

# Foster youth have unique educational needs



- Education outcomes for foster youth lag behind those for other students – even compared to low-income and EL students. **Why?**
- Foster youth face unique educational challenges:
  - Educational Neglect
  - High Rates of School Mobility
    - Curricular Discontinuity, Lack of School Records or Misinformation, School Disconnectedness, Gaps in Attendance
  - Disproportionate School Discipline
  - Lack of Consistent Adult Support for Education
  - Impact of Trauma.

# TOOLS FOR CHANGE!

JV 535-539; Rules 5.649-5.651.

USING COURT RULES AND FORMS  
TO IMPROVE EDUCATION  
OUTCOMES FOR FOSTER YOUTH

# WIC § 16010

Court reports must have the education information or records of the child, including:

- the names and addresses of the child's education providers;
- the child's grade level performance;
- the child's school record;
- assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
- the number of school transfers the child has already experienced;
- the child's educational progress, as demonstrated by factors, including academic proficiency scores and credits earned toward graduation;
- any other relevant education information concerning the child determined to be appropriate by the Director of Social Services.

# **CRC 5.651(c)**

## **Reports for hearings related to, or that may affect, education or developmental services**

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:

- 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;
- The child's or youth's educational, physical, mental health, or developmental needs;
- Whether the child or youth is participating in developmentally appropriate extracurricular and social activities;
- Whether the child or youth is attending a comprehensive, regular, public or private school;
- 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;
- 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;
- 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;

# CRC 5.651(c)

## Reports for hearings related to, or that may affect, education or developmental services

- 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.
- 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.
- 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.
- Recommendations and case plan goals to meet the child's or youth's identified educational, physical, mental health, and developmental-services needs; and
- 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.

# Uninterrupted Scholars Act

Effective January 14, 2013

- Permits schools to release education records to a representative of a state or local child welfare agency who has the right to access a student's case plan when the agency or organization is legally responsible for the child's care and protection.
- Eliminates the requirement that education agencies notify parents before education records are released pursuant to a court order to any individual, when the parent is a party to the case where that order was issued.

# Role of the Juvenile Court in Education

- Section 5.40 of the Standards of Judicial Administration: juvenile court judges have the “responsibility, with the other juvenile court participants ... to ensure that the child’s educational needs are met...”

# Education Code 48850

“It is the intent of the Legislature to ensure that ... educators, county placing agencies, care providers, advocates, and the juvenile courts **shall work together** to maintain stable school placements and to ensure that each [foster youth] pupil 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 all pupils... In all instances, educational and school placement decision shall be based on the best interests of the child.”

# JV-535 and related forms updated in 2013:

- Courts appoint developmental services decisionmakers as well as education rights holders.
- Courts may appoint ERHs and DSDs for young adults 18 to 21.
- ERHs have statutory duty to meet with child, investigate education needs, and report to court.
- Courts must seek to appoint an ERH known to the child.
- School-of-origin rights have expanded, and ERHs must make school placement decisions

# WHEN IS THE JV-535 FORM USED?

**At every hearing!** Court must identify child's ERH and consider education needs at detention, disposition, and all review hearings.

- Child's attorney should fill out JV-535 form
- If parent retains education rights, only items 1, 2 and 6 are filled out.
- If a prior JV-535 is in place and there are no changes, only items 1 and 2 are filled out.

# WHAT ABOUT THE JV-535A?

Not mandatory, but useful format for findings supporting orders made on JV-535. Use it to:

- Record current school and district contact info.
- Make findings to support limiting parent's education rights and/or appointing ERH
- Order ERH to take specific actions to investigate and address child's needs.
- Make findings on school-of-origin and other school placement issues.

# WHEN SHOULD PARENTS' EDUCATION RIGHTS BE LIMITED?

- **At the detention hearing**, if child has immediate educational needs and parent is “unavailable, unable, or unwilling to exercise educational or developmental services rights for the child,” despite agency’s efforts to secure parent’s participation. WIC 319(g)(1)(A).
- **At or after disposition hearing**, to the extent “necessary to protect the child.” WIC 361(a)(1).

# WHO SHOULD HOLD EDUCATION RIGHTS?

- Consider shared education rights.
- Look for responsible adult known to child.
  - Child's attorney and social worker must make efforts (ask the child, parents, relatives, other adults such as god-parents, family friends, clergy)
- Appoint volunteer if no adult known to child is available;
- Request district surrogate if no ERH available and child has/needs special education. (JV-536)
- Court holds education rights as last resort.

# RIGHTS AND DUTIES OF EDUCATION RIGHTS HOLDER

- Obtain records, attend court hearings, participate in education portion of hearing.
- Investigate educational needs
- Address needs (e.g. meet with teachers, attend IEPs, SSTs, discipline proceedings; obtain tutoring and other supports; enroll child in extracurricular activities)
- Report to court (attend hearing, contact social worker before hearing, *or* submit JV 537 form).

# EVERY CHILD NEEDS AND DESERVES AN EFFECTIVE ERH!

Court and all parties have responsibility to take action if parent or current ERH is not effective...

- Parents' counsel - help parent understand role in child's education (or consider sharing or giving up education rights);
- Social worker or minor's counsel - help current ERH understand and fulfill their role, or
- Find new ERH!

# DISPUTE RESOLUTION

- Minor's attorney or social worker requests hearing (using JV-539 form), to:
  - Limit parents' rights and/or appoint new ERH
  - Resolve a dispute over removal from school of origin.
- Court sets hearing, makes findings and orders (using JV-535/535A or JV-538 form)
  - Court may make any orders necessary to enforce child's school-of-origin rights (including joinder!)

# Review of Proposed Removal from School of Origin

# Notice of School Change

## CRC 5.651(e)

- The social worker or probation officer must notify the court, the child's attorney, and the educational rights holder or surrogate parent, no more than one court day after making the decision to move the child to a proposed placement that could lead to removal from the school of origin.

# Notice of School Change

## CRC 5.651(e)

After receipt of the notice:

- (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; 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; the social worker or probation officer; the educational rights holder or surrogate parent; the foster youth educational liaison; the 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. After receipt of the form, the clerk must provide notice of the hearing date to the required persons.
- (C)The court on its own motion may direct the clerk to set a hearing.

The child or youth must be allowed to remain in the school of origin pending this hearing.

# JV 539

<b>JV-539</b>	
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):</p> <p>TELEPHONE NO.: _____ FAX NO.: _____</p> <p>FAMILY ADDRESS: _____</p> <p>ATTORNEY FOR (Name): _____</p> <p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS: _____</p> <p>MAILING ADDRESS: _____</p> <p>CITY AND ZIP CODE: _____</p> <p>BRANCH NAME: _____</p> <p><b>CHILD'S NAME:</b> _____</p>	<p><b>FOR COURT USE ONLY</b></p>
<b>REQUEST FOR HEARING REGARDING CHILD'S ACCESS TO SERVICES</b>	CASE NUMBER: _____

**NOTICE OF HEARING**

1. A hearing on this application will be held as follows:

a. Date:	Time:	Dept:	Div:	Room:
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b. Address of court:  is shown above  is (specify): \_\_\_\_\_

**Appointment of Educational Rights Holder**

2.  On (date): \_\_\_\_\_

the educational rights holder resigned or is no longer serving in that capacity.

the surrogate parent resigned or was terminated.

I am requesting a hearing for appointment of an educational rights holder.

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

(TYPE OR PRINT NAME)  ATTORNEY FOR CHILD OR YOUTH  
 SOCIAL WORKER OR PROBATION OFFICER

**Review of Proposed Removal From School of Origin**

3.  On (date): \_\_\_\_\_, the social worker or probation officer informed me that the child's or youth's placement will be changed and that this will result in the removal of the child or youth from the school of origin. Based on the information provided to me by the social worker or probation officer, I am requesting a hearing for the court to review the proposed removal of the child or youth from the school of origin.

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

(TYPE OR PRINT NAME)  ATTORNEY FOR CHILD OR YOUTH  
 EDUCATIONAL RIGHTS HOLDER

Page 1 of 1

Form Approved for Optional Use  
Judicial Council of California  
JV-539 (Rev. January 1, 2014)

**REQUEST FOR HEARING REGARDING  
CHILD'S ACCESS TO SERVICES**

Welfare and Institutions Code, §§ 362, 727,  
Education Code, §§ 49051.5, 49069.5,  
Cal. Rules of Court, rule 5.031 www.courts.ca.gov

# Report requirements

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 with the information required in CRC5.561(e)(4), including:

- Information addressing how the proposed change serves the best interest of the child or youth;
- 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.

**NEW PLACEMENT DISRUPTION PROCESS WITH EDUCATION REQUIREMENTS**  
**7 – Day Notice with School Age Child**  
**DRAFT – Revised 8/24/08**

Receipt of 7-day notice	<ul style="list-style-type: none"> <li>➤ Schedule and Participate in TDM</li> <li>➤ The social worker at this time is to initiate a search for a probable alternate placement for the child taking into account the proximity of the child’s “school of origin”</li> </ul>	
<b>STOP HERE IF PLACEMENT IS SAVED</b>		
	<b>If placement disruption does not require the child to transfer to a new school</b> ↓	<b>If placement disruption requires the child to transfer to a new school</b> ↓
As soon as Possible	Determine if pre-placement visits can be established	<ul style="list-style-type: none"> <li>➤ Complete “<i>Notice of Placement Disruption that May Require the Child to Transfer to a New School</i>” (CS643?) and give to transcription. (Transcription will email the completed document to the social worker and supervisor within 24 hours.)</li> <li>➤ Social worker or supervisor will review the returned CS 643 and make any necessary changes.</li> <li>➤ Social worker or supervisor will email the corrected 643 to the appropriate school change distribution list in outlook and return a revised copy to transcription.</li> <li>➤ Transcription will correct the CS 643 in CWS/CMS and print out a copy for social worker and supervisor’s signature.</li> <li>➤ Social worker and supervisor will sign document, submit to court and mail a signed copy to the educational rights holder</li> </ul> <p><i>Please note once SCA and the educational rights holder have received a copy of the CS 642A, they will have 3 court days to challenge the department’s decision to enroll the child in a new school by filing a JV 539</i></p> <ul style="list-style-type: none"> <li>➤ Determine if pre-placement visits can be established</li> </ul>
		<b>IF a JV 539 is not Filed</b> ↓
		<b>IF a JV 539 is Filed</b> ↓
3 court days after CS 643 has been emailed to SCA, the Foster Youth Liaison and mailed to the educational rights holder		<p>Inform the new care-giver that the child can be enrolled in a new school</p> <p><i>Please note that the child can enroll in a new school prior to 3 court days after the CS 643 is filed if the social worker verbally or in writing (i.e. Email) confirms with SCA and the educational rights holder that they will not challenge this decision by filing a JV539. This confirmation must be documented in the file.</i></p>
		<p><i>If SCA challenges the department’s decision to enroll the child in a new school, the social worker and supervisor will be notified via email.</i></p> <ul style="list-style-type: none"> <li>➤ Arrange for the child to be transported back to the school of origin until the outcome of the hearing is known.</li> <li>➤ Complete “<b>Proposed Removal From The School of Origin</b>” court report and findings and Order (JV 538)</li> </ul>
<b>For Special Education Children Only</b>		
As soon as the new school is known		<p>Contact the Foster Youth Liaison at the new school district to inform them that a child with special education will be enrolled in a school within their district.</p>
		<p><i>If the outcome of the hearing allows the child to be enrolled in a new school:</i></p> <p>Contact the Foster Youth Liaison at the new school district to inform them that a child with special education will be enrolled in a school within their district.</p>
Within 5 days after placement disruption	<b>Complete 1173</b> and submit to transcription which will initiate completion of the “ <i>Notice of Placement Disruption</i> ” (CS 642)	<b>Complete 1173</b> and submit to transcription which will initiate completion of the “ <i>Notice of Placement Disruption</i> ” (CS 642)

# Transportation

- Fostering Connections to Success Act
  - Added the cost of reasonable travel for the child to remain in the school of origin as an allowable foster care maintenance cost. (42 USC § 675(4)(a))
  - ACL NO. 11-51 Educational Travel reimbursement
- AB 854: Foster Youth Services Coordinating Programs
  - Requires the FYSC to establish an ongoing collaboration with LEAs, county child welfare agencies, and probation departments to determine the proper educational placement of foster youth, with the primary goal to be to minimize changes in school placements. FYSC may pay for cost of transportation
- Special Education
  - Transportation as a related service

# Resources

[www.cfyetf.org](http://www.cfyetf.org) - **California Foster Youth Education Task Force** - education Law factsheets and other materials.

[www.MyLifeMyRights.org](http://www.MyLifeMyRights.org) – **Public Counsel** - easy to read, phone and tablet-friendly website for foster youth on education and ILP rights.