

**1999 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB412)**

Received: **10/12/1999**

Received By: **mlief**

Wanted: **As time permits**

Identical to LRB:

For: **Suzanne Jeskewitz (608) 266-3796**

By/Representing: **rebecca**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - miscellaneous  
Education - handicapped ed.**

Extra Copies: **PG, MJL**

**Pre Topic:**

No specific pre topic given

**Topic:**

Definition of parent for special education purposes

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 10/12/1999	csicilia 10/18/1999		_____			
/1			jfrantze 10/18/1999	_____	lrb_docadmin 10/18/1999	lrb_docadmin 10/18/1999	

FE Sent For:

<END>

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/?	malaigm	10/13 99 ejs/?	Jb 10/18	Jb/RA 10/18			

FE Sent For:

<END>

10/7/99

Gordon -

Would you take a look at this request for a substitute amendment for AB 412, which you & I discussed a few months ago? The memo from Laura Rose is helpful, but my concern with DPI's proposed draft is that I don't know what is meant by a child's "natural parent" (see my highlighting) or what DPI means when it talks about the natural parents' authority being "extinguished." They borrow this lg. from the fed. regs., but I think I would need to be more specific (i.e., extinguished under or by a particular statute).

Although there's no rush, if you could get back to me next week, I would appreciate it.

Thanks,  
Ronnie

~~X~~  
Ronnie, See the attached draft and D-Note.

Gordon - Thanks! I entered the request (S0140) w/you as drafter. I didn't see an Ins. A, however. (Please check analysis.)



# SUE JESKEWITZ

STATE REPRESENTATIVE

TO: LONNIE LIEF, LEGISLATIVE REFERENCE BUREAU, DRAFTING

FROM: REBECCA LARSON  
AIDE TO STATE REPRESENTATIVE SUZANNE JESKEWITZ

RE: SUBSTITUTE AMENDMENT REQUEST FOR ASSEMBLY BILL 412

DATE: OCTOBER 4, 1999

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Per our conversation, I have attached two memos to assist in drafting a substitute for Assembly Bill 412. If you have questions, you may contact any of the following people:

Mickey Biel - MPS 414-475-8725

Paul Halverson - DPI (to be contacted through Mike TeRonde- Leg. Liaison for DPI)  
608-266-5186

Laura Rose - Leg. Council 266-9791

Thanks for all your help. If you need any additional information, please contact me at 266-3796.



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536  
Telephone: (608) 266-1304  
Fax: (608) 266-3830  
Email: leg.council@legis.state.wi.us

DATE: September 24, 1999  
TO: REPRESENTATIVE SUZANNE JESKEWITZ  
FROM: Laura Rose, Senior Staff Attorney  
SUBJECT: 1999 Assembly Bill 412, Relating to Modifying the Definition of a Parent of a Child With a Disability and Granting Rule-Making Authority

This memorandum was prepared at the request of your aide, Rebecca Larson. It describes and discusses the provisions of 1999 Assembly Bill 412, relating to modifying the definition of a parent of a child with a disability and granting rule-making authority, which you introduced on July 15, 1999. This bill has been referred to the Assembly Committee on Family Law.

This memorandum first describes current law. Next, it describes Assembly Bill 412, and discusses issues raised with the bill by the Department of Public Instruction (DPI) in a letter to you and Senator Grobschmidt, the bill's Senate coauthor. It then describes federal statutes and regulations relating to permitting foster parents to act on behalf of their foster children in special education proceedings. The memorandum then describes the conflict between the federal law and the current version of Assembly Bill 412. Finally, the memorandum presents some alternatives to address the problems which are perceived to exist in the Milwaukee Public Schools relating to finding a person to act on behalf of a child in foster care when the parents cannot be found.

### A. CURRENT LAW

Under s. 115.76 (12), Stats., for the purposes of special education proceedings on behalf of a child with a disability, a parent means any of the following:

1. A biological parent.
2. A husband who has consented to the artificial insemination of his wife under s. 891.40.

3. A male who is presumed to be the child's father under s. 891.41.
4. A male who has been adjudicated the child's father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state.
5. An adoptive parent.
6. A legal guardian.
7. A person acting as a parent of a child [as defined in s. 115.76 (13)].
8. A person appointed as a sustaining parent under s. 48.428.
9. A person assigned as a surrogate parent under s. 115.792 (1) (a) 2.

A parent does not include any person whose parental rights have been terminated; the state or a county or a child welfare agency if a child was made a ward of this state or a county or child welfare agency under ch. 880 or if a child has been placed in illegal custody or guardianship of the state or a county or a child welfare agency under ch. 488 or ch. 767; or an American tribal agency if the child was made a ward of the agency or placed in illegal custody or guardianship of the agency. [s. 115.76 (12), Stats.]

#### **B. ISSUES RELATING TO ASSEMBLY BILL 412**

1999 Assembly Bill 412 adds foster parents to the list of persons who may be considered parents for the purposes of special education proceedings. Under the bill, in order for a foster parent to act on the child's behalf, the child's biological or adoptive parents or the child's legal guardian must have died, or the local educational agency must be unable to locate the child's biological or adoptive parents or legal guardian after reasonable efforts, as determined by the department by rule.

In a letter dated August 18, 1999, to you and Senator Grobschmidt, the DPI expressed concerns that Assembly Bill 412 would conflict with new federal regulations which took effect July 1, 1999. These regulations permit foster parents to act as parents in special education proceedings on behalf of a foster child with a disability under certain conditions. Under 34 C.F.R. s. 300.20 (see Attachment A), unless the state law prohibits a foster parent from acting as a parent, a state may allow a foster parent to act as a parent if all of the following conditions are met:

1. The natural parent's authority to make educational decisions on the child's behalf has been extinguished under state law.
2. The foster parent meets all of the following criteria:
  - a. The <sup>foster</sup> ~~surrogate~~ parent has an ongoing, long-term parental relationship with the child.

- b. The surrogate parent is willing to make the educational decisions required of parents under the act.
- c. The surrogate parent has no interest that would conflict with the interest of the child.

The provisions in Assembly Bill 412 would permit foster parents to act on the child's behalf under circumstances which conflict with those outlined in federal regulations. Specifically, federal law requires that the parents' rights to make educational decisions for the child be extinguished, while the bill's provisions do not. Therefore, these provisions, if enacted, could jeopardize the receipt of federal funds under the federal special education laws. A change, such as proposed in the bill, could result in some foster parents acting on behalf of their foster children under conditions that conflict with federal law.

Some school districts might consider the federal requirement that the parents' decision-making rights be extinguished to be too burdensome in cases where a child is in foster care and the parents cannot be located or are unavailable to act on the child's behalf. In many of those cases, the parents may still have the legal authority to make decisions for their children. In situations such as these, the school district may wish to consider appointing the child's foster parent as a surrogate parent under s. 115.792 (1) (a) 2, Stats. Appointing a surrogate parent does not require extinguishing the parents' rights to make educational decisions on behalf of the child.

Federal regulations establish a public agency's duties regarding surrogate parents. Under 34 C.F.R. s. 300.515 (see Attachment B), these duties include assigning an individual to act as a surrogate, which must include a method for determining whether a child needs a surrogate parent and determining a method for assigning a surrogate parent to the child. The regulations also set out criteria for selecting surrogates. Under the regulations, the public agency may select a surrogate parent in any way permitted under state law. However, public agencies must ensure that a person selected as a surrogate is not an employe of the state or local educational agency or any other agency involved in the education or care of the child; has no interest that conflicts with the interest of the child he or she represents; and has knowledge or skills that ensure adequate representation of the child. In addition, a public agency may select a person as a surrogate who is an employe of a nonpublic agency that only provides noneducational care for the child and who meets the standards in the regulation.

These requirements are mirrored in s. PI 11.14, Wis. Adm. Code. (See Attachment B.) Section PI 11.14, Wis. Adm. Code, also sets forth requirements in addition to those in federal law. These include requirements regarding the review of a surrogate's appointment; procedures to follow in the case of terminating a surrogate parent's appointment; requirements for school boards to establish policies and procedures to identify children who need surrogates and to identify surrogate parents; the qualifications for surrogate parents; and the terms for appointing surrogate parents.

In conclusion, if foster parents are to be permitted to act on behalf of children in their care, they must meet the requirements set out in the federal regulations. Alternatively, foster parents may be appointed to act as surrogate parents on behalf of children in their care. In order to act as surrogates, they must meet the requirements in both the federal regulations and in s. PI

11.14. The procedure for appointing a surrogate parent may be less burdensome than appointing a foster parent to act, because it does not require that the parents' rights over a child to make education decisions to be extinguished. In addition, DPI has indicated some willingness to make the procedures in s. PI 11.14 for appointing a surrogate parent less burdensome.

I hope this information is helpful. Please do not hesitate to contact me at the Legislative Council Staff offices if you need any further information on this matter. My telephone number is 266-9791.

LR:rv:ksm;jal

Attachments



To: Carol Topinka  
Pat Yahle

MPS - staff

From: Paul Halverson

Please review the attached possible revision to AB 412. In addition to recommending this revision we would propose repealing the existing state rule on surrogate parents and rely solely on the federal rule. I have also attached a checklist that districts could, but would not be required to use.

Please let me know if this resolves your concern. If you agree that these changes would resolve the issue we will try to work them through the system.

Thank you.

- Repeal Surrogate-parenting of DPI rule  
Accept any procedure for MPS that minimally meets the procedure of Federal Law  
- [MPS develops procedure]

① Sub Amend to AB 412 drafted - <sup>is</sup> Ask if Draft is Kinship Care included?

② Modify Rule -  
Repeal rather than repeal & recreate - <sup>because</sup> State law exceeds Fed req.

\* Sup Intendant Benson - Simplify State Law -

No - if want to include, must specify "kinship care relative or long-term k.c. relative"

\* Parental Rights Extinguished - Argued at Federal Law

LRB-2463/1

MJL:cmh:jf

1999 - 2000 LEGISLATURE

**1999 ASSEMBLY BILL 412**

July 15, 1999 - Introduced by Representatives JESKEWITZ, KEDZIE, JENSEN, RHOADES, PLALE, ALBERS, HUEBSCH, STONE, J. LEHMAN, MUSSER, OWENS, GRONEMUS, HAHN, GOETSCH, SUDER, KELSO, TOWNSEND, REYNOLDS, POCAN, KLUSMAN, TURNER, SCHNEIDER, BOCK, PLOUFF, STASKUNAS, BRANDEMUEHL, PETROWSKI, KREIBICH, MEYER, LASSA, HUNDERTMARK and GUNDERSON, cosponsored by Senators GROBSCHMIDT, ROSENZWEIG, PANZER, HUELSMAN, FARROW, ERPENBACH, CLAUSING and DARLING. Referred to Committee on Family Law.

**AN ACT** to amend 115.76 (12) of the statutes; relating to: modifying the definition of a parent of a child with a disability and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a parent for special education purposes is defined, among other things, as a biological parent of a child with a disability (CWD), an adoptive parent of a CWD or a legal guardian of a CWD. This bill expands the definition of parent to include a foster parent of a CWD if the biological or adoptive parents or the legal guardian of the CWD have died or if the local educational agency (generally a school district) cannot locate the biological or adoptive parents or the legal guardian of the CWD after reasonable efforts.

For further information see the local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 115.76 (12) of the statutes is amended to read:

115.76 (12) "Parent" means a biological parent; a husband who has consented to the artificial insemination of his wife under s. 891.40; a male who is presumed to be the child's father under s. 891.41; a male who has been adjudicated the child's father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state; an adoptive parent; a legal guardian; a person acting as a parent of a child; a person appointed as a sustaining parent under s. 48.428; a foster parent of the child if the child's biological or adoptive parents or the child's legal guardian have died or if the local educational agency cannot locate the child's biological or adoptive parents or the child's legal guardian after reasonable efforts, as determined by the department by rule natural parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions required of parents under this subchapter and has no interest that would conflict with the interests of the child; or a person assigned as a surrogate parent under s. 115.792 (1) (a) 2. "Parent" does not include any person whose parental rights have been terminated; the state or a county or a child welfare agency if a child was made a ward of the state or a county or child

*Amend*

welfare agency under ch. 880 or if a child has been placed in the legal custody or guardianship of the state or a county or a child welfare agency under ch. 48 or ch. 767; or an American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.

The underlined and lined-through text is the original AB 412 amendment to existing statutory language. The italicized print is our recommended language to replace the lined-through text.

FOSTER PARENT ACTING AS A PARENT / FOSTER PARENT AS SURROGATE PARENT

Child's name-----

Foster parent's name and address-----

ACTING AS A PARENT

You may permit the foster parent to act as a parent on behalf of the above-named child if you answer "yes" to the following four statements:

- 1. Parents' authority to make educational decisions for the child has been extinguished ( by death or by court order). Yes/no
- 2. Foster parent has an ongoing, longterm parental relationship with the child. Yes/no
- 3. Foster parent is willing to make educational decisions on behalf of the child. Yes/no
- 4. Foster parent has no interest that would conflict with the interests of the child. Yes/no

The above-named foster parent is permitted to act as a parent on behalf of the above-named child.

Signed-----

Date-----

#####

SURROGATE PARENT

You may assign the foster parent to act as the child's surrogate parent if you answer "yes" to the following four statements:

- 1. No parent can be identified; Yes/no  
OR  
The district, after reasonable efforts, cannot discover the whereabouts of a parent. Yes/no  
OR  
The child is a ward of the state. Yes/no
- 2. The foster parent is not an employee of DPI, the district or any other agency involved in the education or care of the child. Yes/no
- 3. The foster parent has no interest that conflicts with the interests of the child. Yes/no.
- 4. The foster parent has knowledge and skills that ensure adequate representation of the child. Yes/no.

The above-named foster parent is assigned to act as the surrogate parent for the above-named child.

Signed-----

Date-----



State of Wisconsin  
1999 - 2000 LEGISLATURE

*Dr. J. J.*

LRBs0140?  
GMM.....  
*e*  
*cjs*

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 1999 ASSEMBLY BILL 412

*ger*

1 AN ACT *ger* ...; relating to: modifying the definition of a parent of a child with a  
2 disability for special education purposes.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 115.76 (12) of the statutes is renumbered 115.65 (12) (a) and  
4 amended to read:

5 115.65 (12) (a) "Parent" means a any of the following:

- 6 1. A biological parent; ~~a.~~
- 7 2. A husband who has consented to the artificial insemination of his wife under
- 8 s. 891.40; ~~a.~~
- 9 3. A male who is presumed to be the child's father under s. 891.41; ~~a.~~
- 10 4. A male who has been adjudicated the child's father under subch. VIII of ch.
- 11 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court

1 of competent jurisdiction or by final order or judgment of a court of competent  
2 jurisdiction in another state;~~an.~~

3 5. An adoptive parent;~~a.~~

4 6. A legal guardian;~~a.~~

5 7. A person acting as a parent of a child;~~a.~~

6 8. A person appointed as a sustaining parent under s. 48.428;~~or a.~~

7 9. A person assigned as a surrogate parent under s. 115.792 (1) (a) 2.

8 (b) "Parent" does not include any of the following:

9 1. A person whose parental rights have been terminated;~~the.~~

10 2. The state ~~or~~, a county or a child welfare agency, if a child was made a ward  
11 of the state ~~or~~ a county or child welfare agency under ch. 880 or if a child has been  
12 placed in the legal custody or guardianship of the state ~~or~~ a county or a child welfare  
13 agency under ch. 48 or ch. 767;~~or an.~~

14 3. An American Indian tribal agency if the child was made a ward of the agency  
15 or placed in the legal custody or guardianship of the agency.

History: 1997 a. 164, 237.

16 ~~SECTION 2.~~ <sup>X</sup> 115.76 (12) (a) 10. of the statutes is created to read:

17 115.76 (12) (a) 10. A foster parent, if the right and <sup>the</sup> responsibility of all of the  
18 persons specified in subd. <sup>s</sup> 1. to 5. to make educational decisions concerning a child  
19 have been extinguished by termination of parental rights <sup>by</sup> transfer of guardianship  
20 or legal custody <sup>by</sup> other court order, and if the foster parent has an ongoing,  
21 long-term parental relationship with the child, is willing to make the educational  
22 decisions that are required of a parent under this subchapter and has no interests  
23 that would conflict with the interests of the child.

24 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0140/1

GMM...Y:...

Y  
CJS

In reviewing this <sup>1</sup>draft, please note all of the following:

1. The draft does not use the term “natural parents” to describe whose authority to make educational decisions has been extinguished, but rather refers to all persons who are presumed to be a child’s parents under Wisconsin law, that is, not only a child’s biological parents, but also a child’s adoptive parents, a husband who has consented to the artificial insemination of his wife, a man who is married to a woman when a child is conceived and a man who is adjudicated to be a child’s father. Although 34 CFR 300.20 uses the term “*natural* parents,” it appears that the intent there was to distinguish those individuals from a child’s *foster* parents and not to limit the operation of the regulation to when a child’s *biological* parents have had that authority extinguished.

2. “Extinguished” is an unusual term that is not normally used in Wisconsin law when referring to the nullification of a parent’s rights and responsibilities. Instead, Wisconsin law uses the term “*termination* of parental rights” when that nullification is permanent. A parent’s rights and responsibilities can also be “extinguished” temporarily by a transfer of guardianship or legal custody. In those cases, the guardian or legal custodian, and not the parent, makes decisions for the child until such time as guardianship or legal custody is returned to the parent.

3. The draft only applies to foster parents and not to kinship care relatives or long-term kinship care relatives. If you want kinship care relatives and long-term kinship care relatives included, that will have to be specified.

If you have any questions, please do not hesitate to contact me directly.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: Gordon.Malaise@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0140/1  
GMM:cjs:jf

October 18, 1999

In reviewing this draft, please note all of the following:

1. The draft does not use the term "natural parents" to describe whose authority to make educational decisions has been extinguished, but rather refers to all persons who are presumed to be a child's parents under Wisconsin law, that is, not only a child's biological parents, but also a child's adoptive parents, a husband who has consented to the artificial insemination of his wife, a man who is married to a woman when a child is conceived and a man who is adjudicated to be a child's father. Although 34 CFR 300.20 uses the term "*natural* parents," it appears that the intent there was to distinguish those individuals from a child's *foster* parents and not to limit the operation of the regulation to when a child's *biological* parents have had that authority extinguished.

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If you have any questions, please do not hesitate to contact me directly.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: Gordon.Malaise@legis.state.wi.us



9950140

CORRECTIONS IN:

~~1999~~  
ASSEMBLY <sup>Substitute</sup> AMENDMENT 1

To 1999 Assembly Bill 412

Prepared by Legislative Reference Bureau

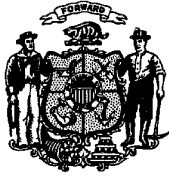
(February 25, 2000)

# Page 1, line 4: delete "115.65" and  
substitute "115.76".

# Page 1, line 6: delete "115.65" and  
substitute "115.76".

KMG:

~~(END)~~



State of Wisconsin  
1999-2000 LEGISLATURE

**CORRECTIONS IN:**

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 412**

Prepared by the Legislative Reference Bureau  
(February 25, 2000)

1. Page 1, line 4: delete "115.65" and substitute "115.76".
2. Page 1, line 6: delete "115.65" and substitute "115.76".

LRBs0140/lccc-1

KMG:ch

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Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31, Assembly Rule 37 and Joint Rule 56.