California Rules of Court

Rule 5.512. Joint assessment procedure

(a) Joint assessment requirement (§ 241.1)

Whenever a child appears to come within the description of section 300 and either section 601 or section 602, the responsible child welfare and probation departments must conduct a joint assessment to determine which status will serve the best interest of the child and the protection of society.

(1) The assessment must be completed as soon as possible after the child comes to the attention of either department.

(2) Whenever possible, the determination of status must be made before any petition concerning the child is filed.

(3) The assessment report need not be prepared before the petition is filed but must be provided to the court for the hearing as stated in (e).

(4) If a petition has been filed, on the request of the child, parent, guardian, or counsel, or on the court's own motion, the court may set a hearing for a determination under section 241.1 and order that the joint assessment report be made available as required in (f).

(Subd (a) amended effective January 1, 2007.)

(b) Proceedings in same county

If the petition alleging jurisdiction is filed in a county in which the child is already a dependent or ward, the child welfare and probation departments in that county must assess the child under a jointly developed written protocol and prepare a joint assessment report to be filed in that county.

(Subd (b) amended effective January 1, 2007.)

(c) Proceedings in different counties

If the petition alleging jurisdiction is filed in one county and the child is already a dependent or ward in another county, a joint assessment must be conducted by the responsible departments of each county. If the departments cannot agree on which will prepare the joint assessment report, then the department in the county where the petition is to be filed must prepare the joint assessment report.

(1) The joint assessment report must contain the recommendations and reasoning of both the child welfare and the probation departments.

(2) The report must be filed at least 5 calendar days before the hearing on the joint assessment in the county where the second petition alleging jurisdictional facts under sections 300, 601, or 602 has been filed.

(Subd (c) amended effective January 1, 2007.)

(d) Joint assessment report

The joint assessment report must contain the joint recommendation of the probation and child welfare departments if they agree on the status that will serve the best interest of the child and the protection of society, or the separate recommendation of each department if they do not agree. The report must also include:

(1) A description of the nature of the referral;

(2) The age of the child;

(3) The history of any physical, sexual, or emotional abuse of the child;

(4) The prior record of the child's parents for abuse of this or any other child;

(5) The prior record of the child for out-of-control or delinquent behavior;

(6) The parents' cooperation with the child's school;

(7) The child's functioning at school;

(8) The nature of the child's home environment;

(9) The history of involvement of any agencies or professionals with the child and his or her family;

(10) Any services or community agencies that are available to assist the child and his or her family;

(11) A statement by any counsel currently representing the child; and

(12) A statement by any CASA volunteer currently appointed for the child.

(Subd (d) amended effective January 1, 2007.)

(e) Hearing on joint assessment

If the child is detained, the hearing on the joint assessment report must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of detention and before the jurisdictional hearing. If the child is not detained, the hearing on the joint assessment must occur before the jurisdictional hearing and within 30 days of the date of the petition. The juvenile court must conduct the hearing and determine which type of jurisdiction over the child best meets the child's unique circumstances.

(Subd (e) amended effective January 1, 2007.)

(f) Notice and participation

At least 5 calendar days before the hearing, notice of the hearing and copies of the joint assessment report must be provided to the child, the child's parent or guardian, all attorneys of record, any CASA volunteer, and any other juvenile court having jurisdiction over the child. The notice must be directed to the judicial officer or department that will conduct the hearing.

(Subd (f) amended effective January 1, 2007.)

(g) Conduct of hearing

All parties and their attorneys must have an opportunity to be heard at the hearing. The court must make a determination regarding the appropriate status of the child and state its reasons on the record or in a written order.

(h) Notice of decision after hearing

Within 5 calendar days after the hearing, the clerk of the juvenile court must transmit the court's findings and orders to any other juvenile court with current jurisdiction over the child.

(i) Local protocols

On or before January 1, 2004, the probation and child welfare departments of each county must adopt a written protocol for the preparation of joint assessment reports, including procedures for resolution of disagreements between the probation and child welfare departments, and submit a copy to the Judicial Council.

Rule 5.512 amended and renumbered effective January 1, 2007; adopted as rule 1403.5 effective January 1, 2003.

California Rules of Court

Rule 5.575. Joinder of Agencies

(a) Basis for joinder (§§ 362, 365, 727)

The court may, at any time after a petition has been filed, following notice and a hearing, join in the proceedings any agency (as defined in section 362) that the court determines has failed to meet a legal obligation to provide services to a child or a nonminor or nonminor dependent youth for whom a petition has been filed under section 300, 601, or 602. The court may not impose duties on an agency beyond those required by law.

(Subd (a) amended effective January 1, 2014; previously amended effective January 1, 2007.)

(b) Notice and Hearing

On application by a party, counsel, or CASA volunteer, or on the court's own motion, the court may set a hearing and require notice to the agency or provider subject to joinder.

(1) Notice of the hearing must be given to the agency on *Notice of Hearing on Joinder-Juvenile* (form JV-540). The notice must clearly describe the legal obligation at issue, the facts and circumstances alleged to constitute the agency's failure to meet that obligation, and any issues or questions the court expects the agency to address at the hearing.

(2) The hearing must be set to occur within 30 calendar days of the signing of the notice by the court. The hearing will proceed under the provisions of rule 5.570(h) or (i), as appropriate.

(3) The clerk must cause the notice to be served on the agency and all parties, attorneys of record, the CASA volunteer, any other person or entity entitled to notice under section 291 or 658, and, if the hearing might address educational or developmental-services issues, the educational rights holder by first-class mail within 5 court days of the signing of the notice.

(4) Nothing in this rule prohibits agencies from meeting before the hearing to coordinate the delivery of services. The court may request, using section 8 of form JV-540, that agency representatives meet before the hearing and that the agency or agencies submit a written response to the court at least 5 court days before the hearing.

(Subd (b) amended effective January 1, 2014; previously amended effective January 1, 2006, and January 1, 2007.)

Rule 5.575 amended effective January 1, 2014; adopted as rule 1434 effective January 1, 2002; previously amended effective January 1, 2006; amended and renumbered effective January 1, 2007.

California Rules of Court

Rule 5.645. Mental health or condition of child; court procedures

(a) Doubt concerning the mental health of a child (§§ 357, 705, 6550, 6551)

Whenever the court believes that the child who is the subject of a petition filed under section 300, 601, or 602 is mentally disabled or may be mentally ill, the court may stay the proceedings and order the child taken to a facility designated by the court and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. The professional in charge of the facility must submit a written evaluation of the child to the court.

(Subd (a) amended effective January 1, 2007.)

(b) Findings regarding a mental disorder (§ 6551)

Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150) applies.

(1) If the professional reports that the child is not in need of intensive treatment, the child must be returned to the juvenile court on or before the expiration of the 72-hour period, and the court must proceed with the case under section 300, 601, or 602.

(2) If the professional in charge of the facility finds that the child is in need of intensive treatment for a mental disorder, the child may be certified for not more than 14 days of involuntary intensive treatment according to the conditions of sections 5250(c) and 5260(b). The stay of the juvenile court proceedings must remain in effect during this time.

(A) During or at the end of the 14 days of involuntary intensive treatment, a certification may be sought for additional treatment under sections commencing with 5270.10 or for the initiation of proceedings to have a conservator appointed for the child under sections commencing with 5350. The juvenile court may retain jurisdiction over the child during proceedings under sections 5270.10 et seq. and 5350 et seq.

(B) For a child subject to a petition under section 602, if the child is found to be gravely disabled under sections 5300 et seq., a conservator is appointed under those sections, and the professional in charge of the child's treatment or of the treatment facility determines that proceedings under section 602 would be detrimental to the child, the juvenile court must suspend jurisdiction while the conservatorship remains in effect. The suspension of jurisdiction may end when the conservatorship is terminated, and the original 602 matter may be calendared for further proceedings.

(Subd (b) amended effective January 1, 2007.)

(c) Findings regarding mental retardation (§ 6551)

Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150) applies.

(1) If the professional finds that the child is mentally retarded and recommends commitment to a state hospital, the court may direct the filing in the appropriate court of a petition for commitment of a child as a mentally retarded person to the State Department of Developmental Services for placement in a state hospital.

(2) If the professional finds that the child is not mentally retarded, the child must be returned to the juvenile court on or before the expiration of the 72-hour period, and the court must proceed with the case under section 300, 601, or 602.

(3) The jurisdiction of the juvenile court must be suspended while the child is subject to the jurisdiction of the appropriate court under a petition for commitment of a mentally retarded person, or under remand for 90 days for intensive treatment or commitment ordered by that court.

(Subd (c) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(d) Doubt as to capacity to cooperate with counsel (§§ 601, 602; Pen. Code, § 1367)

(1) If the court finds that there is substantial evidence that a child who is the subject of a petition filed under section 601 or 602 lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her, the court must suspend the proceedings and conduct a hearing regarding the child's competence. Evidence is substantial if it raises a reasonable doubt about the child's competence to stand trial.

(A) The court must appoint an expert to examine the child to evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the child's competency.

(B) To be appointed as an expert, an individual must be a:

(i) Licensed psychiatrist who has successfully completed four years of medical school and either four years of general psychiatry residency, including one year of internship and two years of child and adolescent fellowship training, or three years of general psychiatry residency, including one year of internship and one year of residency that focus on children and adolescents and one year of child and adolescent fellowship training; or

(ii) Clinical, counseling, or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation and who is licensed as a psychologist.

(C) The expert, whether a licensed psychiatrist or psychologist, must:

(i) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

(ii) Have expertise in the cultural and social characteristics of children and adolescents;

(iii) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;

(iv) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

(v) Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents; and

(vi) Be proficient in the language preferred by the child, or if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the child.

(2) Nothing in this rule precludes involvement of clinicians with other professional qualifications from participation as consultants or witnesses or in other capacities relevant to the case.

(3) Following the hearing on competence, the court must proceed as directed in section 709.

(Subd (d) amended effective January 1, 2012; previously amended effective January 1, 2007.)

Rule 5.645 amended effective January 1, 2012; adopted as rule 1498 effective January 1, 1999; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2009.

Advisory Committee Comment

Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop and adopt rules regarding the qualification of experts to determine competency for purposes of juvenile adjudication. Upon a court finding of incompetency based on a developmental disability, the regional center determines eligibility for services under Division 4.5 of the Lanterman Developmental Disabilities Services (Welf. & Inst. Code, § 4500 et seq.).

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.

California Rules of Court

Rule 5.660. Attorneys for parties (§§ 317, 317.5, 317.6, 353, 366.26, 16010.6)

(a) Local rules

On or before January 1, 2002, the superior court of each county must amend its local rules regarding the representation of parties in dependency proceedings.

(1) The local rules must be amended after consultation by the court with representatives of the State Bar of California; local offices of the county counsel, district attorney, public defender, and other attorneys appointed to represent parties in these proceedings; county welfare departments; child advocates; current or recent foster youth; and others selected by the court in accordance with standard 5.40(c) of the Standards of Judicial Administration.

(2) The amended rules must address the following as needed:

(A) Representation of children in accordance with other sections of this rule;

(B) Timelines and procedures for settlements, mediation, discovery, protocols, and other issues related to contested matters;

(C) Procedures for the screening, training, and appointment of attorneys representing parties, with particular attention to the training requirements for attorneys representing children;

(D) Establishment of minimum standards of experience, training, and education of attorneys representing parties, including additional training and education in the areas of substance abuse and domestic violence as required;

(E) Establishment of procedures to determine appropriate caseloads for attorneys representing children;

(F) Procedures for reviewing and resolving complaints by parties regarding the performance of attorneys;

(G) Procedures for informing the court of interests of the dependent child requiring further investigation, intervention, or litigation; and

(H) Procedures for appointment of a Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem, who may be an attorney or a CASA volunteer, in cases in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the child.

(3) Appropriate local forms may be used.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2001, and January 1, 2003.)

(b) Attorneys for children

The court must appoint counsel for a child who is the subject of a petition under section 300 and is unrepresented by counsel, unless the court finds that the child would not benefit from the appointment of counsel.

(1) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:

(A) The child understands the nature of the proceedings;

(B) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and

(C) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.

(2) If the court finds that the child would not benefit from representation by counsel, the court must make a finding on the record as to each of the criteria in (1) and state the reasons for each finding.

(3) If the court finds that the child would not benefit from representation by counsel, the court must appoint a CASA volunteer for the child, to serve as the CAPTA guardian ad litem, as required in section 326.5.

(Subd (b) amended effective January 1, 2007; adopted effective July 1, 2001; previously amended effective January 1, 2003.)

(c) Conflict of interest guidelines for attorneys representing siblings

(1) *Appointment*

(A) The court may appoint a single attorney to represent a group of siblings involved in the same dependency proceeding.

(B) An attorney must decline to represent one or more siblings in a dependency proceeding, and the court must appoint a separate attorney to represent the sibling or siblings, if, at the outset of the proceedings:

(i) An actual conflict of interest exists among those siblings; or

(ii) Circumstances specific to the case present a reasonable likelihood that an actual conflict of interest will arise among those siblings.

(C) The following circumstances, standing alone, do not necessarily demonstrate an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise:

(i) The siblings are of different ages;

(ii) The siblings have different parents;

(iii) There is a purely theoretical or abstract conflict of interest among the siblings;

(iv) Some of the siblings appear more likely than others to be adoptable; or

(v) The siblings may have different permanent plans.

(2) *Withdrawal from appointment or continued representation*

(A) An attorney representing a group of siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is an actual conflict of interest.

(B) The following circumstances, standing alone, do not necessarily demonstrate an actual conflict of interest:

(i) The siblings are of different ages;

(ii) The siblings have different parents;

(iii) There is a purely theoretical or abstract conflict of interest among the siblings;

(iv) Some of the siblings are more likely to be adopted than others;

(v) The siblings have different permanent plans;

(vi) The siblings express conflicting desires or objectives, but the issues involved are not material to the case; or

(vii) The siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.

(C) It is not necessary for an attorney to withdraw from representing some or all of the siblings if there is merely a reasonable likelihood that an actual conflict of interest will develop.

(D) If an attorney believes that an actual conflict of interest existed at appointment or developed during representation, the attorney must take any action necessary to ensure that the siblings' interests are not prejudiced, including:

(i) Notifying the juvenile court of the existence of an actual conflict of interest among some or all of the siblings; and

(ii) Requesting to withdraw from representation of some or all of the siblings.

(E) If the court determines that an actual conflict of interest exists, the court must relieve an attorney from representation of some or all of the siblings.

(F) After an actual conflict of interest arises, the attorney may continue to represent one or more siblings whose interests do not conflict only if:

(i) The attorney has successfully withdrawn from the representation of all siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent;

(ii) The attorney has exchanged no confidential information with any sibling whose interest conflicts with those of the sibling or siblings the attorney continues to represent; and

(iii) Continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2006.)

(d) Competent counsel

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel.

(1) *Definition*

"Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.

(2) *Evidence of competency*

The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding.

(3) *Experience and education*

(A) Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Attorney training must include:

(i) An overview of dependency law and related statutes and cases;

(ii) Information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and

(iii) For any attorney appointed to represent a child, instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home placement.

(B) Within every three years, attorneys must complete at least eight hours of continuing education related to dependency proceedings.

(4) *Standards of representation*

Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.

(5) *Attorney contact information*

The attorney for a child for whom a dependency petition has been filed must provide his or her contact information to the child's caregiver no later than 10 days after receipt of the name, address, and telephone number of the child's caregiver. If the child is 10 years of age or older, the attorney must also provide his or her contact information to the child for whom a dependency petition has been filed no later than 10 days after receipt of the caregiver's contact information. The attorney may give contact information to a child for whom a dependency petition has been filed who is under 10 years of age. At least once a year, if the list of educational liaisons is available online from the California Department of Education, the child's attorney must provide, in any manner permitted by section 317(e)(4), his or her contact information to the educational liaison of each local educational agency serving the attorney's clients in foster care in the county of jurisdiction.

(6) *Caseloads for children's attorneys*

The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5).

(Subd (d) amended effective January 1, 2015; adopted as subd (b); amended and relettered as subd (c) effective July 1, 2001; previously relettered effective January 1, 2006; previously amended effective July 1, 1999, January 1, 2005, January 1, 2007, and January 1, 2014.)

(e) Client complaints

The court must establish a process for the review and resolution of complaints or questions by a party regarding the performance of an appointed attorney. Each party must be informed of the procedure for lodging the complaint. If it is determined that an appointed attorney has acted improperly or contrary to the rules or policies of the court, the court must take appropriate action.

(Subd (e) relettered effective January 1, 2006; adopted as subd (c); previously amended and relettered as subd (d) effective July 1, 2001.)

(f) CASA volunteer as CAPTA guardian ad litem (§ 326.5)

If the court makes the findings as outlined in (b) and does not appoint an attorney to represent the child, the court must appoint a CASA volunteer as the CAPTA guardian ad litem of the child.

(1) The required training of CASA volunteers is stated in rule 5.655.

(2) The caseload of a CASA volunteer acting as a CAPTA guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.

(3) CASA volunteers must not assume the responsibilities of attorneys for children.

(4) The appointment of an attorney to represent the child does not prevent the appointment of a CASA volunteer for that child, and courts are encouraged to appoint both an attorney and a CASA volunteer for the child in as many cases as possible.

(Subd (f) amended effective January 1, 2007; adopted as subd (e) effective July 1, 2001; previously amended effective January 1, 2003; previously relettered effective January 1, 2006.)

(g) Interests of the child

At any time following the filing of a petition under section 300 and until juvenile court jurisdiction is terminated, any interested person may advise the court of information regarding an interest or right of the child to be protected or pursued in other judicial or administrative forums.

(1) *Juvenile Dependency Petition (Version One)* (form JV-100) and *Request to Change Court Order* (form JV-180) may be used.

(2) If the attorney for the child, or a CASA volunteer acting as a CAPTA guardian ad litem, learns of any such interest or right, the attorney or CASA volunteer must notify the court immediately and seek instructions from the court as to any appropriate procedures to follow.

(3) If the court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the court must appoint an attorney for the child, if the child is not already represented by counsel, and do one or all of the following:

(A) Refer the matter to the appropriate agency for further investigation and require a report to the court within a reasonable time;

(B) Authorize and direct the child's attorney to initiate and pursue appropriate action;

(C) Appoint a guardian ad litem for the child. The guardian may be the CASA volunteer already appointed as a CAPTA guardian ad litem or a person who will act only if required to initiate appropriate action; or

(D) Take any other action to protect or pursue the interests and rights of the child.

(Subd (g) amended effective January 1, 2007; adopted as subd (d); previously amended and relettered as subd (f) effective July 1, 2001; amended effective January 1, 2003; previously relettered effective January 1, 2006.)

Rule 5.660 amended effective January 1, 2015; adopted as rule 1438 effective January 1, 1996; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1999, July 1, 2001, January 1, 2003, January 1, 2005, January 1, 2006, and January 1, 2014.

Advisory Committee Comment

The court should initially appoint a single attorney to represent all siblings in a dependency matter unless there is an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise. (*In re Celine R.* (2003) 31 Cal.4th 45, 58.) After the initial appointment, the court should relieve an attorney from representation of multiple siblings only if an actual conflict of interest arises. (*Ibid.*) Attorneys have a duty to use their best judgment in analyzing whether, under the particular facts of the case, it is necessary to decline appointment or request withdrawal from appointment due to a purported conflict of interest.

Nothing in this rule is intended to extend the permissible scope of any judicial inquiry into an attorney's reasons for declining to represent one or more siblings or requesting to withdraw from representation of one or more siblings, due to an actual or reasonably likely conflict of interest. (See State Bar Rules Prof. Conduct, rule 3-310(C).) While the court has the duty and authority to inquire as to the general nature of an asserted conflict of interest, it cannot require an attorney to disclose any privileged communication, even if such information forms the basis of the alleged conflict. (*In re James S.* (1991) 227 Cal.App.3d 930, 934; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593.)