through the Court Appointed Special Advocate (CASA). The CASA is a volunteer who, like DFS, investigates the case. The CASA can talk to teachers, doctors, neighbors, relatives, landlords and the children to determine what is in the children's best interest. Throughout the proceedings, the CASA often visits with the children, as well as with the parents to see how they are trying to improve their situation.

24. Should I, as the relative caregiver, obtain an attorney?

The legal system can be complicated and confusing. An attorney can advise you concerning your legal rights and help you understand the legal procedures.

5

GUARDIANSHIP

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Introduction

If the Division of Family Services has placed a child in your care, you have some important issues to consider. If you believe you will care for the child for quite some time or you do not know where the parents are, you may want to consider applying for guardianship so you can make decisions without delay. Having guardianship will ensure your right to keep the parent from taking the child from you and allow you to make educational and medical decision on behalf of the child. Keep in mind that, unless you have guardianship, the parents' decisions always have priority.

Chapter 5 explains guardianship and how you can seek it within the court system. The information in this section does not contain all you will want to know. For further information and details please contact either the Division of Family Services at **(302) 633-5128**, or the Community Legal Aid Society at **(302) 575-0660** in New Castle County; **(302) 674-8500** in Kent County; or in Sussex County at **(302) 856-0038**.

The Types of Guardianship

1. What kinds of guardianship are there in Delaware?

In Delaware Family Court there are three types of guardianship - permanent and standard. Both standard and permanent guardians have the authority to act as the parent for matters such as medical treatment, education, and choice of religion. Permanent guardianship is more difficult to obtain but once obtained cannot be undone by the birth parent without your agreement. The third is stand by guardianship which enables a parent or custodian suffering from a chronic progressive condition or terminal illness to make plans for the permanent future care of a child without terminating parental or legal rights.

2. What is the advantage of permanent guardianship over standard guardianship?

The advantage of permanent guardianship is that the birth parent cannot move to terminate the permanent guardianship. They can only file to modify contact, visitation, and/or information sharing. If the permanent guardianship is terminated, the parent may be considered but with no greater priority than any other person or agency and the court applies the best interest factors to make this determination.

With standard guardianship, the parent can go to Family Court at any point in time and petition to regain custody of the child.

3. What does the Court require in order to obtain permanent guardianship?

To obtain permanent guardianship, a petitioner must show at least one legal reason for terminating the parents' rights. Examples of legal reasons that may qualify are abandonment, legally incompetent parents, child abuse and/or neglect, failure to care for the child, or termination of rights to other children. The petition must also show that adoption of the child is not possible or appropriate and that permanent guardianship is in the best interest of the child. The birth parents can agree to appointment of a permanent guardian, or it can be granted by the Court.

4. What is the difference between guardianship and adoption?

The difference between guardianship and adoption is that with adoption all of the rights of the natural parents are terminated. Once adoption is granted, the birth parent is no longer the parent in the eyes of the law. Guardianship provides the right to care for the child and make decisions on behalf of the child but the parents' rights remain intact.

Who Can Obtain Guardianship

5. What is the minimum age requirement for a guardian?

In Delaware, any adult person(s) may petition Family Court for a guardianship regarding that a child is not his, hers or theirs. An adult is a person who has reached his or her eighteenth birthday. The child need not be a blood relation. However, for permanent guardianship of a foster child over 12 years of age the potential guardian must be a relative or the foster parent. Also, DSCYF, the Division, a licensed agency, or the Child Attorney who has an interest in the health, education or welfare of a child or children may petition the Family Court for a guardianship order so long as the proposed guardian or guardians consent to the appointment.

6. What does the Court look for when considering someone to become a guardian?

The Court looks for the proposed guardian to be physically, emotionally, and financially able to care for the child.

7. Can the child appoint his/her own guardian?

A child 14 or older must consent to the appointment of a guardian for permanent guardianships, as long as the legal requirements are met. Also, a social study, which is an evaluation of the child, the home, and the suitability of the placement, with a recommendation for or against the guardianship, made by the person or agency conducting the study, is required. The study may also be required for a non-permanent guardianship.

Filing for Guardianship

8. How do I file a guardianship petition?

A guardianship petition is filed in Family Court (see Forms). At the time of the printing of Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children, the cost for the petition was \$85. (You can request a fee waiver.) However, if your request is denied the fee must be paid within thirty days or the petition will be dismissed.

Filing for Guardianship (cont.)

The petition must contain:

- Name and place of residence of the petitioner;
- Name, sex, date of birth and place of birth of the child;
- Relationship of the petitioner to the child; name and address of mother and father or presumed father, or information concerning detailed efforts to locate the parent(s);
- Name and address of an agency that holds parental rights or custody;
- If the child is 14 or older, an affidavit that the child consents to the guardianship;
- A statement regarding each parent that the child is dependent and/or neglected and the reasons for that situation; or that the proposed guardian is a stepparent; or that the parent consents;
- A certified copy of death certificate if parent(s) deceased;
- And a statement setting forth why the guardianship is in the child's best interest.

9. What if the parents are deceased?

If the parents are deceased, a copy of the death certificates must be attached to the petition.

10. What happens after a petition for guardianship or custody is filed?

After the petition is filed and properly served, the Court will schedule a hearing.

11. How does the Court decide whether or not to grant guardianship? Is a social study required?

The Court will hear testimony from the parties involved, as well as witnesses. The Court could order a social study and report, which is an evaluation of the child, the home and suitability of the placement, with a recommendation for or against the guardianship. The social study is required for permanent guardianship, but not for standard guardianship. A social report will be prepared for a permanent guardianship.

The Court will grant the petition for guardianship if it finds by preponderance of the evidence (see Glossary) that the child is dependent, neglected or abused and it is in the best interest of the child. The Court will determine if the parent voluntarily consents to the guardianship or if the child is 14 years or older and consents to guardianship. The Court will also determine whether there should be contact between the child and the parents.

Filing for Guardianship (cont.)

12. When does the order of guardianship end?

Guardianship terminates upon the guardian's death, the adoption of the child, when the child reaches the age of majority or as otherwise ordered by the Court.

13. Can the guardianship order ever change?

Standard guardianship can be changed by the court if the child is no longer dependent and neglected and it is in the best interest of the child to modify the order. Permanent guardianship is more difficult to change than standard guardianship because a parent cannot petition to terminate a permanent guardianship and the Court must find there has been a change also this explanation needs to be expanded.

14. What if the birth parents want the child back?

The parents cannot seek to end a permanent guardian arrangement. An order of guardianship may be modified regarding contact, visitation or sharing of information at any time if it is in the best interests of the child. An order of guardianship may be rescinded upon a judicial determination that the petitioner has made a preliminary showing the guardianship is no longer necessary for the reason it was established unless the Court finds that the guardian has established a preponderance of the evidence that the child will be dependent, neglected, and/or abused in the care of the parents seeking rescission or the Court finds that the guardian has established, by clear and convincing evidence, that the child will suffer physical or emotional harm if the guardianship is terminated.

Financial Support

15. What financial support is available for the guardian?

If the child was in the custody of the Division of Family Services for at least one year prior to the grant of guardianship, a subsidy (see Glossary) may be available. The Department of Services for Children, Youth and Their Families determines the amount and length of time of the subsidy. This subsidy applies to guardianship only.

16. Can a guardian file for child support?

A guardian can file for child support through the Division of Child Support Services (see Forms and Resources). Parents are obligated to pay child support until the child reaches 18 years of age and graduates from high school or turns 19 and is likely to graduate. A child support order can also order the parents to pay for or provide health insurance.

6

FOSTER CARE

For Information On:

Adoption
Day care
Delaware Help Line (Resources)
Department of Services for Children,
Youth & Their Families (Resources)
Division of Family Services (DFS)
Foster parent
Guardianship
Medicaid card
Medicaid office
Permanent guardianship
Permanent home
Permanent placement
Respite
Reunification services
State Service Center
Stipend
Temporary Assistance for
Needy Families (TANF)

See Question #:

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Introduction

Division of Family Services web site: <http://www.state.de.us/kids>

Introduction

Perhaps you are concerned for the welfare of your young relative, but permanent placement in your home is not the best solution. Foster care allows a child who is abused, neglected or dependent and in the custody of the Division of Family Services (DFS) to live with a party other than her parents until she is returned to her parents or until a permanent home can be arranged. You may choose to offer your home and care as a foster parent for a child in the custody of Division of Family Services. Becoming a foster parent is only an option if the child is currently in the custody of DFS. When relatives have custody of a child, they may choose not to become foster parents, but they may seek financial support through Temporary Assistance for Needy Families (TANF). Application may be made at any State Service Center and Medicaid office (see Resources).

In Delaware, foster parents

- can be single, married, divorced or widowed
- can rent or own their home
- must be between the ages of 21 and 65 years of age
- participate in 27 hours of pre-service training
- pass a criminal history check
- can be of any race, religion or sexual orientation
- must pass home, health and safety studies
- must be economically stable
- must provide references

This chapter discusses the ways in which you can seek to be a foster parent for your related child in Division of Family Services' custody. This section does not cover everything you need to know about foster care. For further information, please contact the Division of Family Services at (302) 451-2800 or 1-800-464-4357. You may also find information on the Division's web site at www.kids.delaware.gov.

You can also contact the Community Legal Aid Society in New Castle County at (302) 575-0660 or 1-800-292-7980; Kent County at (302) 674-8400 or 1-800-537-8383; and Sussex County at (302) 856-0038 or 1-800-462-7070.

Becoming a Foster Parent

1. How do I become a foster parent?

Contact the Division of Family Services at of the number above. You can also find a number of provide agencies on DFS' website.

2. What are the advantages/disadvantages of foster care over guardianship or adoption?

A foster parent cares for the child until a permanent placement can be made. The foster parent, however, has no legal parental rights. The Department of Services for Children, Youth and Their Families is the legal custodian and has authority for decisions regarding most medical care, except in emergency situations and some school services. In an adoption or a guardianship, you would be the legal guardian.

The Birth Parents' Interests

3. What if the birth parents want the child back from foster care?

Under most circumstances, the Division of Family Services is required to provide reunification services (bringing parent and child back together) to the parents and child for a period of time. The parents are given a chance to repair the situation that caused the child to enter foster care. The Court reviews the parents' progress and determines whether the child should remain in foster care because of the situation at home. The Court can also order a change in goal from reunification to adoption, guardianship, or "Another Planned Permanent Living Arrangement (APPLA)" if the parents are unable to provide a safe home for the child.

Financial Support

4. What financial support and services are available?

The Division of Family Services provides a Medicaid card, supportive services such as day care and respite to foster parents only as needed and a non-taxable stipend to care for each child placed in their home. The stipend is to assist them in the care of the child. The range of the stipend can be anywhere from \$13.04 to \$55.00 per day for each child, based on the age of the child, his/her needs, the foster parent's skills, training and level of service they agree to provide. Relative caregivers who are not foster parents (see Question 1) are not eligible to receive this stipend.

Foster parents to children with special needs may be eligible for financial support to help them obtain permanent guardianship.

For other financial assistance and non-financial supports and information, caregivers can contact the Delaware Help Line **(1-800-464-4357)**.

7

ADOPTION

For Information On:

Adoption petition
Adoption subsidies
Birth parents
Child's best interest (Glossary)
Delaware Code
Department of Services for Children,
9 Youth & their Families (Resources)
Fee
Legal parent
Licensed agency
Non-relative
Permanent
Petition for the termination of
8, 9 parental rights
Relative
Right to inherit
Social study (Glossary)
Special needs children
Temporary Assistance for
Needy Families (TANF)
Terminate Parental Rights

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Introduction

If you believe that a child's well-being is best served by staying with you permanently, you may want to consider adoption. The adoption process is a long one. There must be grounds to terminate parental rights, and the termination of parental rights must appear to be in the child's best interest. This chapter discusses the advantages and disadvantages of adoption, as well as the legal processes.

This section does not cover everything you need to know about adoption. For further information, please contact the Department of Services for Children, Youth and Their Families at **(302) 633-2657** or The Delaware Help line at **1-800-464-4357**. You will find information on the Division's web site at <http://www.state.de.us/kids/adoption.html>.

You can also contact the Community Legal Aid Society in New Castle County at **(302) 575-0660** or **1-800-292-7980**; Kent County at **(302) 674-8400** or **1-800-537-8383**; and Sussex County at **(302) 856-0038** or **1-800-462-7070**.

More information on the termination of parental rights and adoption can be found in the Delaware Code Annotated Title 13 Chapters 9 and 11. You can access Delaware laws on the Internet at <http://www.delcode.state.de.us/>.

Who Can Adopt

1. What are the advantages of adoption?

The advantages of adoption are that adoption is permanent and you become the legal parent of the child. You have all the rights and responsibilities of the parent. The adoptive child is considered the child of the adopting parent, entitled to the same rights and privileges and subject to the same duties and obligations as if she had been born to the adopting parents. The adopted child gets the right to inherit from its adoptive parents, but not from the birth parents.

2. What are the disadvantages of adoption?

The disadvantage is that adoption is not an easy process or quick solution. The Court understands and gives much thought to this important action. Even if the birth parent consents to terminate his or her rights, it is still a long process. Also, both birth parents must terminate their rights for an adoption to take place, unless it is a stepparent adoption. Children over the age of 14 must give their written consent to the adoption, and it must be submitted to Family Court with the adoption petition.

3. Can a relative or non-relative adopt?

Yes, a relative or non-relative can adopt.

The Adoption Process

4. What is the process for a relative to adopt?

A petition to terminate parental rights is filed in Family Court. Only a parent, blood relative, licensed agency, the Department of Services for Children, Youth and their Families or a guardian or permanent guardian can actually file a petition to terminate parental rights. A petition to adopt can be filed by an unmarried person, a husband and wife who are living together or a divorced person being a resident of Delaware at the time a petition is filed or with whom a child has been placed. Such person must be at least 21 years old. A relative, parent or guardian who plans to adopt must have had the child in the household continuously for at least one year, and there must be little chance that the birth parent will be able to take their parental responsibility in the near future.

5. What is the process for a non-relative to adopt?

For a non-relative to adopt, he or she must go through the Department of Services for Children, Youth, and Their Families or a licensed agency to terminate parental rights, and then must file an adoption petition. In effect, the agency will be granted parental rights and then will transfer those rights to the prospective adoptive parent through the adoption petition.

Termination of Parental Rights

6. What is the fee to file for termination of parental rights?

At the time of the publication of Delaware's Legal Handbook for Grandparents & Other Relatives Raising Children, the filing fees for Family Court were \$90 for any custody, \$85 for any guardianship, \$85 for any adoption petition, etc.

7. How do I file to terminate parental rights?

A petition for the termination of parental rights may be filed by a parent of a child, a blood relative, the Department of Services for Children, Youth and Their Families, or a licensed agency or a guardian or permanent guardian.

The petition must contain:

- Name and place of residence of the petitioner;
- Name, sex, date of birth and place of birth of the child;

Termination of Parental Rights (cont.)

- Relationship of the petitioner to the child or that no such relationship exists;
- Name and address of mother and father or presumed father, or affidavit that mother does not know or is unwilling to disclose the name of the biological father or his whereabouts;
- Name and address of the agency or individual that holds parental rights or custody, and information regarding who is caring for the child;
- Grounds for termination of parental rights (including, but not limited to abandonment, incompetence, commission of a serious crime, failure to plan for child's physical needs, etc. (see Delaware Code, Title 13, Chapter 11, §1103) (<http://www.delcode.state.de.us/>)).
- Name and address of the person who wants to adopt;
- If parents' whereabouts are unknown, detailed information concerning efforts made to locate parents;
- Efforts made to place the child with a relative, if a non- relative wishes to adopt and any other placement efforts made;
- A statement that birth parents have been advised of their rights to file an affidavit regarding contact by the child when the child reaches 21 years old. If the birth parents agrees to terminate or end his or her rights, a written, signed consent from the parents is attached to the petition.

8. What happens once the termination of parental rights petition is filed?

Upon filing of the termination of parental rights petition, the Court will order a social study and report on the petition to be filed in Court within four months. The Court will schedule a date for the hearing after the report is filed. All parties will be notified of the hearing date.

9. How does the Court come to the decision to terminate parental rights?

The Court will grant the petition for termination of rights after a hearing if it decides based on the evidence that one or more grounds for termination have been met and it is in the best interest of the child (see Glossary). The Court decides that those parental rights should be transferred to some other person or persons or the Department of Services for Children, Youth, and Their Families or a licensed agency, whichever is best qualified. The Court may also grant the termination of parental rights if the parents provide written consent.

10. What if the birth parent(s) want(s) the child back after parental rights have been terminated?

Once parental rights are terminated without their consent, the parent has 30 days in which to appeal the decision in state Supreme Court. Only under very unusual circumstances can a parent take action for return of the child after the appeal period. If a parent executed a consent to terminate, that parent can only revoke that consent within 14 days of signing the consent or upon finding that the consent was obtained through fraud or duress.

Financial Support

11. Are there financial support and services available to help with day-to-day expenses?

For special needs children and for families that qualify, adoption subsidies may be available for those adopting a child out of the foster care system. Also, Temporary Assistance for Needy Families (TANF) benefits may be available for the family.



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Division of Services for Aging and Adults with Physical Disabilities web site:

<http://dhss.delaware.gov/dhss/dsaapd/index.html>

Introduction

Caregivers who do not have custody or guardianship of the related children living with them can authorize medical treatment and make certain educational decisions with the appropriate affidavits. To approve medical treatment, the caregiver must complete and have notarized a Relative Caregivers' Medical Authorization Affidavit. To make educational decisions, the caregiver must complete and have notarized a Relative Caregivers' School Authorization Affidavit (see Forms).

If you know the parents' whereabouts, you must have them sign the Relative Caregivers' Medical Authorization Affidavit and the Relative Caregivers' School Authorization Affidavit. A parent, custodian, or guardian may sign the affidavit in those situations where the parents are unable or unavailable to perform their parental responsibilities for a certain period of time. For example, they may not be available to approve medical care or register the child for school if the parent, custodian, or guardian is on military assignment, in jail, or going to be away from home for a prolonged period of time.

Relative Caregivers' School Authorization Affidavit

1. How can I register my grandchild, niece, nephew or cousin for school if I do not have custody or guardianship?

You make education decisions for a child in your care for school his or her by completing the Relative Caregivers' School Authorization Affidavit. You must be related to the child and caring for him or her in your home.

2. What information does the Relative Caregivers' School Authorization Affidavit require?

The Relative Caregivers' School Authorization Affidavit asks for information about you, the child, and why you are raising the child. You also must show that you are a relative, that you are providing care for the child, and that you have the child's parent's consent, or that you have tried unsuccessfully to reach the child's parents to inform them of your decision to take on the child's education decisions.

3. What responsibilities do I have if I submit the Relative Caregivers' School Authorization Affidavit?

By signing the affidavit you agree to be responsible for education decisions for the child, including enrolling the student in school; being the legal contact for the school regarding, but not limited to, truancy and discipline; making school-based decisions, including, but not limited to, those regarding special education; and giving medical approval for healthcare administered by the school.

4. Under what circumstances should a parent, custodian, or guardian sign the Relative Caregivers' School Authorization Affidavit and make me responsible for the child's education decisions?

A parent, custodian, or guardian could sign the affidavit if he or she will not be able or available to make education decisions. Some examples of when this arrangement would be appropriate are if the responsible person is going to be away on a military mission, going to jail, or entering a drug treatment program.

5. Where can I get more information and a copy of the Relative Caregiver's School Authorization Affidavit?

You can find information about Relative Caregiver's School Authorization Form on the Division of Services for Aging and Adults with Physical Disabilities web site, <http://dhss.delaware.gov/dhss/dsaapd/contact.html>, or call the Division at **1-800-223-9074**. The affidavits can be obtained at your local school district office. A sample is included in the Forms section of this handbook.

6. How long can a Relative Caregivers' School Authorization Affidavit be in effect?

Depending on when you submit the affidavit, it will generally be in effect for up to two years. It would no longer be in effect if the parent, or prior guardian resumes care of the child or the current caregiver becomes the legal guardian of the child through the Family Court.

Relative Caregivers' Medical Authorization Affidavit

7. What do I have to do to give approval for medical treatment for the child in my care?

If you do not have custody or guardianship and are raising a relative's child, you would complete a Relative Caregivers' Medical Authorization Affidavit in order to approve medical treatment.

8. Can a parent, custodian, or guardian sign the Relative Caregivers' Medical Authorization Affidavit and make me responsible for making medical decisions for the child?

Just as with the Relative Caregivers' School Authorization Affidavit, a parent, custodian, or guardian who will be away for a certain length of time can sign the medical affidavit, giving you permission to make medical decisions. If the parent, custodian or guardian is not available, you must show that you have tried unsuccessfully to reach them.

9. Where can I get more information and a copy of the Relative Caregivers' Medical Authorization Affidavit?

A copy of the Caregivers' Medical Authorization Affidavit is included in the Forms section of this handbook. You also can pick up copies at service sites of the Division of Public Health, the Division of Social Services, and the Division of State Service Centers (see Resources). You can find more information on the Division of Services for Aging and Adults with Physical Disabilities web site, <http://dhss.delaware.gov/dhss/dsaapd/publica.html>, or call the Division at **1-800-223-9074**.

10. How long can the Relative Caregivers' Medical Authorization Affidavit be in effect?

The Medical Authorization Affidavit is in effect for one year, after which it must be renewed.

9

SPECIAL EDUCATION

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Department of Education web site:
<http://www.doe.k12.de.us/domain/78>

Introduction

If you become concerned about the educational needs of the child in your care, especially if the child is struggling in school or the child has a disability that keeps him or her from progressing in his or her learning, there are laws that may help the child receive appropriate educational supports.

This chapter will explain what is available in the school system to help your child with learning and/or behavioral problems. It will also give information about your role in your child's educational management and what to do if you feel your child's rights are not being addressed adequately.

Overview

1. What is special education?

Special education is “specially designed educational instruction that confers a meaningful benefit on a child with a disability that is gauged to the child with a disability's potential.’ That means children with disabilities are entitled to services and supports that can help meet their individual education needs. Special education includes accommodations, therapy, and other services for children with disabilities. These services are provided at no cost to the parents (or caregivers) for children age three to twenty-one. Special education is not just for children with intellectual disabilities. Special education services may be provided to children with physical limitations, emotional or behavioral problems, attention deficit disorders (ADD/ADHD), dyslexia, or other learning disabilities that affect their education.

2. What laws govern special education?

There are two federal laws that require schools to accommodate and provide special education services to eligible children with disabilities. These are the Individuals with Disabilities Education Act (IDEA of 2004) and Section 504 of the Rehabilitation Act (of 1973) which is generally called "Section 504." These are explained in the sections that follow.

3. Where can a caregiver get some help with dealing with special education needs outside of the education system?

Caregivers statewide can call the Parent Information Center (PIC) toll-free at **1-888-547-4412**. Visit their website at www.picofdel.org. PIC is a statewide non-profit organization serving children and youth with special needs and their families.

The Association for the Rights of Citizens with Mental Retardation (ARC/DE) has a parent mentor program to help caregivers navigate the special education system. For more information contact ARC/DE in New Castle County at **(302) 996-9400** and

Kent County at (302) 736-6140. Visit their website at www.thearcdelaware.org.

Eligibility

4. The child in my care does well in school but still has problems that keep her from making progress. Could she be eligible for special education services?

A child who has the ability to do well academically may still be eligible for special education services. For example, if a child is very intelligent, but his or her behavior problems or a learning disability prevent him or her from making progress, the child may be eligible for special education services. Or, if a child is physically disabled, he or she may need special equipment or health services in order to make academic progress; therefore, the child may be eligible for special education services.

5. If a child is eligible for special education services, is it required that he or she be placed in special education classrooms?

Being eligible for special education does not necessarily mean that a child will be placed in a special classroom. Special education refers to services that must be provided in the most integrated setting appropriate for the child, which is also called the least restrictive environment. Many children who qualify for special education spend their days in regular classrooms and just receive help from special education teachers. Some children attend special education classrooms for some or all of the day. Some children attend special schools that only serve special education students. Such accommodations may include accommodations like special seating, a behavior support plan, or breaks to help the student. The accommodations will be based on the individual and unique educational needs of the child.

The types of accommodations and placement will depend on the severity of the disability and the degree to which it interferes with a child's ability to learn.

6. Who can make special education decisions for a child?

A team of individuals, including the parents (or guardians or caregivers), teachers, and other qualified professionals, make decisions together about a child who receives special education services. Relative caregivers may help make decisions in place of the parents if:

- The Court has appointed the relative to be the legal guardian for the child; or
- The relative caregiver has submitted a Relative Caregiver's School Authorization Affidavit if child lives with that relative and that relative is "acting in the place of a *parent*."
- The relative caregiver has been designated by the Department of Education as the "Educational Surrogate Parent" for special education.

Individuals with Disabilities **in Education Act – IDEA**

7. What is the Individuals with Disabilities Education Act (IDEA) and what does it provide?

IDEA is a federal law that establishes the provision for special education and related aids and services to eligible children ages 3-21 with disabilities. IDEA outlines the child's rights, the school's responsibilities, the requirements for an individualized education plan, information about related services, a complaint process for families to use if they feel their child is not getting an appropriate education, the requirement that children be educated in the "least restrictive environment," and provisions for disciplining children with disabilities.

8. How does the IDEA define a child with a disability?

Under IDEA, a "child with a disability" is one who is evaluated as having a qualifying disability, such as: mental retardation, a hearing impairment, a speech/language impairment, a visual impairment, emotional disability, an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, because of his or her disability, needs special education and related services.

Individuals with Disabilities in Education Act – IDEA (cont.)

9. If I am a relative caregiver, how do I get special education services for the child in my care under IDEA?

If you think the child is eligible for special education services under IDEA, you should write a letter to the child's school and ask for an evaluation for special education services in all areas of academic functioning. If the child struggles with behavior, you should also include a request for evaluations in social and emotional functioning. Make sure you sign and date the letter. Keep a photocopy of the letter and any other correspondence with the school. If you have a diagnosis from the child's doctor, submit that with the request. It is reasonable to request a response to your letter within 10 school days. If you do not receive a response from the school within that time, it is advisable to follow up with another letter or a phone call. The school has 45 school days or 90 calendar day (whichever is sooner) to evaluate the child for special education services.

10. What should I do if the school refuses to evaluate the child?

Under the IDEA and 504, the district has a duty to identify, locate, and evaluate all children who have disabilities, which require special education and related services. If the school personnel do not see any sign that the child's disability is interfering with learning, they may refuse to evaluate the child for special education services. If the school refuses to evaluate the child, a description of the alternatives considered and why school rejected them, a description of the information or data used to support its decision, an explanation of parents' rights to appeal, and sources of support for the parents in understanding the child's rights under the IDEA must be provided to the parent in a Letter of Notice from the school. The Letter of Notice must include a Full Explanation of all the Procedural Safeguards, which describes the appeal process.

11. If I disagree with the school's decision not to evaluate the child, what can I do?

The parent/caregiver has multiple options if the school does not evaluate the child. The parent/caregiver can request a resolution meeting or mediation as a first step. The parent/caregiver may also appeal the decision through due process or through an administrative complaint. To appeal the school's decision not to evaluate the child, the family may ask for an impartial due process hearing (see questions 28 & 29). At that hearing, the family would be given the opportunity to present testimony and evidence that their child has a disability and requires special education services. The district would present evidence and testimony supporting their decision not to evaluate. The parent/caregiver has up to **two years**

to file due process against the school for its failure to evaluate or implement the IEP.

In addition to filing for a due process hearing, a family may file an administrative complaint with the Delaware Department of Education if they are seeking an evaluation related to the IDEA. The parent/caregiver has up to **one year** to file an administrative complaint against the school for its failure to evaluate or implement the IEP. Or they may file the administrative complaint with the United States Department of Education Office of Civil Rights if they are seeking an evaluation related to either the IDEA or Section 504. Administrative complaints trigger an investigation by the responsible agency, which determines if the child's rights have been violated without conducting a hearing. The agency would contact the parents, the school, and any other parties with relevant information during its investigation. The parent/caregiver has up to **180 days** to file due process against the school for its failure to evaluate or implement the special education plan (IEP or 504 Plan).

12. The relative child in my care was previously evaluated by her doctor. Does she need to be re-evaluated?

If the child has previously been privately assessed, that evaluation shall be considered by the school. It may be helpful to make copies of these assessments available to the school. The school may decide to have the child re-evaluated in some cases, and such evaluations would be at the school district's expense. The parent/caregiver may also request in writing an independent evaluation from the school if it is appropriate.

13. How often should schools re-evaluate children who are in special education programs?

Generally, the school will automatically reassess children who are in special education every three years. If the child is already receiving special education services but a new problem has arisen, you may request additional evaluations or simply ask for an IEP meeting at any time to discuss your concerns with the team and to make changes to the child's education plan.

14. What is an Individualized Education Program (IEP)?

The school must develop an Individualized Education Program (IEP) for any child who qualifies for special education under IDEA. The IEP is a written document that contains the annual goals for the child, present levels of performance, a statement of what special educational services will be provided and in what setting, descriptions of what "related services" and modifications or support will be provided, and in what extracurricular activities the child will participate.

Since the law requires children with disabilities to be educated with non-disabled children to the maximum extent possible, the IEP will also say how much of the child's education will be with non-disabled children.

Individuals with Disabilities in Education Act – IDEA (cont.)

15. Who develops the Individualized Education Plan (IEP)?

The IEP team develops the IEP. The IEP team must include the child's parent (or a person acting in the place of a parent, such as a legal guardian, grandparent or relative caregiver with whom the child lives), a special education teacher, a regular education teacher, a school administrator, and any person with relevant information about the child. The child may also be included, and he or she must be invited to the IEP meetings beginning at age 14. You may also request that other people attend the meeting as appropriate — such as a school nurse, a counselor, or an attorney or advocate for the child. These additional people may work for the school, but they can also be people who do not work for the school.

16. Where can I find help to enable me to participate in the child's IEP meetings?

If you need accommodations to participate in an IEP meeting (e.g. a language interpreter or special transportation), the school must provide those accommodations upon written request. For more information, you can also visit <http://www.doe.k12.de.us/Page/2335>.

17. How often should an IEP be updated?

An IEP must be updated at least once a year. However, if you feel the child's IEP is not being implemented or is not working, you have the right to request an additional IEP meeting to adjust the IEP at any time. Make sure you put your request in writing and keep a dated copy for your records. You have the right to written notice at least 10 days prior to any IEP meeting, but you may choose to waive that right in some circumstances when you feel an immediate meeting is appropriate.

18. I trust my child's Individualized Education Plan team. Must everything be in writing?

You should be aware that the IEP is a legally enforceable document. If you want a service for the child in your care and the team agrees it is appropriate, make sure it gets written in the IEP. Do **NOT** accept verbal assurances that services will be provided. Not all of the child's teachers will be at the meeting, and they cannot be expected to know what was promised for the child unless it is written in the IEP. It is also helpful to have all accommodations and related services in writing so that if the child changes grades or schools, the information will follow the child.

19. What if the child's disability is behavior related?

If the child's disability involves difficult or disruptive behavior that keeps her or others from learning, the IEP should include strategies and supports to address that behavior. The behavior plan should be developed by your IEP team with your input. First, the IEP team (or an expert) will conduct a functional behavioral assessment (FBA). A functional behavioral assessment gathers information to help determine what behaviors are occurring, when, where and how often. Positive strategies and supports can then be developed by the IEP team to address these behaviors and help the child to develop more appropriate behaviors.

The IEP should include "positive behavioral interventions" — a list of steps school personnel will take and caregivers can reinforce at home to help shape the child's behavior in a more positive direction by helping the child to replace negative behaviors with positive behaviors and by rewarding the child for positive behaviors. This plan should be reviewed regularly for effectiveness.

The behavior plan should not amount to simply a list of goals for the child to master or behavioral guidelines she must follow. It should not permit the school to send a child home routinely or authorize the school to remove the child from the classroom for long periods of time. You should ask the IEP team to create a one page summary sheet of the most important points in this behavior plan. Make sure the summary is copied and distributed to all school personnel, so that everyone who comes in contact with the child will know what the plan is.

Disagreements/Complains

20. What can I do if I disagree with a decision the school makes about the relative child in my care and special education services, or if I have a complaint?

If you disagree with a decision the school has made about special education services for the relative child in your care, have a complaint about those services, or feel the child's rights under the Individuals with Disabilities Education Act (IDEA) have been violated, the first thing you should do is talk with your child's teacher or school administrator. If you still disagree, call your district special education supervisor or director. When you have a concern, this informal conversation often solves the problem and helps to maintain open communication.

If you believe that you need to move to a more formal way to solve problems, there are a number of ways available under IDEA: Mediation, impartial due process and the state complaint procedures.

Mediation

21. What is mediation?

Mediation is a process that uses an impartial, trained individual to help the parties work out solutions acceptable to both sides in an informed, non-argumentative manner. Mediation is offered anytime that a due process hearing is requested. Mediation is offered at no cost, but both parents and the school district must agree to try mediation before it can be attempted.

22. What are some of the rules regarding mediation?

- It is voluntary: You cannot be forced to participate.
- It cannot be used to deny or delay a caregiver's right to a due process hearing.
- It is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- The State is responsible for the cost of the mediation process.
- Each session will be scheduled and held at a location that is convenient to the parties to the dispute.
- Discussions are confidential and may not be used as evidence in any later due process hearings or civil proceedings.

23. What are some of the responsibilities of the school district?

The school district must have a representative with authority to make decisions and commit resources to agreed-upon services present at mediation. The school district must also inform the caregiver of any free or low-cost legal and other relevant services that are available.

24. Is a record of the agreement reached through mediation placed in the child's school file?

Yes. The written mediation agreement becomes part of the child's educational record.

25. What happens if I do not want to use mediation?

If mediation has been explained to you and you refuse it, you may proceed with a due process hearing or file a complaint with the Department of Education.

Impartial Due Process

26. What is an impartial due process hearing?

The purpose of a due process hearing is to address the identification, evaluation and educational placement of a child or the provision of a free, appropriate education. The parent/caregiver has two years to file for due process. In Delaware, an impartial due process hearing is before a three-member hearing panel. An attorney may represent you. You may present evidence of your own and confront and cross-examine witnesses testifying against you. You have the right to require witnesses to be present.

You will also find it helpful to refer to the "Notice of Procedural Safeguards," which is on the Department of Education's web site at <http://www.doe.k12.de.us/Page/639>.

27. What are some of the rules regarding an impartial due process hearing?

- A parent, district, or State agency may request a hearing concerning any right or entitlement under Special Education Services.
- A hearing is started by sending a **written request** to the Secretary of Education. (Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware, 19901). The phone number for the Secretary's office is **(302) 739-4601**. You must also send a copy of the Due Process Complaint to the school.
- When the Secretary of Education receives a request for a hearing, he or she will appoint a hearing panel consisting of an attorney, an educator knowledgeable in special education, and one person who has shown interest in the education of the disabled from a Registry of Impartial Hearing Officers maintained by the Department of Education.
- The district or State agency will inform the caregiver of any free or low-cost legal and other relevant services available whenever the caregiver requests the information.

Other rules for a due process hearing may be found in your "Notice of Procedural Safeguards," which you will receive from the school district

Impartial Due Process (cont.)

28. What information has to be included when writing to the Department of Education to request an impartial due process hearing?

- The name of the child.
- The address of the residence of the child.
- The name of the school the child is attending.
- A description of the problem of the child and facts relating to the problem.
- A proposed resolution to the problem to the extent known and available to you.

29. What are the rights of caregivers at a hearing?

The caregiver has the right to:

- Have a fair and impartial hearing.
- Be represented by an attorney or accompanied by individuals who have special knowledge or training about children with disabilities.
- Present evidence and cross-examine witnesses.
- Require witnesses to be present.
- Be told about evaluations and resulting recommendations that have been completed at least five business days before the hearing.
- Receive a record and of the hearing and decision from the hearing officer or panel.
- Have your child present at the hearing.
- Have the hearing open or closed to the public.
- Have the hearing conducted at a time and place reasonably convenient to you and your child.

30. How long does it take to have a disagreement settled?

As a general rule, the Due Process hearing will be held and decision issued no later than 45 days after:

- The expiration of the 30 day resolution period; or
- Any adjusted time periods.

31. What happens once the due process hearing panel reaches a final decision?

When the impartial due process hearing panel reaches a final decision, the chairperson records the vote of each panelist. The chairperson will forward a copy of its final written decision to the parties, including the Department of Education.

32. What can I do if I disagree with the decision of the hearing panel?

Any party that disagrees with the decision of the hearing panel may file a civil action in the Family Court. You must file the complaint within 30 days of the date of the decision.

The Court will receive the records of the proceedings, hear additional evidence at the request of a party, and will make a decision.

State Complaint Procedure

33. How do I complain about special education services?

A caregiver can submit a written complaint regarding special education to the Director of the Exceptional Children Resources, Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901. The complaint must be filed within one year of the alleged violation (unless the violation is a continuing one or the complaining party is seeking compensatory services). If the complaint is the subject of a due process hearing, the State must wait until the conclusion of that hearing to hear the complaint. The complaint procedure can be followed with other portions of the complaint that are not being addressed at the due process hearing.

Complaints must be in writing and include:

- A statement that the school has violation the IDEA or Department of Education regulations;
- The specific facts on which the state is based;
- The signature and contact information for the complainant;
- If alleging violations regarding a specific child:
 - Child's name and address;
 - The name of the school the child is attending;
 - A description of the nature of the problem of the child;
 - A proposed resolution of the problem to the extent known and available to the party filing the complaint; and
 - A description of the attempts made to resolve the issue prior to filing the complaint.

State Complaint Procedure (cont.)

34. What are the State's responsibilities regarding complaints?

The State must:

- Conduct an independent investigation, including on-site investigation, if it determines that one is necessary.
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- Provide the school with the opportunity to respond to the complaint including the chance to make a proposal to resolve the complaint and an opportunity for the school and the complainant to agree to engage in mediation.
- Review all relevant information and make an independent decision as to whether the public agency is violation a requirement of IDEA or Department of Education regulation.
- Issue a written decision to the complainant that addresses each allegation in the complaint and includes finding of fact and conclusions and the reasons for its final decision.

The Department must complete its investigation and issue its written decision within 60 days. You may use either the due process hearing system or the State Complaint procedure to resolve disputes over your child's education.

The Rehabilitation Act, Section 504

35. What is the Rehabilitation Act (Section 504)?

The Rehabilitation Act, "Section 504," is a federal civil rights law that prohibits schools from receiving federal funds if they are found to discriminate against a child based on his or her disability. Under this law, every child, regardless of disability, is entitled to a "free, appropriate public education." Every child who is entitled to services under IDEA is also protected by Section 504. However, Section 504 covers all children with disabilities, not just those who qualify for special education under the IDEA.

The Rehabilitation Act, Section 504 (cont.)

36. What is a Section 504 Plan?

The law requires school districts to accommodate the student's disability so that his needs are met as adequately as the needs of non-disabled students. A 504 Plan is a list of accommodations and services that will be provided to a child in order to give him or her the opportunity to receive a "free, appropriate public education." A child who has a disability within the meaning of Section 504 is entitled to receive any special education services the team decides are necessary to achieve this aim. The team consists of people who are knowledgeable about the child, including parents, teachers, and others.

37. The relative child in my care does not qualify for services under the IDEA.

Can she be eligible for Section 504 services?

If the child does not qualify for special education services under the IDEA, she may still qualify for services under Section 504.

38. Who is entitled to receive services under Section 504?

An individual may be entitled to services if he or she meets the definition of an individual with a disability under Section 504. 504 Plans are available to any student who has a physical or mental impairment that greatly limits a major life activity (such as learning, walking, breathing, talking, etc.) or has a record of such an impairment or is considered as having such an impairment.

If a child's disability impacts his or her ability to learn, and accommodations under Section 504 are not sufficient to provide him or her with a free, appropriate public education, he or she will may meet the eligibility criteria for an IEP.

39. How do I get a 504 Plan for the relative child in my care?

If you think the child should receive accommodations under Section 504, you may make a written request asking the school to evaluate your child for eligibility for accommodations under Section 504. Keep a photocopy of all correspondence with the school. If you have a copy of the child's diagnosis of a disability from the doctor or counselor, submit that to the school as well. If the school refuses to evaluate the child, you can appeal. If the school does the evaluation and finds that the child is not disabled and you disagree, you can appeal that decision too. You can also contact the Federal Office of Civil Rights.

For More Information

40. Where can I get written information about special education, mediation, and the impartial due hearing process?

You can request a copy of Notice of Procedural Safeguards, a manual describing your due process rights at <http://www.doe.k12.de.us/Page/639>. You can also check the Administrative Manual for Special Education Services and the Resource Guide to the Implementation of Section 504 in Delaware Public Schools. The Delaware Department of

Education (DOE) publishes these documents. You can call DOE at **(302) 739-5471** or view them on the DOE web site, <http://www.doe.k12.de.us/Page/2297>.

The Self-Help and Family Resource Centers in your county courthouse have detailed listings of the attorneys in Delaware. The lists include their specialties and other useful information. Attorneys who work on special education issues will be listed.

10 CHILD SUPPORT

For Information On:

See Question #:

Customer Service Unit	5, 7
Department of Justice (Resources)	2
Deputies Attorney General	2
Division of Child Support Services (Resources)	1, 2, 4, 7, 8
Family Court	2, 3
Federal Office of Child Support Enforcement	6
Good Cause	8
Guardian ad item (Glossary)	3
Legal duty	1
Medicaid	1, 9
Non-custodial parent	4
Rules of Support	5
Social Security	1
Supplemental Security Income	9
Temporary Assistance For Needy Families (TANF)	1, 9
Uniform Interstate Family Support Act	6
Veterans Benefits	1
Wage Attachment	4

Introduction

If you are caring for a relative's child, you may be entitled to financial support from the child's parents. If the child you are caring for becomes a parent, he or she may be eligible for support from the baby's other parent. This chapter will inform you about Delaware's child support enforcement services.

1. What is "child support"?

Every parent has a legal duty to support their child (children). Any caregiver has the right to seek support from the child's parents if support is not voluntarily given. If a parent is unable to pay due to disability, the Court may suspend the order or enter only a minimal order. Investigate Social Security or Veterans' Benefits as possible resources if it is appropriate for each child.

For information on Social Security benefits, call **1-800-772-1213** or if you are in New Castle County—**(302) 323-0304**; Kent County—**(302) 674-5162**; or Sussex County—**(302) 856-9620**. For information on Veterans' Benefits, call the Delaware Commission of Veterans Affairs in Dover at **(302) 739- 2792** or **1-800-344-9900**.

If you receive public assistance (Temporary Assistance for Needy Families - TANF) or Medicaid benefits for the child, your case will automatically be referred to the Delaware Division of Child Support Services (DCSS). If you do not receive public assistance, you may apply for the Division's assistance by filing an application directly with DCSS.

The Division of Child Support Services' programs include:

- Parent Locator
- Paternity Establishment
- Order Establishment, Modification and Enforcement
- Accounting
- Interception of Tax Refunds
- Communicating with Sister Support Agencies in Other States

In some cases, DCSS performs only accounting services, tracking incoming payments and sending them on to the custodian.

To obtain these services, there is a \$30.00 application fee. The fee can be waived under certain conditions. If you are a custodial parent who has never received TANF assistance and you want DCSS assistance, there is a \$25.00 annual processing fee.

2. What are the advantages of seeking support through DCSS?

A team of Deputies Attorney General (DAG) from the Department of Justice provides guidance to the Division of Child Support Services (DCSS) in the processing of child support cases. A DAG will also be present at any Family Court hearings at the commissioner's (see Glossary) or judge's level if you are a DCSS client.

You also have the option to process your own case through the Family Court or to retain a private attorney. Some caregivers retain the services of a private attorney while also using the Division's services. This is permissible as long as DCSS is informed about any actions taken by your private attorney to avoid any duplication of effort.

3. Can a minor who has a child seek support for his or her own child?

Although a minor may seek support, Family Court requires an adult to be involved in the process as well to protect the rights of the minor. The court can appoint a "Child Attorney" (see Glossary) if no adult comes forward to represent the minor.

Only the natural or adoptive parents of a child can be held responsible for child support.

Minor parents have the right to seek support. However, orders against minors are generally minimal amounts because of the limited earning capacity of most minors.

4. How is child support collected?

Most child support payments are collected through wage attachment. The Non-Custodial Parent's (NCP) employer is ordered to deduct the ordered amount from the NCP's wages and send it to the Division of Child Support Services (DCSS). DCSS then sends the appropriate payment to the caregiver.

Parents who fail to pay as ordered may be subject to a variety of enforcement solutions such as:

- Interception of State/Federal tax refunds
- Denial/Suspension of driver's, professional, business or recreational licenses
- Liens on personal property
- Passport denial
- Incarceration
- Fines

Some enforcement solutions may be applied automatically as cases meet established eligibility criteria.

5. Can a child support order be changed?

Orders can be recalculated following significant changes in the circumstances of either party. If you are a client of the Division of Support Services, you can request a modification of an existing order by contacting the Division of Child Support Services' Customer Service Unit (see Resources) for guidance. You may also file a petition to modify on your own or through the assistance of a private attorney. Outcomes of modifications are not predictable; an order may increase, decrease or remain the same.

Family Court's "Rules of Support," signed by every party responsible for the child, requires parties to keep each other informed of substantial changes in financial circumstances and to exchange financial information every 12 months from the date the support order is entered.

6. What if the birth parent lives in another state?

The fact that a parent lives outside of Delaware should not keep you from seeking support. The federal Office of Child Support Services oversees the child support programs in every state. This federal connection supports the processing of cases among all of the states through the Uniform Interstate Family Support Act. States use standardized forms and observe federally established time frames for handling interstate matters. A number of other countries also cooperate in this same manner.

7. How can I get additional information on child support issues?

The Division of Child Support Services operates an Automated Assistance Line, through which you can connect to the Customer Service Unit during normal working hours.

The numbers are:

New Castle County	(302) 577-7171
Kent County	(302) 739-8299
Sussex County	(302) 856-5386

8. Must the Division of Child Support Services (DCSS) let every parent who is asked to pay child support know where the child and caregiver live?

In some cases, a caregiver child support applicant's address can be kept from the parent who will be paying child support through the Good Cause exception. Some examples of when Good Cause is applicable are when the parent has physically harmed the child in the past, where rape or incest resulted in the conception of the child, and where the mother is considering placing the child for adoption. You will likely need to file a motion for confidential address.

9. Does receiving child support have any effect on other benefits I may be receiving?

It may. If the child support payment is more than the amount the child receives from TANF (Temporary Assistance for Needy Families), the child will no longer receive money from TANF. Medicaid is not affected unless the child support payment is so much that the child no longer meets the maximum income. If the child is receiving Supplemental Security Income, child support is counted towards financial eligibility like any other income.

11

JUVENILE DELINQUENCY

For Information On:

Aftercare (Glossary)
Bail hearing
Bond order
Cash bond (Glossary)
Criminal activity
Department of Services for Children
Youth and Their Families (Resources)
Division of Youth Rehabilitative Services
Justice of the Peace court
Juvenile (Glossary)
Juvenile Justice System
Office of the Attorney General
Office of Defense Services
Preliminary hearings
Probation (Glossary)
Secured bond (Glossary)
Superior Court
Youth Detention Facilities

See Question #:

13, 14, 15, 18
5
6, 7
6, 7
3, 11
9, 13
1, 13, 17
4
3
1
8
1, 10, 11
5
13, 14, 16, 18
6, 7
5
13, 15, 16

Introduction

If you have responsibility for a grandchild and he or she gets into legal trouble, you may find that you need to understand the juvenile justice system. Chapter 11 explains the role of Family Court in the juvenile justice system. This chapter also provides information on what to do if your grandchild is put in jail.

The Juvenile Justice System

1. What is the Juvenile Justice System?

When a person who is less than 18 years of age is accused of violating the criminal law, that person will enter the Juvenile Justice System. There are four parts to the Juvenile Justice System:

- Law enforcement/Department of Justice
- Family Court
- Office of Defense Services
- Division of Youth Rehabilitative Services

2. How many police agencies are in Delaware?

In Delaware, there are several police agencies, each with a particular geographic area of responsibility.

Delaware's largest police agencies are:

The Delaware State Police	(302) 739-5901
The New Castle County Police	(302) 573-2800
The City of Wilmington Police	(302) 654-5151
The City of Newark Police	(302) 366-7111
The City of Dover Police	(302) 736-7111

3. What is the role of a police officer?

The police are responsible for enforcing the law. That means that a police officer will investigate a complaint about criminal activity and arrest a person accused of that activity. When the person arrested is under the age of 18 (a juvenile), that person enters the Juvenile Justice System.

Your Minor Grandchild is Accused of Committing a Crime

4. How soon after the arrest is the juvenile's custodian notified?

Delaware law requires that when a police officer arrests a juvenile, that police officer must immediately notify the juvenile's custodian of the arrest and the reasons for it. If the custodian either refuses to accept the juvenile, cannot be located, or cannot adequately care for the juvenile, the police officer must take the juvenile to Family Court (if it is open) or to a Justice of the Peace court.

5. How does the Family Court handle delinquency cases?

If a child who has committed an act, which, if committed by an adult would be a crime, he or she is usually considered by Family Court to be "delinquent." Family Court deals with cases of a child's delinquency. Initially, the bail hearing and the preliminary hearings are held in Family Court. If the child is accused of committing a very serious offense, for instance, murder, rape, or kidnapping, the child **may** be treated as an adult and the case handled by the Superior Court.

In cases where the child is at least 16 years old, was found guilty of a felony in the past and is accused of another very serious offense, that child may also be treated as an adult and sent to the Superior Court.

The rest of this chapter is based on the child being accused of a delinquent act and treated as a juvenile.

6. What happens to the juvenile once arrested?

After arrest, the child is presented to Family Court (or if it is after hours, a Justice of the Peace Court) so that the Court can set bond. In other cases, the Court may order a parent, custodian, guardian or caregiver to post a cash or secured bond.

7. What are secured and cash bonds?

A secured bond is a designated amount of money or security such as a title to property worth at least as much as the ordered bond amount. A cash only bond is payment of a designated amount of money to the Court.

Both bonds require the signing of a bond order guaranteeing the appearance of the respondent at further court hearings.

8. Who prosecutes juvenile cases?

The Department of Justice prosecutes juvenile cases. The Deputy Attorney General works for the Delaware Department of Justice.

9. What is a plea bargain?

Before the trial actually takes place, the prosecutor and often a social worker employed by the Department of Services for Children, Youth and Their Families (DSCYF) will discuss with the child’s attorney, child and parents, custodian, guardian, or caregiver choices for closing the case without a trial. This process is sometimes called plea-bargaining. Plea bargaining involves the child accepting responsibility for his or her actions, but does not always result in a lesser penalty. It is very important that a defense lawyer help the child in this process.

10. Should I hire an attorney?

You may hire a defense attorney or you may have an attorney appointed. The Court considers the child - not the child’s caretaker- as the client. Because of this, all children are eligible for a lawyer appointed by the Office of Defense Services.

11. What is the job of a public defender?

The Office of Defense Services provides defense lawyers to people accused of criminal or delinquent activity who cannot afford to hire a lawyer. The Office of Defense Services has an office in each county in Delaware.

The Office of Defense Services:	
New Castle County	(302) 577-5200
Kent County	(302) 739-4476
Sussex County	(302) 856-5310

12. Can the juvenile have a trial by jury?

No, the right to a jury trial does not apply in juvenile cases in Family Court.

Detention Centers and Probation

13. What is the Division of Youth Rehabilitative Services?

The Division of Youth Rehabilitative Services (DYRS) is part of the Delaware Department of Services for Children, Youth and Their Families. DYRS operates the youth detention facilities in Delaware. DYRS also operates the probation and aftercare system for juvenile delinquents. For more information, contact DYRS at **(302) 633-2620**.

14. What are probation and aftercare?

Probation is a certain time span when a child must comply with conditions and behaviors prescribed by the Court or by a probation officer. Probation is for a limited time, and a violation of a condition may result in detention.

Aftercare is similar to probation, but follows a period of detention.

15. Where are the youth detention facilities in Delaware?

Ferris School (Wilmington):	(302) 993-3800
New Castle County Detention Center (Wilmington):	(302) 633-3100
Stevenson House (Milford):	(302) 424-8100

16. When can the court send a child to a youth detention facility?

The court may send a child into state custody after arrest but before any trial of delinquency. He or she may be sent to the New Castle County Detention Center or the Stevenson House. If the child is found guilty of the crime for which he or she was arrested, then the court may send the child to a juvenile detention facility, usually the Ferris School, or place him or her on probation. A child placed at the Ferris School will often be required to participate in aftercare when released from the Ferris School.

17. Is it possible for a juvenile to be placed in an out-of-state facility?

Yes, in some cases the Court will order the Division of Youth Rehabilitative Services to place a child in an out-of-state facility when there is no facility in Delaware that offers the services or treatment that child needs.

18. What happens when a child is placed on probation or aftercare?

When a child is placed on probation or aftercare, the parent, custodian, guardian, or caregiver will receive a letter or telephone call from the worker who will be working with the child throughout the period of probation or aftercare.

The child must report to the worker at the place and time arranged and must obey any other conditions ordered by the Court. The child must report any change of address or telephone number within three days, and must have parental, custodial, guardian or caregiver's permission to be away from home longer than 24 hours. The child must also inform the worker if he or she is charged with any criminal or delinquent offense.

12

FUTURE PLANNING FOR YOU AND YOUR GRANDCHILD

For Information On:

See Question #:

Community Legal Aid Society, Inc. (Resources)	5, 10
Custody	1
Financial Affairs	2, 6, 7, 8, 9
Guardian	4, 9
Incompetent	7, 8
Living arrangements	2
Living Wills	3

Introduction

It is important to think about what will happen to the child that you are caring for if you die. Who would you like to take care of the child? How can you make some or all of your resources available for the child's care? It is also important to think about what will happen if you become very sick or disabled. Who will make health care decisions for you and look after your financial affairs? This section describes some legal documents that are useful tools for you to use in planning for your future and the child's future. Another good resource on these issues is the Legal Handbook for Older Delawareans, produced by the Elder Law Section of the Delaware Bar, which is available at www.delawareelderlawhandbook.com.

Last Will and Testament

1. What is the purpose of a Will?

A Will is a document that sets out who will receive your property when you die. It also says who will be the person responsible for winding up your affairs, making sure that your bills are paid, and seeing that your property is distributed properly. It is a good idea for you to name in your Will the person you want to become the child's legal guardian if you die and the child is still under the age of 18.

2. What happens if I name someone in my Will to take over from me as the child's legal guardian after I die?

Naming someone as the guardian for a minor child in your Will does not automatically make that person the child's legal guardian when you die. It does let your family and the Family Court know what your wishes are. The person that you have named in your Will has to file a guardianship petition with the Family Court asking to be named the new guardian. The Family Court will appoint a new guardian after determining what it is in the child's best interest. The Family Court will give significant weight to the wishes expressed in your Will as to who the guardian should be.

3. Who gets my property if I do not have a Will?

If you do not have a Will, state law determines who gets your property. Under the Delaware law that applies if you not have a Will, it is likely that the child in your care will not receive any of your probate property, particularly if all of your children are still living when you dies, or if you have a spouse who survives you. You should name the child in your care as a beneficiary of your Will if you want the child to receive some of your property. If you have a child that you do not want to receive any of your property, you need to execute a Will that excludes that child. Otherwise, he or she may receive property under the Delaware state law.

4. Is it a good idea to include some simple trust provisions in a Will?

You should consult with an attorney in connection with the preparation of your Will if you would like to leave some property to a child under the age of 18. There are good reasons to include some simple trust provisions in your Will or in a separate trust document, particularly if there is a reliable family member who can be responsible for making sure the money or other property is used for the child's benefit. If you have life insurance or any retirement assets, like an Individual Retirement Account or 401(k) Plan that you would like to leave to a minor child, you should get advice from an attorney about the best way to fill out the beneficiary designation forms.

Advance Health Care Directive

5. What is an Advance Health Care Directive?

An Advance Health Care Directive (AHCD) is a document which, in Delaware allows you (a) to name someone else to make health care decisions for you when you cannot make and communicate responsible decision or yourself; (b) to set out your preferences for the treatments you do and do not want used at the very end of your life; and (c) to state if you would like to become an organ donor for transplant and other purposes.

6. What are some examples of treatment options that I may or may not want used?

Some examples of treatments that you may or may not want used are a feeding tube, a ventilator, and cardiopulmonary resuscitation. Even if you indicate that you do not want certain treatments in a very end-of-life situation, you will still receive medication as needed for pain.

7. Is there a form in Delaware for an Advices Health Care Directive?

An Advance Health Care Directive form is included in the Forms section of this handbook. This form can also be obtained from the Division of Services for Aging and Adults with Physical Disabilities by calling 1-800-223-9074 or downloading a printable version from the Division's website at: <http://dhss.delaware.gov/dhss/dsaapd/files/advancedirective.pdf>. The Legal Handbook for Older Delawareans includes an alternate form of Advance Health Care Directive, which offers a few different choices. This form can be found on the internet at <http://delawareelderlawhandbook.com/AdvanceHealthCareDirective2012.pdf>.

8. Why do I need an Advance Health Care Directive?

If you do not have an Advance Health Care Directive, you may have a problem if your family members cannot agree on your medical treatment once you cannot make decisions for yourself. Someone may have to ask the Chancery Court to be appointed as your Guardian, at your expense. You may be kept alive longer than you wish if you become terminally ill or become permanently unconscious. Have an Advance Health Care Directive in place makes it easier for your doctors and your family to understand and follow your wishes.

9. Does An Advance Health Care Directive need to be prepared by an attorney?

No. An Advance Health Care Directive does not have to be prepared by an attorney. It is, however, useful to discuss the choices that you will need to make with an attorney and to make sure that the Directive reflects your wishes and meets the legal requirements. The Advance Health Care Directive form provided does not contain all of the choices permitted under Delaware law. If you want to change the form, you may want to contact a lawyer. If you are disabled or over age 60, it is likely that your local Community Legal Aid Society, Inc. office can prepare one for you at no cost. Contact the Community Legal Aid Society, Inc. office in your community for assistance: New Castle County (302) 575-0660, Kent County (302) 674-8500, and Sussex County (302) 856-0038.

Power of Attorney

10. Why do I need Power of Attorney?

A durable Power of Attorney gives another person the legal authority to handle your finances if you become incompetent, that is, unable to make decisions due to your mental or physical condition. It is a good idea to name two persons to act on your behalf. You will need to decide if you want them to act one after the other, with one as the “primary” agent and the other as the “successor” or backup agent, or if you want them to work together, so that neither has the power to act alone.

11. Must I be incompetent before my Power of Attorney can become effective?

No. You can make the Power of Attorney effective immediately, or you can decide that it can be only be used when a doctor says that you are no longer able to handle your own finances. You can make the Power of Attorney as broad or as limited as you want it to be. For example, you can give the person the authority to make deposits and withdrawals from your bank accounts, but not give them authority to change the beneficiaries on your life insurance policies.

12. Who should I pick to act as my Agent under the Power of Attorney?

Pick someone you trust. Do not pick someone who needs money badly and might be tempted to take some of yours. If you do not have a durable Power of Attorney and you can no longer manage your money, the Chancery Court will need to appoint a Guardian to handle your financial affairs. Generally, this person is a family member, but it may be someone who has a business acting as a guardian for people, or someone from the State Office of the Public Guardian.

13. Is there a form for the Durable Power of Attorney in Delaware?

Effective October 1, 2010, Delaware adopted a new statutory form of personal durable Power of Attorney. Like the statutory form of Advance Health Care directive, a printable version of the statutory form of Durable Power of Attorney is available online at <http://dhss.delaware.gov/dhss/dltcrp/files/poaform.pdf>. This form is also included in the Forms section of this handbook.

14. Am I required by law to hire a lawyer to prepare my Power of Attorney?

No, you are not required to hire a lawyer to prepare your Power of Attorney. However, it is useful to have an attorney explain the choices available to you in executing the Delaware Durable Power of Attorney, and to make sure it meets the legal requirements and contains everything you want and need. If you are disabled or over the age of 60, it is likely that your local Community Legal Aid Society, Inc. office can prepare one for you.

Glossary

Adequate care: A type and degree of personalized attention that will tend to advance a child's physical, mental, moral, emotional and general well-being.

Adjudicatory hearing: A Family Court hearing which occurs after a child has been removed from the custody of a parent or guardian on an emergency basis and placed with the Division of Family Services (DFS).

Advance Health Care Directive: A document in which a person gives his or her wishes regarding medical treatment in the event of incapacitation.

Affidavit: A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.

Aftercare: Similar to probation, but follows a period of incarceration. (See *Probation*)

Allegation: A statement in a lawsuit that a party will attempt to prove. A statement not yet proven.

Best interest of the child: The Court determines the custody and residential arrangements for a child by focusing upon the child's "best interest." Factors the Court considers in determining the child's best interest include, but are not limited to:

- wishes of the parent(s)
- wishes of the child
- relationship of the child with other people living in the household
- child's adjustment to the home, school and community
- mental and physical health of all individuals involved
- past and present compliance of both parents with their rights and responsibilities
- evidence of domestic violence and
- criminal histories of the parties.

Cash bond: A cash bond is payment of a designated amount of money to the Court.

Child Attorney: An attorney who is appointed to represent a child's best interests. Referrals to the Office of the Child Advocate for a Child Attorney come from the Division of Family Services, the Court, or anyone else who believes that a child needs such representation

Clear and convincing proof (evidence): Generally, this phrase means evidence presented by a party that is highly and substantially more probable to be true than not and the judge or jury must have a firm belief or conviction in its factuality.

Commissioner: A Family Court commissioner essentially exercises the duties and powers of a judge in issuing orders and making findings. A judge can overturn commissioners' orders.

Contempt of court: A person is in contempt of court when he/she is under the Court's authority and disobeys or fails to cooperate with an Order of the Court, or fails to comply with a responsibility he/she has been given.

Delinquent child: A child who has committed an act, which, if committed by an adult, would be a crime, is usually considered by the Family Court to be "delinquent."

Dependent child: In the context of Family Court, a child whose physical, mental or emotional health and well-being is threatened or harmed because of inadequate care and protection by the child's custodian, who does not have the ability and/or financial means to provide adequate care for the child. 10 Del. C. §901(8)

Dispositional hearing: A Family Court hearing held 30 days after the Adjudicatory hearing. At this hearing, the judge decides if the placement of the child and the conditions of that placement are appropriate. A case plan outlining the requirements for the parents to regain custody may also be resented at this hearing.

Ex parte hearing: Hearings in which the Court or tribunal hears only one side of the controversy; only one part is present for this hearing or communication.

Hearsay: A statement made out of court, which is offered to prove the truth of the information in the statement.

Impartial due process hearing: In the context of special education, the purpose of a due process hearing is to address the identification, evaluation and educational placement of a child for the provision of a free, appropriate public education.

Incompetent: Not capable of making decisions because of mental or physical condition.

Individualized Education Plan (IEP): Puts in writing the educational plan for a child who is eligible for special education services under IDEA.

IDEA: A federal law that establishes the provision for special education and related aids and services to eligible children ages 3 - 21 with disabilities.

Juvenile: A person who has not yet reached the age at which he or she should be treated as an adult for purposes of criminal law. Under the federal Juvenile Delinquency Act, a "juvenile" is a person who has not attained his 18th birthday. 18 U.S.C.A. §5031

Law citations: For example, in the citation 13 Del. Code § 1103 - 13 is the Title of the law in Delaware code (law) and §1103 is the subsection of that law where you will find the exact part of the law you need.

Neglected child: A child whose physical, mental or emotional health and well-being is threatened or impaired because of inadequate care and protection by the child's custodian, who has the ability and financial means to provide for the care but does not or will not provide adequate care. 10 Del. C. §901(18)

Petitioner: One who files a petition in court.

Power of Attorney: A legal document that gives someone else permission to handle one's finances.

Probable cause: Is a reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person's belief that certain facts are probably true.

Probation: A certain time span when a child must comply with conditions and behaviors prescribed by the court or by a probation officer. Probation is for a limited time, and a violation of a condition may result in incarceration.

Rehabilitation Act, Section 504: a federal civil rights law that prohibits schools receiving federal funds from discrimination against a child based on his or her disability.

Respondent: The person against whom an action is filed.

Secured Bond: A designated amount of money or security such as a title to property worth at least as much as the ordered bond amount.

Section 504: The Rehabilitation Act: A federal civil rights law that prohibits schools receiving federal funds from discrimination against a child based on his or her disability. A 504 Plan is a list of accommodations and services that will be provided to a child in order to give him or her the opportunity to receive a "free, appropriate public education."

Social Study Report: An evaluation of a child, the home and the suitability of the placement, with a recommendation for or against a petition for guardianship, adoption or termination of parental rights.

Subsidy: A grant of money made by government for the benefit to the public.

Resource Phone Number List

For a complete listing of aging and disability resources, including those reference in this handbook, please visit the Guide to Services for Older Delawareans and Persons with Disabilities (also available in Spanish) at

http://www.dhss.delaware.gov/dhss/dsaapd/files/aging_and_disabilities_guide.pdf, the Division of Services for Aging and Adults with Physical Disabilities at <http://www.dhss.delaware.gov/dhss/dsaapd/index.html>, or call the Aging and Disability Resource Center at 1-800-223-9074.



Delaware
Aging & Disability
Resource Center

1-800-223-9074

Helpful Forms

Advance Health Care Directive - <http://www.dhss.delaware.gov/dsaapd/files/advancedirective.pdf>

Durable Power of Attorney - <http://dhss.delaware.gov/dhss/dltcrp/files/poaform.pdf>

Caregivers' Medical Authorization Affidavit -
http://www.dhss.delaware.gov/dhss/dsaapd/files/medical_affidavit.pdf

Caregivers' School Authorization Affidavit -
http://www.dhss.delaware.gov/dhss/dsaapd/files/school_affidavit.pdf

Dependency/Neglect Petition for Custody -
<http://courts.delaware.gov/forms/download.aspx?id=61638>

Petition – Rule to Show Cause - <http://courts.delaware.gov/Forms/Download.aspx?id=8348>

Petition for Support - <http://courts.delaware.gov/forms/download.aspx?id=193>

Petition for Order of Protection from Abuse -
<http://courts.state.de.us/forms/download.aspx?id=3778>

Petition for Visitation - <http://courts.delaware.gov/forms/download.aspx?id=207>

Due Process Complaint Form and Request for Hearing -
<http://www.doe.k12.de.us/cms/lib09/DE01922744/Centricity/Domain/78/dueprocesscomplaintform.doc>

Special Education State Complaint Form -
<http://www.doe.k12.de.us/cms/lib09/DE01922744/Centricity/Domain/78/specialedcomplaintform.doc>

Petition for Guardianship - <http://courts.delaware.gov/forms/download.aspx?id=431>

Petition for Permanent Guardianship -
<http://courts.delaware.gov/forms/download.aspx?id=451>

Additional forms can be found on the Family Court's website at www.courts.delaware.gov/family.



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Services for Aging and Adults with Physical Disabilities

Delaware's Legal Handbook for

Grandparents & Other Relatives Raising Children

A Legal Resource for People Caring for the Children of a Relative

Delaware's Legal Handbook for Grandparents Raising Children: A Legal Resource for People Caring for the Children of a Relative is published by:

Delaware Health and Social Services Division of Services for Aging and Adults with Physical Disabilities (DSAAPD)

1901 N. Du Pont Highway New Castle, Delaware 19720

Telephone: **(800) 223-9074**

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Please contact DSAAPD with revisions. Information appearing in this publication shall not be construed as legal counsel from the State of Delaware, the DHSS Division of Services for Aging and Adults with Physical Disabilities, its employees or the Community Legal Aid Society of Delaware, Inc.

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