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

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

10
11 **(a) Order (§§ 361, 366, 366.27, 366.3, 726, 727.2; 20 U.S.C. § 1415; 34 C.F.R. §**
12 **300.300)**

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14 At the dispositional hearing and each subsequent review or permanency hearing,
15 the court must determine whether the rights of a parent or guardian to make
16 educational or developmental-services decisions for the child should be limited.
17 If necessary to protect a child who is adjudged a dependent or ward of the court
18 under section 300, 601, or 602, the court may limit a parent's or guardian's rights
19 to make educational or developmental-services decisions for the child by making
20 appropriate, specific orders on *Order Designating Educational Rights Holder* (form
21 JV-535).

22
23 **(b) Temporary order (§ 319)**

24
25 At the initial hearing on a petition filed under section 325 or at any time before a
26 child is adjudged a dependent or the petition is dismissed, the court may, on
27 making the findings required by section 319(g)(1), use form JV-535 to temporarily
28 limit a parent's or guardian's rights to make educational or developmental-services
29 decisions for the child. An order made under section 319(g) expires on dismissal of
30 the petition, but in no circumstances later than the conclusion of the hearing held
31 under section 361.

32
33 If the court does temporarily limit the parent's or guardian's rights to make
34 educational or developmental-services decisions, the court must, at the
35 dispositional hearing, reconsider the need to limit those rights and must identify the
36 authorized educational rights holder on form JV-535.

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

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

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- (1) The court has limited, even temporarily, the educational or developmental-services decision-making 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 decision-making 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 5.650. 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

1 caregiver may, without a court order, exercise educational decision-making
2 rights under Education Code section 56055 and developmental-services
3 decision-making rights under section 361 or 726, and is not prohibited from
4 exercising those rights by section 361, 726, or 4701.6(b), or by 34 Code of
5 Federal Regulations section 300.519 or 303.422; or
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7 (2) The court cannot identify a responsible adult to serve as the child's
8 educational rights holder under section 319, 361, or 726 or under Education
9 Code section 56055; and
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11 (A) The child is a dependent child or ward of the court and is or may be
12 eligible for special education and related services or already has a valid
13 individualized education program, and the court:
14

15 (i) refers the child to the local educational agency for the
16 appointment of a surrogate parent under section 361 or 726,
17 Government Code section 7579.5, and title 20 United States
18 Code section 1415; and
19

20 (ii) Will, with the input of any interested person, make
21 developmental-services decisions for the child; or
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23 (B) The appointment of a surrogate parent is not warranted, and the court
24 will, with the input of any interested person, make educational and
25 developmental-services decisions for the child.
26

27 (C) If the court must temporarily make educational or developmental-
28 services decisions for a child before disposition, it must order that
29 every effort be made to identify a responsible adult to make future
30 educational or developmental-services decisions for the child.
31

32 **(b) Nonminor and nonminor dependent youth (§§ 361, 726, 366.3)**
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34 The court may, using form JV-535, appoint or continue the appointment of an
35 educational rights holder to make educational or developmental-services decisions
36 for a nonminor or nonminor dependent youth if:
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38 (1) The youth has chosen not to make educational or developmental-services
39 decisions for himself or herself or is deemed by the court to be incompetent;
40 and
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1 (2) With respect to developmental-services decisions, the court also finds that the
2 appointment or continuance of a rights holder would be in the best interests
3 of the youth.
4

5 **(c) Limits on appointment (§§ 319, 361, 726; Ed. Code, § 56055; Gov. Code, §**
6 **7579.5(i)-(j); 34 C.F.R. §§ 300.519, 303.422)**
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8 (1) The court must determine whether a responsible adult relative, nonrelative
9 extended family member, or other adult known to the child is available and
10 willing to serve as the educational rights holder and, if one of those adults is
11 available and willing to serve, should consider appointing that person before
12 appointing or temporarily appointing a responsible adult not known to the
13 child.
14

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

21 **(d) Referral for appointment of surrogate parent (§§ 361, 726; Gov. Code, §**
22 **7579.5; 20 U.S.C. § 1415)**
23

24 (1) If the court has limited a parent's or guardian's right to make educational
25 decisions for a child and cannot identify a responsible adult to act as the
26 educational rights holder, and the child is or may be eligible for special
27 education and related services or already has an individualized education
28 program, the court must use form JV-535 to refer the child to the responsible
29 local educational agency for prompt appointment of a surrogate parent under
30 Government Code section 7579.5.
31

32 (2) If the court refers a child to the local educational agency for appointment of a
33 surrogate parent, the court must order that *Local Educational Agency*
34 *Response to JV-535—Appointment of Surrogate Parent* (form JV-536) be
35 attached to form JV-535 and served by first-class mail on the local
36 educational agency no later than five court days from the date the order is
37 signed.
38

39 (3) The court must direct the local educational agency that when the agency
40 receives form JV-535 requesting prompt appointment of a surrogate parent,
41 the agency must make reasonable efforts to identify and appoint a surrogate
42 parent within 30 calendar days of service of the referral.
43

1 (A) Whenever the local educational agency appoints a surrogate parent for
2 a dependent or ward under Government Code section 7579.5(a)(1), it
3 must notify the court on form JV-536 within five court days of the
4 appointment and, at the same time, must send copies of the notice to the
5 child's attorney and to the social worker or probation officer identified
6 on the form.

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8 (B) If the local educational agency does not appoint a surrogate parent
9 within 30 days of receipt of a judicial request, it must notify the court
10 within the next five court days on form JV-536 of the following:

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12 (i) Its inability to identify and appoint a surrogate parent; and

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14 (ii) Its continuing reasonable efforts to identify and appoint a
15 surrogate parent.

16
17 (4) Whenever a surrogate parent resigns or the local educational agency
18 terminates the appointment of a surrogate parent, replaces a surrogate parent,
19 or appoints another surrogate parent, it must notify the court, the child's
20 attorney, and the social worker or probation officer on form JV-536 within
21 five court days of the resignation, termination, replacement, or appointment.
22 The child's attorney, the social worker, or the probation officer may request a
23 hearing for appointment of a new educational rights holder by filing *Request*
24 *for Hearing Regarding Child's Access to Services* (form JV-539) and must
25 provide notice of the hearing as provided in (g)(2). The court may, on its own
26 motion, direct the clerk to set a hearing.

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28 **(e) Transfer of parent's or guardian's educational or developmental-services**
29 **decision-making rights to educational rights holder**

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31 When the court appoints an educational rights holder after limiting a parent's or
32 guardian's educational or developmental-services decision-making rights, those
33 parental decision-making rights-including the right to notice of educational or
34 developmental-services meetings and activities, to participation in educational or
35 developmental-services meetings and activities, and to decision-making authority
36 regarding the child's education or developmental services, including the authority
37 under sections 4512 and 4701.6, Education Code section 56028, 20 United States
38 Code sections 1232g and 1401(23), and 34 Code of Federal Regulations section
39 300.30-are transferred to the educational rights holder unless the court specifies
40 otherwise in its order.

41
42 (1) When returning a child to a parent or guardian, the court must consider the
43 child's educational and developmental-services needs. The parent's or

1 guardian's educational and developmental-services decision-making rights
2 are reinstated when the court returns custody to the parent or guardian unless
3 the court finds specifically that continued limitation of parental decision-
4 making rights is necessary to protect the child.
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- 6 (2) If the court appoints a guardian for the child under rule 5.735 or 5.815, all of
7 the parent's or previous guardian's educational and developmental-services
8 decision-making rights transfer to the newly appointed guardian unless the
9 court determines that limitation of the new guardian's decision-making rights
10 is necessary to protect the child.
11

12 **(f) Authority and responsibilities (§§ 317, 319, 360, 361, 635, 706.5, 726, 4514,**
13 **4646-4648, 4700-4731, 5328; Ed. Code, §§ 56055, 56340, 56345; Gov. Code, §§**
14 **7579.5, 95014-95020; 34 C.F.R. § 300.519)**
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- 16 (1) The educational rights holder acts as and holds the rights of the parent or
17 guardian with respect to all decisions regarding the child's education and
18 developmental services, and is entitled:
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20 (A) To access records and to authorize the disclosure of information to the
21 same extent as a parent or guardian under the Family Educational
22 Rights and Privacy Act (FERPA), 20 United States Code section
23 1232g;
24

25 (B) To be given notice of and participate in all meetings or proceedings
26 relating to school discipline;
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28 (C) To advocate for the interests of a child or youth with exceptional needs
29 in matters relating to:
30

31 (i) The identification and assessment of those needs;
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33 (ii) Instructional or service planning and program development-
34 including the development of an individualized family service
35 plan, an individualized educational program, an individual
36 program plan, or the provision of other services and supports, as
37 applicable;
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39 (iii) Placement in the least restrictive program appropriate to the
40 child's or youth's educational or developmental needs;
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- 1 (iv) The review or revision of the individualized family service plan,
2 the individualized education program, or the individual program
3 plan; and
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- 5 (v) The provision of a free, appropriate public education.
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- 7 (D) To attend and participate in the child's or youth's individualized family
8 service plan, individualized education program, individual program
9 plan, and other educational or service planning meetings; to consult
10 with persons involved in the provision of the child's or youth's
11 education or developmental services; and to sign any written consent to
12 educational or developmental services and plans; and
13
- 14 (E) Notwithstanding any other provision of law, to consent to the child's or
15 youth's individualized family service plan, individualized education
16 program, or individual program plan, including any related
17 nonemergency medical services, mental health treatment services, and
18 occupational or physical therapy services provided under sections
19 7570-7587 of the Government Code.
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- 21 (2) The educational rights holder is responsible for investigating the child's or
22 youth's educational and developmental-services needs, determining whether
23 those needs are being met, and acting on behalf of the child or youth in all
24 matters relating to the provision of educational or developmental services, as
25 applicable, to ensure:
26
- 27 (A) The stability of the child's or youth's school placement. At any hearing
28 following a change of educational placement, the educational rights
29 holder must submit a statement to the court indicating whether the
30 proposed change of placement is in the child's or youth's best interest
31 and whether any efforts have been made to keep the pupil in the school
32 of origin;
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- 34 (B) Placement in the least restrictive educational program appropriate to the
35 child's or youth's individual needs;
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- 37 (C) The child's or youth's access to academic resources, services, and
38 extracurricular and enrichment activities;
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- 40 (D) The child's or youth's access to any educational and developmental
41 services and supports needed to meet state standards for academic
42 achievement and functional performance or, with respect to
43 developmental services, to promote community integration, an

1 independent, productive, and normal life, and a stable and healthy
2 environment;

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4 (E) The prompt and appropriate resolution of school disciplinary matters;

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6 (F) The provision of any other elements of a free, appropriate public
7 education; and

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9 (G) The provision of any appropriate early intervention or developmental
10 services required by law, including the California Early Intervention
11 Services Act or the Lanterman Developmental Disabilities Services
12 Act.

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14 (3) The educational rights holder is also responsible for:

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16 (A) Meeting with the child or youth at least once and as often as necessary
17 to make educational or developmental-services decisions that are in the
18 best interest of the child or youth;

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20 (B) Being culturally sensitive to the child or youth;

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22 (C) Complying with all federal and state confidentiality laws, including, but
23 not limited to, sections 362.5, 827, 4514, and 5328, as well as
24 Government Code section 7579.5(f);

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26 (D) Participating in, and making decisions regarding, all matters affecting
27 the child's or youth's educational or developmental-services needs-
28 including, as applicable, the individualized family service planning
29 process, the individualized education program planning process, the
30 individual program planning process, the fair hearing process
31 (including mediation and any other informal dispute resolution
32 meetings), and as otherwise specified in the court order-in a manner
33 consistent with the child's or youth's best interest; and

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35 (E) Maintaining knowledge and skills that ensure adequate representation
36 of the child's or youth's needs and interests with respect to education
37 and developmental services.

38
39 (4) Before each statutory review hearing, the educational rights holder must do
40 one or more of the following:
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- 1 (A) Provide information and recommendations concerning the child's or
2 youth's educational or developmental-services needs to the assigned
3 social worker or probation officer;
4
- 5 (B) Make written recommendations to the court concerning the child's or
6 youth's educational or developmental-services needs;
7
- 8 (C) Attend the review hearing and participate in any part of the hearing that
9 concerns the child's or youth's education or developmental services.
10

- 11 (5) The educational rights holder may provide the contact information for the
12 child's or youth's attorney to the local educational agency.
13

14 **(g) Term of service; resignation (§§ 319, 361, 726; Gov. Code § 7579.5)**
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- 16 (1) An appointed educational rights holder must make educational or
17 developmental-services decisions for the child or youth until:
18
- 19 (A) The dismissal of the petition or the conclusion of the dispositional
20 hearing, if the rights holder is appointed under section 319(g);
21
- 22 (B) The rights of the parent or guardian to make educational or
23 developmental-services decisions for the child are fully restored;
24
- 25 (C) The dependent or ward reaches 18 years of age, unless he or she
26 chooses not to make his or her own educational or developmental-
27 services decisions or is deemed incompetent by the court, in which case
28 the court may, if it also finds that continuation would be in the best
29 interests of the youth, continue the appointment until the youth reaches
30 21 years of age or the court's jurisdiction is terminated;
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- 32 (D) The court appoints another responsible adult as educational rights
33 holder for the child or youth under this rule;
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- 35 (E) The court appoints a successor guardian or conservator; or
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- 37 (F) The court designates an identified foster parent, relative caregiver, or
38 nonrelative extended family member to make educational or
39 developmental-services decisions because:
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- 41 (i) Reunification services have been terminated and the child is
42 placed in a planned permanent living arrangement with the

1 identified caregiver under section 366.21(g)(5), 366.22, 366.26,
2 366.3(i), 727.3(b)(5), or 727.3(b)(6); and

- 3
4 (ii) The foster parent, relative caregiver, or nonrelative extended
5 family member is not otherwise excluded from making education
6 or developmental-services decisions by the court, by section 361
7 or 726, or by 34 Code of Federal Regulations section 300.519 or
8 303.422.

- 9
10 (2) If an appointed educational rights holder resigns his or her appointment, he or
11 she must give notice to the court and to the child's attorney and may
12 use *Educational Rights Holder Statement* (form JV-537) to provide this
13 notice. Once notice is received, the child's or youth's attorney, or the social
14 worker or probation officer may request a hearing for appointment of a new
15 educational rights holder by filing form JV-539.

16
17 The attorney for the party requesting the hearing must provide notice of the
18 hearing to:

- 19
20 (A) The parents or guardians, unless otherwise indicated on the most recent
21 form JV-535, parental rights have been terminated, or the child has
22 reached 18 years of age;
23
24 (B) Each attorney of record;
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26 (C) The social worker or probation officer;
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28 (D) The CASA volunteer; and
29
30 (E) All other persons or entities entitled to notice under section 293.

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32 The hearing must be set within 14 days of receipt of the request for hearing.
33 The court may, on its own motion, direct the clerk to set a hearing.
34

35 **(h) Service of order**

36
37 Whenever the order identifies or appoints a new or different educational rights
38 holder or includes any other changes, the clerk will provide a copy of the
39 completed and signed form JV-535, form JV-535(A) if attached, and any received
40 form JV-536 or JV-537 to:

- 41
42 (1) The child, if 10 years of age or older, or youth;
43

- 1 (2) The attorney for the child or youth;
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- 3 (3) The social worker or probation officer;
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- 5 (4) The Indian child's tribe, if applicable, as defined in rule 5.502;
- 6
- 7 (5) The local foster youth educational liaison, as defined in Education Code
- 8 section 48853.5;
- 9
- 10 (6) The county office of education foster youth services coordinator;
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- 12 (7) The regional center service coordinator, if applicable; and
- 13
- 14 (8) The educational rights holder.

15
16 The completed and signed form must be provided no later than five court days from
17 the date the order is signed. The clerk must also ensure that any immediately
18 preceding educational rights holder, surrogate parent, or authorized representative,
19 if any, is notified that the previous court order has been vacated and their
20 appointment terminated.

21
22 The clerk will make copies of the form available to the parents or guardians, unless
23 otherwise indicated on the form, parental rights have been terminated, or the child
24 has reached 18 years of age and reunification services have been terminated; to the
25 CASA volunteer; and, if requested, to all other persons or entities entitled to notice
26 under section 293.

27
28 **(i) Education and training of educational rights holder**

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

37
38 **(j) Notice of and participation in hearings**

- 39
- 40 (1) The educational rights holder must receive notice of all regularly scheduled
- 41 juvenile court hearings and other judicial hearings that might affect the
- 42 child's or youth's education and developmental services, including joint

1 assessment hearings under rule 5.512 and joinder proceedings under rule
2 5.575.

- 3
4 (2) The educational rights holder may use form JV-537 to explain any
5 educational or developmental-services needs to the court. The court must
6 permit the educational rights holder to attend and participate in those portions
7 of a court hearing, nonjudicial hearing, or mediation that concern education
8 or developmental services.
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10
11 **Rule 5.651. Educational and developmental-services decision-making rights**
12

- 13 (a) **Applicability (§§ 213.5, 319(g), 358, 358.1, 361(a), 362(a), 364, 366.21, 366.22,**
14 **366.23, 366.26, 366.27(b), 366.3(e), 726, 727.2(e), 4500 et seq., 11404.1; Ed.**
15 **Code, §§ 48645 et seq., 48850 et seq., 49069.5, 56028, 56055, and 56155 et seq.;**
16 **Gov. Code, §§ 7573-7579.6; 20 U.S.C. § 1400 et seq.; 29 U.S.C. § 794; 42 U.S.C.**
17 **§ 12101 et seq.)**
18

19 This rule incorporates all rights with respect to education or developmental services
20 recognized or established by state or federal law and applies:
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- 22 (1) To any child, or any nonminor or nonminor dependent youth, for whom a
23 petition has been filed under section 300, 601, or 602 until the petition is
24 dismissed or the court has terminated dependency, delinquency, or transition
25 jurisdiction over that person; and
26
27 (2) To every judicial hearing related to, or that might affect, the child's or
28 youth's education or receipt of developmental services.
29

30 **(b) Conduct of hearings**
31

- 32 (1) To the extent the information is available, at the initial or detention hearing
33 the court must consider:
34
35 (A) Who holds educational and developmental-services decision-making
36 rights, and identify the rights holder or holders;
37
38 (B) Whether the child or youth is enrolled in, and is attending, the child's
39 or youth's school of origin, as that term is defined in Education Code
40 section 48853.5(f);
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42 (C) If the child or youth is at risk of removal from or is no longer attending
43 the school of origin, whether:

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- (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 decision-making 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 decision-making 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:

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- (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 decision-making 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 decision-making 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

1 child's education and developmental services as provided in rule
2 5.650(e), (f), and (j); or

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4 (ii) If the court finds that the parent's or guardian's educational or
5 developmental-services decision-making rights should be or
6 remain limited, the court must designate the holder of those
7 rights. The court must explain to the parent or guardian why the
8 court is limiting his or her educational or developmental-services
9 decision-making rights and must explain the rights and
10 responsibilities of the educational rights holder as provided in
11 rule 5.650(e), (f), and (j); and

12
13 (I) Whether, in the case of a nonminor or nonminor dependent youth who
14 has chosen not to make educational or developmental-services
15 decisions for himself or herself or has been deemed incompetent, it is in
16 the best interests of the youth to appoint or to continue the appointment
17 of an educational rights holder.

18
19 **(c) Reports for hearings related to, or that may affect, education or**
20 **developmental services**

21
22 This subdivision applies at all hearings, including dispositional and joint
23 assessment hearings. The court must ensure that, to the extent the information was
24 available, the social worker or the probation officer provided the following
25 information in the report for the hearing:

- 26
27 (1) The child's or youth's age, behavior, educational level, and developmental
28 status and any discrepancies between that person's age and his or her level of
29 achievement in education or level of cognitive, physical, and emotional
30 development;
- 31
32 (2) The child's or youth's educational, physical, mental health, or developmental
33 needs;
- 34
35 (3) Whether the child or youth is participating in developmentally appropriate
36 extracurricular and social activities;
- 37
38 (4) Whether the child or youth is attending a comprehensive, regular, public or
39 private school;
- 40
41 (5) Whether the child or youth may have physical, mental, or learning-related
42 disabilities or other characteristics indicating a need for developmental

1 services or special education and related services as provided by state or
2 federal law;

3
4 (6) If the child is 0 to 3 years old, whether the child may be eligible for or is
5 already receiving early intervention services or services under the California
6 Early Intervention Services Act (Gov. Code, § 95000 et seq.) and, if the child
7 is already receiving services, the specific nature of those services;

8
9 (7) If the child is between 3 and 5 years old and is or may be eligible for special
10 education and related services, whether the child is receiving the early
11 educational opportunities provided by Education Code section 56001 and, if
12 so, the specific nature of those opportunities;

13
14 (8) Whether the child or youth is receiving special education and related services
15 or any other services through a current individualized education program and,
16 if so, the specific nature of those services;

17
18 (A) A copy of the current individualized education program should be
19 attached to the report unless disclosure would create a risk of harm. In
20 that case, the report should explain the risk.

21
22 (9) Whether the child or youth is receiving services under section 504 of the
23 Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and, if so, the specific
24 nature of those services;

25
26 (A) A copy of any current Section 504 plan should be attached to the report
27 unless disclosure would create a risk of harm. In that case, the report
28 should explain the risk.

29
30 (10) Whether the child or youth is or may be eligible for developmental services
31 or is already receiving developmental services and, if that person is already
32 receiving services, the specific nature of those services;

33
34 (A) A copy of any current individualized family service plan or individual
35 program plan should be attached to the report unless disclosure would
36 create a risk of harm. In that case, the report should explain the risk.

37
38 (11) Whether the parent's or guardian's educational or developmental-services
39 decision-making rights have been or should be limited or restored;

40
41 (12) If the social worker or probation officer recommends that the court limit the
42 parent's or guardian's rights to make educational or developmental-services

1 decisions, the reasons those rights should be limited and the actions that the
2 parent or guardian may take to restore those rights if they are limited;

3
4 (13) If the parent's or guardian's educational or developmental-services decision-
5 making rights have been limited, the identity of the designated or appointed
6 educational rights holder or surrogate parent;

7
8 (14) Recommendations and case plan goals to meet the child's or youth's
9 identified educational, physical, mental health, and developmental-services
10 needs, including all related information listed in section 16010(a) as required
11 by section 16010(b);

12
13 (15) Whether any orders to direct an appropriate person to take the necessary steps
14 for the child to receive assessments, evaluations, or services, including those
15 for developmental services or for special education and related services, are
16 requested; and

17
18 (16) In the case of a joint assessment, separate statements by the child welfare
19 department and the probation department, each addressing whether the child
20 or youth may have a disability and whether the child or youth needs
21 developmental services or special education and related services or qualifies
22 for any assessment or evaluation required by state or federal law.

23
24 **(d) Continuance, stay, or suspension (§§ 357, 358, 702, 705)**

25
26 If the court continues the dispositional hearing under rule 5.686 or 5.782 or stays
27 the proceedings or suspends jurisdiction under rule 5.645, the child must continue
28 to receive all services or accommodations required by state or federal law.

29
30 **(e) Change of placement affecting the child's or youth's educational stability (§§**
31 **16010, 16010.6; Ed. Code §§ 48850-48853.5)**

32
33 This subdivision applies to all changes of placement, including the initial
34 placement and any subsequent change of placement.

35
36 (1) At any hearing to which this rule applies that follows a decision to change the
37 child's or youth's placement to a location that could lead to removal from the
38 school of origin, the placement agency must demonstrate that, and the court
39 must determine whether:

40
41 (A) The social worker or probation officer notified the court, the child's or
42 youth's attorney, and the educational rights holder or surrogate parent,

1 no more than one court day after making the placement decision, of the
2 proposed placement decision.

3
4 (B) If the child or youth had a disability and an active individualized
5 education program before removal, the social worker or probation
6 officer, at least 10 days before the change of placement, notified in
7 writing the local educational agency that provided a special education
8 program for the child or youth before removal and the receiving special
9 education local plan area, as described in Government Code section
10 7579.1, of the impending change of placement.

11
12 (2) After receipt of the notice in (1):

13
14 (A) The child's or youth's attorney must, as appropriate, discuss the
15 proposed placement change and its effect on the child's or youth's right
16 to attend the school of origin with the child or youth and the person
17 who holds educational rights. The child's or youth's attorney may
18 request a hearing by filing form JV-539. If requesting a hearing, the
19 attorney must:

20
21 (i) File form JV-539 no later than two court days after receipt of the
22 notice in (1); and

23
24 (ii) Provide notice of the hearing date, which will be no later than
25 five court days after the form was filed, to the parents or
26 guardians, unless otherwise indicated on form JV-535, parental
27 rights have been terminated, or the youth has reached 18 years of
28 age and reunification services have been terminated; the social
29 worker or probation officer; the educational rights holder or
30 surrogate parent; the foster youth educational liaison; the Court
31 Appointed Special Advocate (CASA) volunteer; and all other
32 persons or entities entitled to notice under section 293.

33
34 (B) The person who holds educational rights may request a hearing by
35 filing form JV-539 no later than two court days after receipt of the
36 notice in (1). After receipt of the form, the clerk must notify the persons
37 in (e)(2)(A)(ii) of the hearing date.

38
39 (C) The court on its own motion may direct the clerk to set a hearing.

40
41 (3) If removal from the school of origin is disputed, the child or youth must be
42 allowed to remain in the school of origin pending this hearing and pending

1 the resolution of any disagreement between the child or youth, the parent,
2 guardian, or educational rights holder, and the local educational agency.

3
4 (4) If the court sets a hearing, the social worker or probation officer must provide
5 a report no later than two court days after the hearing is set that includes the
6 information required by (b)(1)(C) as well as the following:

7
8 (A) Whether the foster child or youth has been allowed to continue his or
9 her education in the school of origin to the extent required by
10 Education Code section 48853.5(e)(1);

11
12 (B) Whether a dispute exists regarding the request of a foster child or youth
13 to remain in the school of origin and whether the foster child or youth
14 has been allowed to remain in the school of origin pending resolution
15 of the dispute;

16
17 (C) Information addressing whether the information-sharing and other
18 requirements in section 16501.1(c)(4) and Education Code section
19 49069.5 have been met;

20
21 (D) Information addressing how the proposed change serves the best
22 interest of the child or youth;

23
24 (E) The responses of the child, if over 10 years old, or youth; the child's or
25 youth's attorney; the parent, guardian, or other educational rights
26 holder; the foster youth educational liaison; and the child's or youth's
27 CASA volunteer to the proposed change of placement, specifying
28 whether each person agrees or disagrees with the proposed change and,
29 if any person disagrees, stating the reasons; and

30
31 (F) A statement from the social worker or probation officer confirming that
32 the child or youth has not been segregated in a separate school, or in a
33 separate program within a school, because the child or youth is placed
34 in foster care.

35
36 **(f) Court review of proposed change of placement affecting the right to attend the**
37 **school of origin**

38
39 (1) At a hearing set under (e)(2), the court must:

40
41 (A) Determine whether the placement agency and other relevant parties and
42 advocates have fulfilled their obligations under section 16000(b),
43 16010(a), and 16501.1(f)(8);

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- (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).