



## California Rules of Court

### **Rule 5.649. Right to make educational or developmental-services decisions**

The court must identify the educational rights holder for the child on form JV-535 at each hearing in a dependency or delinquency proceeding. Unless his or her rights have been limited by the court under this rule, the parent or guardian holds the educational and developmental-services decisionmaking rights for his or her child. In addition, a nonminor or nonminor dependent youth holds the rights to make educational and developmental-services decisions for himself or herself unless rule 5.650(b) applies.

#### **(a) Order (§§ 361, 366, 366.27, 366.3, 726, 727.2; 20 U.S.C. § 1415; 34 C.F.R. § 300.300)**

At the dispositional hearing and each subsequent review or permanency hearing, the court must determine whether the rights of a parent or guardian to make educational or developmental-services decisions for the child should be limited.

If necessary to protect a child who is adjudged a dependent or ward of the court under section 300, 601, or 602, the court may limit a parent's or guardian's rights to make educational or developmental-services decisions for the child by making appropriate, specific orders on *Order Designating Educational Rights Holder* (form JV-535).

#### **(b) Temporary order (§ 319)**

At the initial hearing on a petition filed under section 325 or at any time before a child is adjudged a dependent or the petition is dismissed, the court may, on making the findings required by section 319(g)(1), use form JV-535 to temporarily limit a parent's or guardian's rights to make educational or developmental-services decisions for the child. An order made under section 319(g) expires on dismissal of the petition, but in no circumstances later than the conclusion of the hearing held under section 361.

If the court does temporarily limit the parent's or guardian's rights to make educational or developmental-services decisions, the court must, at the dispositional hearing, reconsider the need to limit those rights and must identify the authorized educational rights holder on form JV-535.

#### **(c) No delay of initial assessment**

The child's initial assessment to determine any need for special education or developmental services need not be delayed to obtain parental or guardian consent or for the appointment of an educational rights holder if one or more of the following circumstances is met:

- (1) The court has limited, even temporarily, the educational or developmental-services decisionmaking rights of the parent or guardian, and consent for an initial assessment has been given by an individual appointed by the court to represent the child;
- (2) The local educational agency or regional center, after reasonable efforts, cannot locate the parent or guardian; or
- (3) Parental rights have been terminated or the guardianship has been set aside.

#### **(d) Judicial Determination**

If the court determines that the child is in need of any assessments, evaluations, or services-including special education, mental health, developmental, and other related services-the court must direct an appropriate person to take the necessary steps to request those assessments, evaluations, or services.

#### **(e) Filing of order**

Following the dispositional hearing and each statutory review hearing, the party that has requested a modification, limitation, or restoration of educational or developmental-services decisionmaking rights must complete form JV-535 and any required attachments to reflect the court's orders and submit the completed form within five court days for the court's review and signature. If no request is made, the child's or youth's attorney must complete and file the form. The court may direct the appropriate party to attach *Attachment to Order Designating Educational Rights Holder* (form JV-535(A)) to document the court's findings and orders.

*Rule 5.649 adopted effective January 1, 2014.*



## California Rules of Court

### Rule 5.650. Appointed educational rights holder

**(a) Order and appointment (§§ 319, 361, 366, 366.27, 366.3, 726, 727.2; Gov. Code, §§ 7579.5-7579.6; 20 U.S.C. § 1415; 34 C.F.R. § 300.519)**

Whenever it limits, even temporarily, the rights of a parent or guardian to make educational or developmental-services decisions for a child, the court must use form JV-535 to appoint a responsible adult as educational rights holder or to document that one of the following circumstances exists:

- (1) The child is a dependent child or ward of the court and has a court-ordered permanent plan of placement in a planned permanent living arrangement. The caregiver may, without a court order, exercise educational decisionmaking rights under Education Code section 56055 and developmental-services decisionmaking rights under section 361 or 726, and is not prohibited from exercising those rights by section 361, 726, or 4701.6(b), or by 34 Code of Federal Regulations section 300.519 or 303.422; or
- (2) The court cannot identify a responsible adult to serve as the child's educational rights holder under section 319, 361, or 726 or under Education Code section 56055; and
  - (A) The child is a dependent child or ward of the court and is or may be eligible for special education and related services or already has a valid individualized education program, and the court:
    - (i) Refers the child to the local educational agency for the appointment of a surrogate parent under section 361 or 726, Government Code section 7579.5, and title 20 United States Code section 1415; and
    - (ii) Will, with the input of any interested person, make developmental-services decisions for the child; or
  - (B) The appointment of a surrogate parent is not warranted, and the court will, with the input of any interested person, make educational and developmental-services decisions for the child.
  - (C) If the court must temporarily make educational or developmental-services decisions for a child before disposition, it must order that every effort be made to identify a responsible adult to make future educational or developmental-services decisions for the child.

*(Subd (a) amended and relettered effective January 1, 2014; adopted as subd (b) effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)*

**(b) Nonminor and nonminor dependent youth (§§ 361, 726, 366.3)**

The court may, using form JV-535, appoint or continue the appointment of an educational rights holder to make educational or developmental-services decisions for a nonminor or nonminor dependent youth if:

- (1) The youth has chosen not to make educational or developmental-services decisions for himself or herself or is deemed by the court to be incompetent; and
- (2) With respect to developmental-services decisions, the court also finds that the appointment or continuance of a rights holder would be in the best interests of the youth.

*(Subd (b) adopted effective January 1, 2014.)*

**(c) Limits on appointment (§§ 319, 361, 726; Ed. Code, § 56055; Gov. Code, § 7579.5(i)-(j); 34 C.F.R. §§ 300.519, 303.422)**

- (1) The court must determine whether a responsible adult relative, nonrelative extended family member, or other adult known to the child is available and willing to serve as the educational rights holder and, if one of those adults is available and willing to serve, should consider appointing that person before appointing or temporarily appointing a responsible adult not known to the child.

- (2) The court may not appoint any individual as the educational rights holder if that person is excluded under, or would have a conflict of interest as defined by, section 361(a) or 726(c), Education Code section 56055, Government Code section 7579.5(i)-(j), 20 United States Code section 1415(b)(2), or 34 Code of Federal Regulations section 300.519 or 303.422.

*(Subd (c) amended effective January 1, 2014; adopted effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)*

**(d) Referral for appointment of surrogate parent (§§ 361, 726; Gov. Code, § 7579.5; 20 U.S.C. § 1415)**

- (1) If the court has limited a parent's or guardian's right to make educational decisions for a child and cannot identify a responsible adult to act as the educational rights holder, and the child is or may be eligible for special education and related services or already has an individualized education program, the court must use form JV-535 to refer the child to the responsible local educational agency for prompt appointment of a surrogate parent under Government Code section 7579.5.
- (2) If the court refers a child to the local educational agency for appointment of a surrogate parent, the court must order that *Local Educational Agency Response to JV-535-Appointment of Surrogate Parent* (form JV-536) be attached to form JV-535 and served by first-class mail on the local educational agency no later than five court days from the date the order is signed.
- (3) The court must direct the local educational agency that when the agency receives form JV-535 requesting prompt appointment of a surrogate parent, the agency must make reasonable efforts to identify and appoint a surrogate parent within 30 calendar days of service of the referral.
  - (A) Whenever the local educational agency appoints a surrogate parent for a dependent or ward under Government Code section 7579.5(a)(1), it must notify the court on form JV-536 within five court days of the appointment and, at the same time, must send copies of the notice to the child's attorney and to the social worker or probation officer identified on the form.
  - (B) If the local educational agency does not appoint a surrogate parent within 30 days of receipt of a judicial request, it must notify the court within the next five court days on form JV-536 of the following:
    - (i) Its inability to identify and appoint a surrogate parent; and
    - (ii) Its continuing reasonable efforts to identify and appoint a surrogate parent.
- (4) Whenever a surrogate parent resigns or the local educational agency terminates the appointment of a surrogate parent, replaces a surrogate parent, or appoints another surrogate parent, it must notify the court, the child's attorney, and the social worker or probation officer on form JV-536 within five court days of the resignation, termination, replacement, or appointment. The child's attorney, the social worker, or the probation officer may request a hearing for appointment of a new educational rights holder by filing *Request for Hearing Regarding Child's Access to Services* (form JV-539) and must provide notice of the hearing as provided in (g)(2). The court may, on its own motion, direct the clerk to set a hearing.

*(Subd (d) amended effective January 1, 2014; adopted as subd (b); previously amended and relettered effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)*

**(e) Transfer of parent's or guardian's educational or developmental-services decisionmaking rights to educational rights holder**

When the court appoints an educational rights holder after limiting a parent's or guardian's educational or developmental-services decisionmaking rights, those parental decisionmaking rights—including the right to notice of educational or developmental-services meetings and activities, to participation in educational or developmental-services meetings and activities, and to decisionmaking authority regarding the child's education or developmental services, including the authority under sections 4512 and 4701.6, Education Code section 56028, 20 United States Code sections 1232g and 1401(23), and 34 Code of Federal Regulations section 300.30—are transferred to the educational rights holder unless the court specifies otherwise in its order.

- (1) When returning a child to a parent or guardian, the court must consider the child's educational and developmental-services needs. The parent's or guardian's educational and developmental-services decisionmaking rights are reinstated when the court returns custody to the parent or guardian unless the court finds specifically that continued limitation of parental decisionmaking rights is necessary to protect the child.
- (2) If the court appoints a guardian for the child under rule 5.735 or 5.815, all of the parent's or previous guardian's educational and developmental-services decisionmaking rights transfer to the newly appointed guardian unless

the court determines that limitation of the new guardian's decisionmaking rights is necessary to protect the child.

*(Subd (e) amended effective January 1, 2014; adopted effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2008.)*

**(f) Authority and responsibilities (§§ 317, 319, 360, 361, 635, 706.5, 726, 4514, 4646-4648, 4700-4731, 5328; Ed. Code, §§ 56055, 56340, 56345; Gov. Code, §§ 7579.5, 95014-95020; 34 C.F.R. § 300.519)**

- (1) The educational rights holder acts as and holds the rights of the parent or guardian with respect to all decisions regarding the child's education and developmental services, and is entitled:
  - (A) To access records and to authorize the disclosure of information to the same extent as a parent or guardian under the Family Educational Rights and Privacy Act (FERPA), 20 United States Code section 1232g;
  - (B) To be given notice of and participate in all meetings or proceedings relating to school discipline;
  - (C) To advocate for the interests of a child or youth with exceptional needs in matters relating to:
    - (i) The identification and assessment of those needs;
    - (ii) Instructional or service planning and program development-including the development of an individualized family service plan, an individualized educational program, an individual program plan, or the provision of other services and supports, as applicable;
    - (iii) Placement in the least restrictive program appropriate to the child's or youth's educational or developmental needs;
    - (iv) The review or revision of the individualized family service plan, the individualized education program, or the individual program plan; and
    - (v) The provision of a free, appropriate public education.
  - (D) To attend and participate in the child's or youth's individualized family service plan, individualized education program, individual program plan, and other educational or service planning meetings; to consult with persons involved in the provision of the child's or youth's education or developmental services; and to sign any written consent to educational or developmental services and plans; and
  - (E) Notwithstanding any other provision of law, to consent to the child's or youth's individualized family service plan, individualized education program, or individual program plan, including any related nonemergency medical services, mental health treatment services, and occupational or physical therapy services provided under sections 7570-7587 of the Government Code.
- (2) The educational rights holder is responsible for investigating the child's or youth's educational and developmental-services needs, determining whether those needs are being met, and acting on behalf of the child or youth in all matters relating to the provision of educational or developmental services, as applicable, to ensure:
  - (A) The stability of the child's or youth's school placement. At any hearing following a change of educational placement, the educational rights holder must submit a statement to the court indicating whether the proposed change of placement is in the child's or youth's best interest and whether any efforts have been made to keep the pupil in the school of origin;
  - (B) Placement in the least restrictive educational program appropriate to the child's or youth's individual needs;
  - (C) The child's or youth's access to academic resources, services, and extracurricular and enrichment activities;
  - (D) The child's or youth's access to any educational and developmental services and supports needed to meet state standards for academic achievement and functional performance or, with respect to developmental services, to promote community integration, an independent, productive, and normal life, and a stable and healthy environment;
  - (E) The prompt and appropriate resolution of school disciplinary matters;
  - (F) The provision of any other elements of a free, appropriate public education; and
  - (G) The provision of any appropriate early intervention or developmental services required by law, including the California Early Intervention Services Act or the Lanterman Developmental Disabilities Services Act.

- (3) The educational rights holder is also responsible for:
- (A) Meeting with the child or youth at least once and as often as necessary to make educational or developmental-services decisions that are in the best interest of the child or youth;
  - (B) Being culturally sensitive to the child or youth;
  - (C) Complying with all federal and state confidentiality laws, including, but not limited to, sections 362.5, 827, 4514, and 5328, as well as Government Code section 7579.5(f);
  - (D) Participating in, and making decisions regarding, all matters affecting the child's or youth's educational or developmental-services needs-including, as applicable, the individualized family service planning process, the individualized education program planning process, the individual program planning process, the fair hearing process (including mediation and any other informal dispute resolution meetings), and as otherwise specified in the court order-in a manner consistent with the child's or youth's best interest; and
  - (E) Maintaining knowledge and skills that ensure adequate representation of the child's or youth's needs and interests with respect to education and developmental services.
- (4) Before each statutory review hearing, the educational rights holder must do one or more of the following:
- (A) Provide information and recommendations concerning the child's or youth's educational or developmental-services needs to the assigned social worker or probation officer;
  - (B) Make written recommendations to the court concerning the child's or youth's educational or developmental-services needs;
  - (C) Attend the review hearing and participate in any part of the hearing that concerns the child's or youth's education or developmental services.
- (5) The educational rights holder may provide the contact information for the child's or youth's attorney to the local educational agency.

*(Subd (f) amended effective January 1, 2014; adopted effective January 1, 2008.)*

**(g) Term of service; resignation (§§ 319, 361, 726; Gov. Code § 7579.5)**

- (1) An appointed educational rights holder must make educational or developmental-services decisions for the child or youth until:
- (A) The dismissal of the petition or the conclusion of the dispositional hearing, if the rights holder is appointed under section 319(g);
  - (B) The rights of the parent or guardian to make educational or developmental-services decisions for the child are fully restored;
  - (C) The dependent or ward reaches 18 years of age, unless he or she chooses not to make his or her own educational or developmental-services decisions or is deemed incompetent by the court, in which case the court may, if it also finds that continuation would be in the best interests of the youth, continue the appointment until the youth reaches 21 years of age or the court's jurisdiction is terminated;
  - (D) The court appoints another responsible adult as educational rights holder for the child or youth under this rule;
  - (E) The court appoints a successor guardian or conservator; or
  - (F) The court designates an identified foster parent, relative caregiver, or nonrelative extended family member to make educational or developmental-services decisions because:
    - (i) Reunification services have been terminated and the child is placed in a planned permanent living arrangement with the identified caregiver under section 366.21(g)(5), 366.22, 366.26, 366.3(i), 727.3(b)(5), or 727.3(b)(6); and
    - (ii) The foster parent, relative caregiver, or nonrelative extended family member is not otherwise excluded from making education or developmental-services decisions by the court, by section 361 or 726, or by 34 Code of Federal Regulations section 300.519 or 303.422.

- (2) If an appointed educational rights holder resigns his or her appointment, he or she must give notice to the court and to the child's attorney and may use *Educational Rights Holder Statement* (form JV-537) to provide this notice. Once notice is received, the child's or youth's attorney, or the social worker or probation officer may request a hearing for appointment of a new educational rights holder by filing form JV-539.

The attorney for the party requesting the hearing must provide notice of the hearing to

- (A) The parents or guardians, unless otherwise indicated on the most recent form JV-535, parental rights have been terminated, or the child has reached 18 years of age;
- (B) Each attorney of record;
- (C) The social worker or probation officer;
- (D) The CASA volunteer; and
- (E) All other persons or entities entitled to notice under section 293.

The hearing must be set within 14 days of receipt of the request for hearing. The court may, on its own motion, direct the clerk to set a hearing.

*(Subd (g) amended effective January 1, 2014; adopted effective January 1, 2008.)*

#### **(h) Service of order**

Whenever the order identifies or appoints a new or different educational rights holder or includes any other changes, the clerk will provide a copy of the completed and signed form JV-535, form JV-535(A) if attached, and any received form JV-536 or JV-537 to:

- (1) The child, if 10 years of age or older, or youth;
- (2) The attorney for the child or youth;
- (3) The social worker or probation officer;
- (4) The Indian child's tribe, if applicable, as defined in rule 5.502;
- (5) The local foster youth educational liaison, as defined in Education Code section 48853.5;
- (6) The county office of education foster youth services coordinator;
- (7) The regional center service coordinator, if applicable; and
- (8) The educational rights holder.

The completed and signed form must be provided no later than five court days from the date the order is signed. The clerk must also ensure that any immediately preceding educational rights holder, surrogate parent, or authorized representative, if any, is notified that the previous court order has been vacated and their appointment terminated.

The clerk will make copies of the form available to the parents or guardians, unless otherwise indicated on the form, parental rights have been terminated, or the child has reached 18 years of age and reunification services have been terminated; to the CASA volunteer; and, if requested, to all other persons or entities entitled to notice under section 293.

*(Subd (h) amended effective January 1, 2014; adopted effective January 1, 2008.)*

#### **(i) Education and training of educational rights holder**

If the educational rights holder, including a parent or guardian, asks for assistance in obtaining education and training in the laws incorporated in rule 5.651(a), the court must direct the clerk, social worker, or probation officer to inform the educational rights holder of all available resources, including resources available through the California Department of Education, the California Department of Developmental Services, the local educational agency, and the local regional center.

*(Subd (i) amended effective January 1, 2015; adopted effective January 1, 2008; previously amended effective January 1, 2014.)*

#### **(j) Notice of and participation in hearings**

- (1) The educational rights holder must receive notice of all regularly scheduled juvenile court hearings and other judicial hearings that might affect the child's or youth's education and developmental services, including joint assessment hearings under rule 5.512 and joinder proceedings under rule 5.575.
- (2) The educational rights holder may use form JV-537 to explain any educational or developmental-services needs to the court. The court must permit the educational rights holder to attend and participate in those portions of a court hearing, nonjudicial hearing, or mediation that concern education or developmental services.

*(Subd (j) amended effective January 1, 2014; adopted effective January 1, 2008.)*

*Rule 5.650 amended effective January 1, 2015; adopted as rule 1499 effective July 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2004, January 1, 2008, and January 1, 2014.*

#### **Advisory Committee Comment**

Under the Individuals With Disabilities Education Act (IDEA), the court may appoint a surrogate parent to speak and act on behalf of a pupil in all matters relating to the identification, evaluation, and educational placement of the child and to the provision of the child's free, appropriate public education. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519.) Under Welfare and Institutions Code sections 361 and 726, the court must appoint a responsible adult as an educational representative or rights holder to make decisions regarding the child's educational or developmental-services needs when the parent's rights to make those decisions have been limited. A court-appointed educational rights holder is responsible for protecting the child's rights and interests with respect to educational or developmental services, including any special education and related services.

If the court limits the parent's decisionmaking rights and cannot identify a responsible adult to appoint as educational rights holder, and the appointment of a surrogate parent is not warranted, sections 361 and 726 authorize the court to make educational or developmental-services decisions for the child with the input of interested persons. If, however, the court cannot identify a responsible adult to appoint as educational rights holder and there is reason to believe that the child needs special education and related services, the court must refer the child to the local educational agency (LEA) for the appointment of a surrogate parent. Sections 361 and 726 do not authorize the court to make *educational* decisions for a child in these circumstances. The surrogate parent appointed by the LEA acts as a parent for the purpose of making decisions with respect to special education and related services and the provision of a free, appropriate public education on behalf of the child. (Gov. Code, § 7579.5(c); Ed. Code, § 56028; 34 C.F.R. § 300.30(b)(2); see 20 U.S.C. §§ 1401(9), 1414(d).) If, however, the LEA does not appoint a surrogate parent in a timely manner, the court has the authority to join the LEA in the dependency proceedings under section 362 and rule 5.575. In the period between the setting of the joinder hearing and the appointment of a surrogate parent by the LEA, the court may make educational decisions for the child under the general authority granted by section 362(a). The appointment of a surrogate parent notwithstanding, the court holds the authority under sections 361 and 726 to make *developmental-services* decisions if it cannot identify a responsible adult to do so.





# California Rules of Court

## Rule 5.651. Educational and developmental-services decisionmaking rights

(a) **Applicability** (§§ 213.5, 319(g), 358, 358.1, 361(a), 362(a), 364, 366.21, 366.22, 366.23, 366.26, 366.27(b), 366.3(e), 726, 727.2(e), 4500 et seq., 11404.1; Ed. Code, §§ 48645 et seq., 48850 et seq., 49069.5, 56028, 56055, and 56155 et seq.; Gov. Code, §§ 7573-7579.6; 20 U.S.C. § 1400 et seq.; 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq.)

This rule incorporates all rights with respect to education or developmental services recognized or established by state or federal law and applies:

- (1) To any child, or any nonminor or nonminor dependent youth, for whom a petition has been filed under section 300, 601, or 602 until the petition is dismissed or the court has terminated dependency, delinquency, or transition jurisdiction over that person; and
- (2) To every judicial hearing related to, or that might affect, the child's or youth's education or receipt of developmental services.

*(Subd (a) amended effective January 1, 2014.)*

### (b) Conduct of hearings

- (1) To the extent the information is available, at the initial or detention hearing the court must consider:
  - (A) Who holds educational and developmental-services decisionmaking rights, and identify the rights holder or holders;
  - (B) Whether the child or youth is enrolled in, and is attending, the child's or youth's school of origin, as that term is defined in Education Code section 48853.5(f);
  - (C) If the child or youth is at risk of removal from or is no longer attending the school of origin, whether:
    - (i) In accordance with the child's or youth's best interest, the educational liaison, as described in Education Code section 48853.5(b), (d), and (e), in consultation with, and with the agreement of, the child or youth and the parent, guardian, or other person holding educational decisionmaking rights, recommends the waiver of the child's or youth's right to attend the school of origin;
    - (ii) Before making any recommendation to move a foster child or youth from his or her school of origin, the educational liaison provided the child or youth and the person holding the right to make educational decisions for the child or youth with a written explanation of the basis for the recommendation and how this recommendation serves the foster child's or youth's best interest as provided in Education Code section 48853.5(e)(7);
    - (iii) If the child or youth is no longer attending the school of origin, the local educational agency obtained a valid waiver of the child's or youth's right to continue in the school of origin under Education Code section 48853.5(e)(1) before moving the child or youth from that school; and
    - (iv) The child or youth was immediately enrolled in the new school as provided in Education Code section 48853.5(e)(8).
  - (D) In a dependency proceeding, whether the parent's or guardian's educational or developmental-services decisionmaking rights should be temporarily limited and an educational rights holder temporarily appointed using form JV-535; and
  - (E) Taking into account other statutory considerations regarding placement, whether the out-of-home placement:
    - (i) Is the environment best suited to meet the exceptional needs of a child or youth with disabilities and to serve the child's or youth's best interest if he or she has a disability; and

(ii) Promotes educational stability through proximity to the child's or youth's school of origin.

(2) At the dispositional hearing and at all subsequent hearings described in (a)(2), the court must:

- (A) Consider and determine whether the child's or youth's educational, physical, mental health, and developmental needs, including any need for special education and related services, are being met;
- (B) Identify the educational rights holder on form JV-535; and
- (C) Direct the rights holder to take all appropriate steps to ensure that the child's or youth's educational and developmental needs are met.

The court's findings and orders must address the following:

- (D) Whether the child's or youth's educational, physical, mental health, and developmental-services needs are being met;
- (E) What services, assessments, or evaluations, including those for developmental services or for special education and related services, the child or youth may need;
- (F) Who must take the necessary steps for the child or youth to receive any necessary assessments, evaluations, or services;
- (G) If the child's or youth's educational placement changed during the period under review, whether:
  - (i) The child's or youth's educational records, including any evaluations of a child or youth with a disability, were transferred to the new educational placement within two business days of the request for the child's or youth's enrollment in the new educational placement; and
  - (ii) The child or youth is enrolled in and attending school.
- (H) Whether the parent's or guardian's educational or developmental-services decisionmaking rights should be limited or, if previously limited, whether those rights should be restored.
  - (i) If the court finds that the parent's or guardian's educational or developmental-services decisionmaking rights should not be limited or should be restored, the court must explain to the parent or guardian his or her rights and responsibilities in regard to the child's education and developmental services as provided in rule 5.650(e), (f), and (j); or
  - (ii) If the court finds that the parent's or guardian's educational or developmental-services decisionmaking rights should be or remain limited, the court must designate the holder of those rights. The court must explain to the parent or guardian why the court is limiting his or her educational or developmental-services decisionmaking rights and must explain the rights and responsibilities of the educational rights holder as provided in rule 5.650(e), (f), and (j); and
- (I) Whether, in the case of a nonminor or nonminor dependent youth who has chosen not to make educational or developmental-services decisions for himself or herself or has been deemed incompetent, it is in the best interests of the youth to appoint or to continue the appointment of an educational rights holder.

*(Subd (b) amended effective January 1, 2014.)*

**(c) Reports for hearings related to, or that may affect, education or developmental services**

This subdivision applies at all hearings, including dispositional and joint assessment hearings. The court must ensure that, to the extent the information was available, the social worker or the probation officer provided the following information in the report for the hearing:

- (1) The child's or youth's age, behavior, educational level, and developmental status and any discrepancies between that person's age and his or her level of achievement in education or level of cognitive, physical, and emotional development;
- (2) The child's or youth's educational, physical, mental health, or developmental needs;
- (3) Whether the child or youth is participating in developmentally appropriate extracurricular and social activities;
- (4) Whether the child or youth is attending a comprehensive, regular, public or private school;

- (5) Whether the child or youth may have physical, mental, or learning-related disabilities or other characteristics indicating a need for developmental services or special education and related services as provided by state or federal law;
- (6) If the child is 0 to 3 years old, whether the child may be eligible for or is already receiving early intervention services or services under the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) and, if the child is already receiving services, the specific nature of those services;
- (7) If the child is between 3 and 5 years old and is or may be eligible for special education and related services, whether the child is receiving the early educational opportunities provided by Education Code section 56001 and, if so, the specific nature of those opportunities;
- (8) Whether the child or youth is receiving special education and related services or any other services through a current individualized education program and, if so, the specific nature of those services;
  - (i) A copy of the current individualized education program should be attached to the report unless disclosure would create a risk of harm. In that case, the report should explain the risk.
- (9) Whether the child or youth is receiving services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and, if so, the specific nature of those services;
  - (i) A copy of any current Section 504 plan should be attached to the report unless disclosure would create a risk of harm. In that case, the report should explain the risk.
- (10) Whether the child or youth is or may be eligible for developmental services or is already receiving developmental services and, if that person is already receiving services, the specific nature of those services;
  - (i) A copy of any current individualized family service plan or individual program plan should be attached to the report unless disclosure would create a risk of harm. In that case, the report should explain the risk.
- (11) Whether the parent's or guardian's educational or developmental-services decisionmaking rights have been or should be limited or restored;
- (12) If the social worker or probation officer recommends that the court limit the parent's or guardian's rights to make educational or developmental-services decisions, the reasons those rights should be limited and the actions that the parent or guardian may take to restore those rights if they are limited;
- (13) If the parent's or guardian's educational or developmental-services decisionmaking rights have been limited, the identity of the designated or appointed educational rights holder or surrogate parent;
- (14) Recommendations and case plan goals to meet the child's or youth's identified educational, physical, mental health, and developmental-services needs, including all related information listed in section 16010(a) as required by section 16010(b);
- (15) Whether any orders to direct an appropriate person to take the necessary steps for the child to receive assessments, evaluations, or services, including those for developmental services or for special education and related services, are requested; and
- (16) In the case of a joint assessment, separate statements by the child welfare department and the probation department, each addressing whether the child or youth may have a disability and whether the child or youth needs developmental services or special education and related services or qualifies for any assessment or evaluation required by state or federal law.

*(Subd (c) amended effective January 1, 2014.)*

**(d) Continuance, stay, or suspension (§§ 357, 358, 702, 705)**

If the court continues the dispositional hearing under rule 5.686 or 5.782 or stays the proceedings or suspends jurisdiction under rule 5.645, the child must continue to receive all services or accommodations required by state or federal law.

*(Subd (d) amended effective January 1, 2014.)*

**(e) Change of placement affecting the child's or youth's educational stability (§§ 16010, 16010.6; Ed. Code §§ 48850-48853.5)**

This subdivision applies to all changes of placement, including the initial placement and any subsequent change of

placement.

- (1) At any hearing to which this rule applies that follows a decision to change the child's or youth's placement to a location that could lead to removal from the school of origin, the placement agency must demonstrate that, and the court must determine whether:
  - (A) The social worker or probation officer notified the court, the child's or youth's attorney, and the educational rights holder or surrogate parent, no more than one court day after making the placement decision, of the proposed placement decision.
  - (B) If the child or youth had a disability and an active individualized education program before removal, the social worker or probation officer, at least 10 days before the change of placement, notified in writing the local educational agency that provided a special education program for the child or youth before removal and the receiving special education local plan area, as described in Government Code section 7579.1, of the impending change of placement.
- (2) After receipt of the notice in (1):
  - (A) The child's or youth's attorney must, as appropriate, discuss the proposed placement change and its effect on the child's or youth's right to attend the school of origin with the child or youth and the person who holds educational rights. The child's or youth's attorney may request a hearing by filing form JV-539. If requesting a hearing, the attorney must:
    - (i) File form JV-539 no later than two court days after receipt of the notice in (1); and
    - (ii) Provide notice of the hearing date, which will be no later than five court days after the form was filed, to the parents or guardians, unless otherwise indicated on form JV-535, parental rights have been terminated, or the youth has reached 18 years of age and reunification services have been terminated; the social worker or probation officer; the educational rights holder or surrogate parent; the foster youth educational liaison; the Court Appointed Special Advocate (CASA) volunteer; and all other persons or entities entitled to notice under section 293.
  - (B) The person who holds educational rights may request a hearing by filing form JV-539 no later than two court days after receipt of the notice in (1). After receipt of the form, the clerk must notify the persons in (e)(2)(A)(ii) of the hearing date.
  - (C) The court on its own motion may direct the clerk to set a hearing.
- (3) If removal from the school of origin is disputed, the child or youth must be allowed to remain in the school of origin pending this hearing and pending the resolution of any disagreement between the child or youth, the parent, guardian, or educational rights holder, and the local educational agency.
- (4) If the court sets a hearing, the social worker or probation officer must provide a report no later than two court days after the hearing is set that includes the information required by (b)(1)(C) as well as the following:
  - (A) Whether the foster child or youth has been allowed to continue his or her education in the school of origin to the extent required by Education Code section 48853.5(e)(1);
  - (B) Whether a dispute exists regarding the request of a foster child or youth to remain in the school of origin and whether the foster child or youth has been allowed to remain in the school of origin pending resolution of the dispute;
  - (C) Information addressing whether the information-sharing and other requirements in section 16501.1(c)(4) and Education Code section 49069.5 have been met;
  - (D) Information addressing how the proposed change serves the best interest of the child or youth;
  - (E) The responses of the child, if over 10 years old, or youth; the child's or youth's attorney; the parent, guardian, or other educational rights holder; the foster youth educational liaison; and the child's or youth's CASA volunteer to the proposed change of placement, specifying whether each person agrees or disagrees with the proposed change and, if any person disagrees, stating the reasons; and
  - (F) A statement from the social worker or probation officer confirming that the child or youth has not been segregated in a separate school, or in a separate program within a school, because the child or youth is placed in foster care.

(Subd (e) amended effective January 1, 2014.)

**(f) Court review of proposed change of placement affecting the right to attend the school of origin**

- (1) At a hearing set under (e)(2), the court must:
  - (A) Determine whether the placement agency and other relevant parties and advocates have fulfilled their obligations under section 16000(b), 16010(a), and 16501.1(f)(8);
  - (B) Determine whether the proposed school placement meets the requirements of this rule and Education Code sections 48853.5 and 49069.5, and whether the placement is in the best interest of the child or youth;
  - (C) Determine what actions are necessary to ensure the protection of the child's or youth's educational and developmental-services rights; and
  - (D) Make any findings and orders needed to enforce those rights, which may include an order to set a hearing under section 362 to join the necessary agencies regarding provision of services, including the provision of transportation services, so that the child or youth may remain in his or her school of origin.
- (2) When considering whether it is in the child's or youth's best interest to remove him or her from the school of origin, the court must consider the following:
  - (A) Whether the parent, guardian, or other educational rights holder believes that removal from the school of origin is in the child's or youth's best interest;
  - (B) How the proposed change of placement will affect the stability of the child's or youth's school placement and the child's or youth's access to academic resources, services, and extracurricular and enrichment activities;
  - (C) Whether the proposed school placement would allow the child or youth to be placed in the least restrictive educational program; and
  - (D) Whether the child or youth has the educational and developmental services and supports, including those for special education and related services, necessary to meet state academic achievement standards.
- (3) The court may make its findings and orders on *Findings and Orders Regarding Transfer From School of Origin* (form JV-538).

(Subd (f) amended effective January 1, 2014.)

Rule 5.651 amended effective January 1, 2014; adopted effective January 1, 2008.

**Advisory Committee Comment**

A child or youth in, or at risk of entering, foster care has a statutory right to a meaningful opportunity to meet the state's academic achievement standards. To protect this right, the juvenile court, advocates, placing agencies, care providers, educators, and service providers must work together to maintain stable school placements and ensure that the child or youth is placed in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to other pupils. This rule, sections 362 and 727, and rule 5.575 provide procedures for coordinating the provision of services to ensure that the child's or youth's educational and developmental-services needs are met.

Congress has found that improving the educational performance of children with disabilities is an essential prerequisite to ensuring their equality of opportunity, full participation in education, and economic self-sufficiency. Children and youth in foster care are disproportionately represented in the population of pupils with disabilities and face systemic challenges to attaining self-sufficiency. Children and youth in foster care have rights arising out of federal and state law, including the IDEA, the ADA, and section 504 of the Rehabilitation Act of 1973. To comply with federal requirements regarding the identification of children and youth with disabilities and the provision of services to those children and youth who qualify, the court, parent or guardian, placing agency, attorneys, CASA volunteer, local educational agencies, and educational rights holders must affirmatively address the child's or youth's educational and developmental-services needs. The court must continually inquire about the educational and developmental-services needs of the child or youth and the progress being made to enforce any rights the child or youth has under these laws.