

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack and Hon. Susan Huguenor, Cochairs
Chantal M. Sampogna, Attorney, 415-865-7729,
chantal.sampogna@jud.ca.gov

DATE: September 5, 2007

SUBJECT: Juvenile Law: Ensuring Foster Children's Educational Rights
(amend Cal. Rules of Court, rules 5.502, 5.518, 5.534, 5.650,
5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365,
JV-535, and JV-536; and approve forms JV-537, JV-538, and JV-539)
(Action Required)

Issue Statement

In 2003, the educational rights of foster children were codified by the Legislature with the passage of Assembly Bill 490 (Steinberg; Stats. 2003, ch. 862).¹ In addition, existing law provides educational rights for children with physical, mental, and learning-related disabilities and for children in foster care.² This proposal would incorporate applicable federal and state education and disability laws into juvenile rules and forms and would provide court procedures for implementing those laws.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that effective January 1, 2008, the Judicial Council:

1. Amend rules 5.502, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790 of the California Rules of Court;

¹ AB 490, relating to foster children's educational rights, amended Welfare and Institutions Code sections 361, 366.27, 726, 727.2, 4570, 16000, and 16501.1; amended Education Code sections 48645.5, 48850, 48859, 49061, 49069.5, 49076, and 56055; and added Education Code sections 48853 and 48853.5.

² The Individuals With Disabilities Education Improvement Act of 2004 (20 U.S.C.A. § 1400 et seq.); the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.); the Rehabilitation Act of 1973, § 504 (29 U.S.C.A. § 701 et seq.); Ed. Code, § 56156; Gov. Code, §§ 7560 et seq., 95000 et seq.; Welf. & Inst. Code, §§ 362.05, 4500 et seq.

2. Adopt rule 5.651;
3. Revise forms JV-225, *Your Child's Health and Education*; JV-365, *Termination of Dependency Jurisdiction—Child Attaining Age of Majority*; JV-535, *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*; and JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*; and
4. Approve forms JV-537, *Educational Representative or Surrogate Parent Information*; JV-538, *Findings and Orders Regarding Transfer from School of Origin*; and JV-539, *Request for Hearing Regarding Child's Education*.

The text of the amended and new rules is attached at pages 17–38; the text of the forms is attached at pages 39–55.

Rationale for Recommendation

Children in foster care often have physical, mental, and learning-related disabilities and thus a greater need for educational services than other children. Their disabilities can be due to the effects of abuse or neglect or their separation from the family and home environment. In 2003, Assembly Bill 490 detailed the educational rights for children in foster care. This bill focused on children's education while in foster care, school placement stability, and eliminating the negative effects that foster care placement often has on a child's education.

Soon after the passage of Assembly Bill 490, the Judicial Council received comments on the Spring 2005 proposal "Juvenile Law: Findings and Orders After Hearing." Advocates for children with disabilities and children in foster care advised that the current juvenile law hearing procedures and timelines do not provide meaningful court oversight of a child's education rights. Although the comments were outside the scope of that proposal, the Family and Juvenile Law Advisory Committee did recommend that the Judicial Council consider them in a future rules and forms cycle.

The committee reviewed the issues raised by the commentators in 2005 and agreed that existing procedures make it difficult for the court to determine whether the children for whom they are responsible are receiving appropriate education that meets their needs. The proposed rule amendments, new rules, and revised and new forms will assist the court in its oversight role of ensuring that children who are dependents or wards of the juvenile court receive the educational services to which they are entitled under state and federal law. The new and amended rules and forms address the following:

- The procedures for limiting the rights of parents or guardians to make educational decisions for their child and appointing an educational representative;
- The role of the *educational representative*, including the educational representative's rights and responsibilities;
- The educational rights of children before the court; and
- The court's role in monitoring that a proposed change of school placement does not interfere with the child's rights.

Alternative Actions Considered

The committee considered not going forward with this proposal. However, the committee believes that many children under the jurisdiction of the juvenile court are not receiving the educational services to which they are entitled by state and federal law. The proposed changes to the rules and forms are necessary to provide procedures that allow the court to provide appropriate oversight of the education of children under the jurisdiction of the juvenile court.

Comments from Interested Parties

The invitation to comment on the proposal was circulated from April 25, 2007, through June 20, 2007, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. In addition to the regular circulation list, the committee sent this proposal to the following California education departments and agencies: California Department of Education, including the Foster Youth Services Program; the California School Board's Association; each county's foster youth liaison; each county's Superintendent of Schools; and the regional centers. This proposal received comments from a total of 26 commentators. Seven commentators agreed with the proposed changes. Seventeen commentators agreed with the proposed changes if modified and suggested both substantive and technical changes. Two commentators disagreed with the proposed changes. A chart summarizing the comments and the committee's responses is attached at pages 56–123.

Commentators suggested a number of substantive and technical changes to the proposal. All of the commentators expressed some level of agreement that the current juvenile court procedures do not provide a means for the court to determine whether the child's education needs are met.

The committee incorporated most of the suggested technical and substantive changes in a manner consistent with the proposal's intent.

A few commentators voiced concern that the timelines for compliance with the statutory requirements were not realistic. All of these comments were thoroughly reviewed, and

the committee revised the timelines to provide additional time if the revisions were not inconsistent with statute. Commentators raised three issues that brought the most insightful comments and discussion: the role of the educational representative, the court's authority to oversee a child's educational rights, and the Judicial Council's authority to adopt rules.

The role of the educational representative

Most commentators agreed with the proposed procedures for limiting a parent's educational rights and appointing an education representative and with the roles and responsibilities of the education representative that were detailed in the rule. However, some commentators voiced concern that the rules defined the surrogate parent as having the rights and responsibilities of the educational representative. Surrogate parents are appointed by local education agency (LEA) to represent children who may be eligible for special education or related services. These commentators agreed that the court has authority to appoint an educational representative to act on behalf of a child with regard to all educational needs. However, as these commentators noted, when the court cannot find someone to represent a child who may be eligible for special education or related services, the court can refer the matter to the local education agency (LEA) for appointment of a surrogate parent. The commentators felt that it was important to use the term *surrogate parent* for the person appointed by the LEA and *educational representative* for the person appointed by the court. The committee agreed to use the term *surrogate parent* for the person appointed by the LEA.

The court's authority to oversee a child's education

Many commentators agreed with the proposed procedures that will assist the court in providing greater oversight of educational services for dependent children and wards of the court. Some commentators voiced concern that these procedures, and review of these issues by the court, are not set forth in statute. One commentator asserted that the juvenile court does not have jurisdiction to oversee whether a dependent child or ward of the court is receiving educational services to which he or she is entitled.

The committee agrees with those commentators who noted that neither the Legislature, when enacting AB 490, nor the Congress, when enacting children's disability and educational rights, included a procedure for court oversight of implementation of these laws. However, court oversight of a child's placements, services, and well-being are within the jurisdiction of the juvenile court. Welfare & Institutions Code section 304 states: "While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court."

The court in *In re Robert A.* (1992) 4 Cal.App.4th 174 considered the juvenile court's authority to review the county placing agency's placement decisions and concluded at page 189: "[t]he statutory scheme of the juvenile court law requires that once the court has placed the custody of the minor under the supervision of the probation officer (§

361.2, subd. (b)), the court retains jurisdiction to oversee the administration by the Department, in its choice among the enumerated placement alternatives in section 361.2, subdivision (b), of the custody and care of the minor. . . . Thus, where a judicial decision such as out-of-home placement is required, the authority of the Department to implement that order must necessarily be limited in particular situations, as required by the court's interpretation of the best interests of the child. (§ 202, subd. (b).)''

The committee believes that information about how a placement decision will affect the child's education is critical for the court to consider when determining whether a placement is in the child's best interest. This is especially true when the child is receiving educational services to which he or she is entitled under federal and state law and those services will be disrupted by a change in placement.

The Judicial Council's authority to adopt rules

One commentator also asserted that only the Legislature has the authority to adopt court procedures to ensure that children receive the educational services to which they are statutorily entitled. This commentator specifically cited the lack of procedures in AB 490 and asserted that only the Legislature can establish procedures to implement the bill.

Federal and state law specifically authorize the juvenile court to limit a parent or guardian's educational rights when appropriate and direct the court to appoint a responsible adult to act as the child's representative on all educational issues. AB 490 calls on the court, among others, to fulfill its responsibility to children in foster care by working to maintain stable school placements and to ensure that each child 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 students. The proposed rules of court and forms create a procedure for the court to implement these statutory directives. Article VI of the California Constitution and Welfare and Institutions Code section 265 provide that the Judicial Council may establish rules governing practice and procedure in the juvenile court that are not inconsistent with statute. This proposal for rules and forms is consistent with the state and federal statutes that govern educational services for children under the jurisdiction of the juvenile court and are within the Judicial Council's rule-making authority.

Implementation Requirements and Costs

Implementation of the new procedures will result in some additional workload. In an effort to minimize the workload impact on the courts, child welfare agencies, and probation departments, the committee revised the rule after the comment period to limit noticing requirements and to provide for hearings only on the request of the child's attorney or the person holding the rights to make educational decisions for the child.

Attachments

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JV-535, and JV-536; and approve forms JV-537, JV-538, and JV-539)
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Issue Statement

In 2003, the educational rights of foster children were codified by the Legislature with the passage of Assembly Bill 490 (Steinberg; Stats. 2003, ch. 862).¹ In addition, existing law provides educational rights for children with physical, mental, and learning-related disabilities and for children in foster care.² This proposal would incorporate applicable federal and state education and disability laws into juvenile rules and forms and would provide court procedures for implementing those laws.

Rationale for Recommendation

Children in foster care often have physical, mental, and learning-related disabilities and thus a greater need for educational services than other children. Their disabilities can be due to the effects of abuse or neglect or their separation from the family and home environment. In 2003, Assembly Bill 490 detailed the educational rights for children in foster care. This bill focused on children’s education while in foster care, school

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placement stability, and eliminating the negative effects that foster care placement often has on a child's education.

Soon after the passage of Assembly Bill 490, the Judicial Council received comments on the Spring 2005 proposal "Juvenile Law: Findings and Orders After Hearing." Advocates for children with disabilities and children in foster care advised that the current juvenile law hearing procedures and timelines do not provide meaningful court oversight of a child's education rights. Although the comments were outside the scope of that proposal, the Family and Juvenile Law Advisory Committee did recommend that the Judicial Council consider them in a future rules and forms cycle.

The committee reviewed the issues raised by the commentators in 2005 and agreed that existing procedures make it difficult for the court to determine whether the children for whom they are responsible are receiving appropriate education that meets their needs. The proposed rule amendments, new rules, and revised and new forms will assist the court in its oversight role of ensuring that children who are dependents or wards of the juvenile court receive the educational services to which they are entitled under state and federal law. The new and amended rules and forms address the following:

- The procedures for limiting the rights of parents or guardians to make educational decisions for their child and appointing an educational representative;
- The role of the *educational representative*, including the educational representative's rights and responsibilities;
- The educational rights of children before the court; and
- The court's role in monitoring that a proposed change of school placement does not interfere with the child's rights, including considering, at most stages of the proceedings, a child's disability or suspected disability and any necessary referrals for assessments or services.

Appointment of an educational representative

- Rule 5.502(13) defines the term *educational representative* for the purposes of dependency and delinquency proceedings.
- Rule 5.534(j) explains that if the court limits the right of a parent or guardian to make educational decisions, the court must appoint an educational representative for the child.

- Rules 5.695(c)(3) and 5.790(f)(5) clarify that the court must follow the procedures set forth in rule 5.650 for limiting the educational rights of parents and guardians and for appointing an educational representative.

Procedures for limiting a parent's or guardian's right to make educational decisions

Rule 5.650 establishes the procedures for (1) limiting a parent or guardian's right to make educational decisions and appointing an educational representative; (2) referring a child to, and noticing, the local education agency (LEA); and (3) transferring educational rights to the educational representative. This rule also delineates an educational representative's authority and responsibilities, education and training, term of service, right to notice, and participation in hearings.

Limiting a Parent or Guardian's Right to Make Educational Decisions

- Rule 5.650(a) explains that Welfare and Institutions Code section 319(g) permits the court to temporarily limit a parent's or guardian's right to make educational decisions and requires the court to determine if the child needs any assessments, evaluations, or services related to education and to direct an appropriate person to take the necessary steps to request those services.
- Rule 5.650(b) provides a procedure for limiting educational rights and appointing an educational representative.
- Rule 5.650(c) clarifies that the court may not appoint a person to act as an educational representative if that person would have a conflict of interest as defined by state and federal law.

Referral to Local Education Agency

Rule 5.650(d) explains the process for referring a child who is or may be eligible for special education and related services to the LEA for appointment of a surrogate parent if the court is unable to locate a responsible adult to serve as the educational representative. Rule 5.650(d) also adds the 2005 amendments to title 20 United States Code section 1415(b)(2)(B), which requires the LEA to make reasonable efforts to appoint a surrogate parent within 30 days after the agency determines that the child needs a surrogate. Rule 5.650(d) requires the agency to notify the court if such appointment does not occur within 30 days.

Transfer of Educational Rights to Educational Representative

Rule 5.650(e) clarifies that, upon appointment of an educational representative, the parent's or guardian's rights to make educational decisions transfer to the educational representative. This transfer of rights includes education decisionmaking authority and the right to notice of, and participation in, educational meetings and activities.

Rule 5.650(e) also clarifies that educational rights are restored to the parent or guardian when the child is returned to the parent or guardian unless the court determines that these rights must remain limited.

Authority and Responsibilities of Educational Representative

Rule 5.650(f) specifies the authority and responsibilities of an educational representative, which include the following: representing the child in, providing consent for, and making decisions regarding all matters related to the child's general and special education.

Term of Service

Rule 5.650(b), which currently specifies the educational representative's term of service, is moved to rule 5.650(g).

Education and Training

Rule 5.650(i) explains that the educational representative may obtain education and training in laws relating to a child's educational and disability rights. If the educational representative asks for assistance with this education and training, the rule requires that the court direct the clerk, social worker, or probation officer to inform the educational representative of all available resources for such education and training.

Notice and Participation in Hearings

Rule 5.650(j) provides that the educational representative must receive notice of, and may at the court's discretion participate in, all juvenile hearings regarding or affecting the child's education and that the educational representative may use form JV-537, *Education Representative or Surrogate Parent Information*, to explain the child's educational needs. This rule does not create a right for the educational representative to have counsel or representation at these hearings.

Educational rights of children before the Juvenile court

Rule 5.651 (which was circulated as rule 5.652) provides procedures that help ensure that the court receives information it needs to make an informed decision about the educational needs of the child. Rule 5.651 addresses the following:

Conduct of Hearings Related to, or That May Affect, a Child's Education

- Rule 5.651(b) requires the court to determine the child's educational needs, to identify a plan for meeting those needs, to direct an appropriate person to take the necessary steps for the child to begin receiving services, and to specify who holds educational rights.
- Rule 5.651(c) requires that the court ensure that the social worker or probation officer provide certain information related to the child's education in reports for regularly scheduled hearings and joint assessment hearings to include information

regarding the child's general and special education and whether the child is receiving, or may qualify for, services.

- Rule 5.651(d) requires that all educational and disability services that a child is receiving not be interrupted if a case is continued or jurisdiction is stayed.
- Rule 5.651(e) requires the court to consider whether a proposed change of placement may cause the child to be removed from the child's school if the child's attorney, the person holding educational rights for the child, or court on its own motion requests a hearing. This rule would also require the court to determine whether the child's federal and state educational and disability rights and rights regarding placement stability have been observed.

Advisory Committee Comments

Rule 5.650 includes an advisory comment. This comment clarifies the court's authority to appoint an educational representative to act on behalf of the child's educational needs. This comment also clarifies the expectations, based on federal and state law, of a surrogate parent appointed by the LEA for a child in foster care.

Rule 5.651 also includes an advisory committee comment. The first paragraph explains that the intent of rule 5.651 is to provide the juvenile court and its participants with a procedure that supports and encourages the goal of providing children with the educational services to which they are entitled. The second and third paragraphs summarize the intent of Assembly Bill 490.

Monitoring compliance and consideration of child's disability

- Rule 5.518(b)(2), concerning court-connected dependency mediation, adds the child's education and placement to the topics that must be considered when determining the child's safety and best interest. Rule 5.518(e)(3)(A)(vi) adds training on the requirements of the Individual With Disabilities Education Act of 2004, section 504 of the Rehabilitation Act of 1973, and AB 490 to the mandatory training requirements for dependency mediators.
- Rule 5.650(j)(2) provides that the court may allow the educational representative to participate in mediation.

Revised Forms

This proposal includes revision of the following forms:

1. JV-225, *Your Child's Health and Education* is revised to include questions to satisfy federal and state child-find requirements and AB 490's requirements for moving a child from the school of origin.
2. Form JV-365, *Termination of Dependency Jurisdiction—Child Attaining Age of Majority*, is revised to require that the child receive a proof of dependency or wardship card because state regulations require that the child be given proof of such status. The form also requires the court to ensure that the child receives a current transition service plan and assistance in maintaining relationships with important individuals in the child's life.
3. Form JV-535, *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* is revised to delete reference to *parent* because the form can also be used when limiting a guardian's educational rights; to add a confidentiality provision addressing whether the parent or guardian should receive information regarding the child's education; to provide that the court can temporarily limit the parent's or guardian's educational rights; to address circumstances when no one holds educational rights; to add inquiries to ensure compliance with federal and state child-find requirements; to add the child's attorney to the list of persons who may serve the form on the LEA; and to add the proposed rule 5.650 notice requirements.
4. Form JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*, is revised to ensure that the surrogate parent does not have a conflict of interest with the child and understands the role and responsibilities of a surrogate parent.

New Forms

The proposal also includes the following three new optional forms:

1. New form JV-537, *Educational Representative or Surrogate Parent Information*, will provide the educational representative with a means of informing the court of the child's educational and disability needs, requesting assistance to meet those needs, and summarizing actions taken.
2. New form JV-538, *Findings and Orders Regarding Transfer From School of Origin*, will assist the court with its oversight of compliance with the educational rights provided to children in foster care under AB 490.
3. New form JV-539, *Request for Hearing Regarding Child's Education*, will allow the child's attorney, person holding educational rights, or the court to request a hearing regarding a proposed move from the child's school of origin. This form

will also allow the child's attorney to request a hearing if the child's educational representative or surrogate parent resigns.

Alternative Actions Considered

The committee considered not going forward with this proposal. However, over the past two years the committee has reviewed and considered information and studies which document that foster children are an extremely vulnerable and at risk population of which a high percentage experience poor educational outcomes. This information revealed that foster children have unique needs that affect school readiness and receipt of services and create barriers to academic and social school performance. Based on this information, the committee believes that many children under the jurisdiction of the juvenile court are not receiving the educational services to which they are entitled by state and federal law. The proposed changes to the rules and forms are necessary to provide procedures that allow the court to provide appropriate oversight of the education of children under the jurisdiction of the juvenile court.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 25, 2007, through June 20, 2007, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. In addition to the regular circulation list, the committee sent this proposal to the following California education departments and agencies: California Department of Education including the Foster Youth Services Program; the California School Boards Association; each county's foster youth liaison; each county's Superintendent of Schools; and the regional centers. This proposal received comments from a total of 26 commentators. Seven commentators agreed with the proposed changes. Seventeen commentators agreed with the proposed changes if modified and suggested both substantive and technical changes. Two commentators disagreed with the proposed changes. A chart summarizing the comments and the committee's responses is attached at pages 56–123.

Commentators suggested a number of substantive and technical changes to the proposal. All of the commentators expressed some level of agreement that the current juvenile court procedures do not provide a means for the court to determine whether the child's education needs are met. The committee incorporated most of the suggested substantive and technical changes in a manner consistent with the proposal's intent.

A few commentators expressed concerns about the workload impacts that these new procedures would have on the social workers and the court clerks. As circulated, rule 5.651 would have required that the court hold a hearing anytime that a change in the child's placement would have resulted in a change in the child's school. In response to the concerns about workload, the committee revised the procedure to require that the child's attorney and the person holding the child's educational rights be notified when the change of placement will result in the child being removed from his or her school. Instead

of setting a hearing every time the child changes schools, a hearing will be held only if the child's attorney or person holding educational rights requests a hearing or if the court sets the hearing on its own. This change in procedure required a new optional form, JV-539, *Request for Hearing Regarding Child's Education*. Although this new procedure will slightly increase the workload of the child's attorney because the attorney will have to request a hearing in appropriate cases, it will significantly decrease the workload of the social workers, who will not have to file reports in every case, and the courts, which will not have to schedule and hold a hearing in every case.

The committee made other revisions to minimize the workload impact on the court, social workers, and probation officers. Although rule 5.560(h) requires the clerk of the court to provide copies of certain orders pertaining to the child's education to specified persons, the committee reduced the number of persons required to be provided copies to only the child (if over 10 years old), the child's attorney, the educational representative, the foster care youth liaison at the school, the social worker and the probation officer. The court can determine that someone other than the clerk serve the local education agency and other parties are to be provided with copies only on request of those parties.

One commentator suggested that the court does not have jurisdiction to make orders for the local education agency to take a particular action for an individual child unless the court joins the local education agency as a party under Welfare and Institutions Code section 362. This commentator did agree that the court could direct the local education agency to complete and file forms. The committee agrees that the court should join the local education agency under Welfare and Institutions Code section 362 when making orders for the provision of particular services for individual children. The committee revised the rules to clarify that the court is appointing an appropriate person such as an educational representative to request appropriate services from the local education agency on behalf of the child. The rules also state that if the court is unable to appoint an educational representative, the court must refer a child to a local education agency to appoint a surrogate parent to represent the child in special education matters under Government Code section 7579.5. This referral is required by Welfare and Institutions Code section 361. The local educational agency is required to notify the court when a surrogate parent is appointed or resigns from the appointment.

A few commentators voiced concern that the timelines for compliance with the statutory requirements were not realistic. The committee realizes that many of the timeframes are short. All of these comments were thoroughly reviewed, and the committee revised the timelines to provide additional time if the revised timeline would not be inconsistent with the statutory intent of having issues concerning the child's education resolved quickly.

Commentators raised three issues that brought the most insightful comments and discussion: the role of educational representative, the court's authority to oversee a child's educational rights, and the Judicial Council's authority to adopt rules.

The role of the educational representative

Most commentators agreed with the proposed procedures for limiting a parent's educational rights and appointing an educational representative and with the roles and responsibilities of the educational representative that were detailed in the rule. However, some commentators voiced concern that the rules defined the surrogate parent as having the rights and responsibilities of the educational representative. Surrogate parents are appointed by the LEA to represent children who may be eligible for special education or related services. These commentators agreed that the court has authority to appoint an educational representative to act on behalf of a child with regard to all educational needs. However, as these commentators noted, when the court cannot find someone to represent a child who may be eligible for special education or related services, the court can refer the matter to the LEA for appointment of a surrogate parent. The commentators felt that it was important to use the term *surrogate parent* for the person appointed by the LEA and *educational representative* for the person appointed by the court. The committee agreed to use the term *surrogate parent* for the person appointed by the LEA.

The court's authority to oversee a child's education

Many commentators agreed with the proposed procedures that will assist the court in providing greater oversight of educational services for dependent children and wards of the court. Some commentators voiced concern that these procedures, and review of these issues by the court, are not set forth in statute. One commentator asserted that the juvenile court does not have jurisdiction to oversee whether a dependent child or ward of the court is receiving educational services to which he or she is entitled.

The committee agrees with those commentators who noted that neither the Legislature, when enacting AB 490, nor the Congress, when enacting children's disability and educational rights, included a procedure for court oversight of implementation of these laws. However, court oversight of a child's placements, services, and well-being are within the jurisdiction of the juvenile court. Welfare & Institutions Code section 304 states: "While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court."

The court in *In re Robert A.* (1992) 4 Cal.App.4th 174 considered the juvenile court's authority to review the county placing agency's placement decisions and concluded at page 189: "[t]he statutory scheme of the juvenile court law requires that once the court has placed the custody of the minor under the supervision of the probation officer (§ 361.2, subd. (b)), the court retains jurisdiction to oversee the administration by the Department, in its choice among the enumerated placement alternatives in section 361.2, subdivision (b), of the custody and care of the minor. . . . Thus, where a judicial decision such as out-of-home placement is required, the authority of the Department to implement that order must necessarily be limited in particular situations, as required by the court's interpretation of the best interests of the child. (§ 202, subd. (b).)"

The committee believes that information about how a placement decision will affect the child's education is critical for the court to consider when determining whether a placement is in the child's best interest. This is especially true when the child is receiving educational services to which he or she is entitled under federal and state law and those services will be disrupted by a change in placement.

The Judicial Council's authority to adopt rules

One commentator also asserted that only the Legislature has the authority to adopt court procedures to ensure that children receive the educational services to which they are statutorily entitled. This commentator specifically referenced the lack of procedures in AB 490 and asserted that only the Legislature can establish procedures to implement the bill.

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Implementation Requirements and Costs

A new requirement that clerks provide copies of the court order appointing an educational representative to those people entitled to notice of court orders will result in some additional workload. The committee attempted to minimize the additional workload by giving the judicial officer the discretion to require the social worker, the probation officer, or the child's attorney to provide notice to the school. There also will be some additional workload for county child welfare agencies and county probation departments associated with filing reports with the court when the court, child's attorney, or holder of educational rights requests a hearing to object to the child's removal from his or her school of origin. There will be some increase in the number of hearings in juvenile courts. However, the proposal as circulated would have required a hearing any time a child was removed from his or her school. In an effort to minimize the workload impact on the courts, child welfare agencies, and probation departments, the committee revised

the rule to provide for hearings only on the request of the child's attorney or the person holding the rights to make educational decisions for the child.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that effective January 1, 2008, the Judicial Council:

1. Amend rules 5.502, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790 of the California Rules of Court;
2. Adopt rule 5.651;
3. Revise forms JV-225, *Your Child's Health and Education*; JV-365, *Termination of Dependency Jurisdiction—Child Attaining Age of Majority*; JV-535, *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*; and JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*; and
4. Approve forms JV-537, *Educational Representative or Surrogate Parent Information*; JV-538, *Findings and Orders Regarding Transfer from School of Origin*; and JV-539, *Request for Hearing Regarding Child's Education*.

The text of the amended and new rules is attached at pages 17–38; the text of the forms is attached at pages 39–55.

Attachments

Rules 5.502, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790 of the California Rules of Court are amended, and rule 5.651 is adopted, effective January 1, 2008, to read:

1 **Rule 5.502. Definitions and use of terms**

2
3 Definitions (§§ 202(e), 319, 361, 361.5(a)(3), 366(a)(1)(B), 628.1, 636, 726,
4 727.3(c)(2), 727.4(d); 20 U.S.C. § 1415)

5
6 As used in these rules, unless the context or subject matter otherwise requires:

7
8 ~~(1)–(12)~~ ***

9
10 (13) “Educational representative” means the responsible adult who holds the
11 educational rights for a child when the parent’s or guardian’s educational
12 rights have been limited by the court. The educational representative acts as
13 the child’s spokesperson, educational decision maker, and parent in regard to
14 all educational matters, including those defined in sections 319, 361, and
15 726; Education Code section 56055; Government Code section 7579.5; and
16 title 20 (commencing with section 1400) of the United States Code and part
17 300 (commencing with section 300.1) of title 34 of the Code of Federal
18 Regulations. The educational representative holds educational and privacy
19 rights as the child’s parent as defined in title 20 United States Code section
20 1232g and 34 Code of Federal Regulations section 99.3.

21
22 ~~(13)(14)~~ ***

23
24 ~~(14)(15)~~ ***

25
26 ~~(15)(16)~~ ***

27
28 ~~(16)(17)~~ ***

29
30 ~~(17)(18)~~ “Initial removal” means the date on which the child, who is the
31 subject of a petition filed under section 300 or 600, was taken into custody
32 by the social worker or a peace officer, or was deemed to have been taken
33 into custody under section 309(b) or 628(c), if removal results in the filing of
34 the petition before the court.

35
36 ~~(18)(19)~~ ***

37
38 ~~(19)(20)~~ ***

39
40 ~~(20)(21)~~ ***

1 ~~(21)(22)~~ ***
2
3 ~~(22)(23)~~ ***
4
5 ~~(23)(24)~~ ***
6
7 ~~(24)(25)~~ ***
8
9 ~~(25)(26)~~ ***
10
11 ~~(26)(27)~~ ***
12
13 ~~(27)(28)~~ ***
14
15 ~~(28)(29)~~ ***
16
17 ~~(29)(30)~~ ***
18
19 ~~(30)(31)~~ ***
20
21 ~~(31)(32)~~ ***
22
23 ~~(32)(33)~~ ***

24
25 **Rule 5.518. Court-connected child protection/dependency mediation**

26
27 **(a)** ***

28
29 **(b) Definitions**

30
31 (1) ***

32
33 (2) "Safety and best interest of the child" refers to the child's physical,
34 psychological, and emotional well-being. Determining the safety and
35 best interest of the child includes consideration of all of the following:

36
37 (A)–(B) ***

38
39 (C) The child's need for safety, stability, and permanency; ~~and~~

40
41 (D) The ongoing need of the child to cope with the issues that caused
42 his or her involvement in the juvenile dependency system;
43

1 (E) The child's need for continuity of care and the effect that removal
2 and subsequent placements have had, or may have, on the child;
3 and

4
5 (F) The child's education, which includes the child's participation,
6 progress, need for assistance, cognitive development and, if
7 applicable, early childhood education and care, the need for
8 special education and related services, and the extent to which the
9 child has or has had limited English proficiency (LEP).

10
11 (3)–(5) ***

12
13 (c)–(d) ***

14
15 (e) **Education, experience, and training requirements for dependency**
16 **mediators**

17
18 Dependency mediators must meet the following minimum qualifications:

19
20 (1)–(2) ***

21
22 (3) Completion of at least 40 hours of initial dependency mediation
23 training before or within 12 months of beginning practice as a
24 dependency mediator. Currently practicing dependency mediators must
25 complete the required 40 hours of initial training by January 1, 2006.
26 The training must cover the following subject areas as they relate to the
27 practice of dependency mediation:

28
29 (A) Multiparty, multi-issue, multiagency, and high-conflict cases,
30 including:

31
32 (i)–(v) ***

33
34 (vi) The requirements of the ~~Americans With Disabilities Act~~
35 laws incorporated in rule 5.651(a)(3) and strategies for
36 handling situations involving disability issues or special
37 appropriately addressing the individual needs of persons
38 with disabilities;

39
40 (B)–(K) ***

41
42 (f)–(j) ***

43

1 **Rule 5.534. General provisions—all proceedings**

2
3 (a)–(i) ***

4
5 **(j) Appointment of educational representative (§§ 319, 361, 366, 366.27,**
6 **726; Gov. Code, § 7579.5)**

7
8 If the court limits the right of a parent or guardian to make educational
9 decisions for the child, the court must immediately proceed under rule
10 5.650(b) to appoint an educational representative for the child.

11
12 ~~(j)~~**(k)** ***

13
14 ~~(k)~~**(l)** ***

15
16 ~~(l)~~**(m)** ***

17
18 ~~(m)~~**(n)** ***

19
20 ~~(n)~~**(o)** ***

21
22 **Rule 5.650. Appointment of ~~responsible adult~~ as educational representative**

23
24 **(a) Parent’s or guardian’s educational rights limited (§§ 319, 361, 366,**
25 **366.27, 726; 20 U.S.C. § 1415; 34 C.F.R. §§ 300.519, 300.300)**

26
27 The ~~juvenile~~ court may ~~specifically~~ limit a parent’s or guardian’s right to
28 make educational decisions for a child who is declared a dependent or ward
29 of the court under section 300, 601, or 602, but the limitations may not
30 exceed those necessary to protect the child. Before disposition, the court may
31 temporarily limit a parent’s or guardian’s right to make educational decisions
32 under section 319(g). ~~The court must order any limitation on~~ *Order Limiting*
33 *Parent’s Right to Make Educational Decisions for the Child and Appointing*
34 *Responsible Adult as Educational Representative—Juvenile* (form JV 535).
35 The court may limit a parent’s or guardian’s educational rights regardless of
36 whether the child is, or may be eligible for, special education and related
37 services.

38
39 **(1) If the court temporarily limits the parent’s or guardian’s right to make**
40 **educational decisions under section 319(g), the court must reconsider**
41 **the need, if any, to limit educational rights at the disposition hearing.**
42

1 (2) The child’s initial evaluation for special education services need not be
2 postponed to await parental or guardian consent or appointment of an
3 educational representative if one or more of the following
4 circumstances are met:

5
6 (A) The court has limited or temporarily limited the educational rights
7 of the parent or guardian, and consent for an initial assessment
8 has been given by an individual appointed by the court to
9 represent the child;

10
11 (B) The local education agency cannot discover the whereabouts of
12 the parent or guardian; or

13
14 (C) The parent’s rights have been terminated or the guardianship has
15 been set aside.

16
17 (3) If the court determines that the child is in need of any assessments,
18 evaluations, or services, including special education, mental health, and
19 other related services, the court must direct an appropriate person to
20 take the necessary steps to request those assessments, evaluations, or
21 services.

22
23 **(b) Appointment of responsible adult as educational representative (§§ 319,**
24 **361, 366, 366.27, 726; 20 U.S.C. § 1415; 34 C.F.R. § 300.519)**

25
26 ~~Whenever~~ The court limits the right of a parent or guardian to make
27 educational decisions for the child, the court must at the same time use
28 *Findings and Orders Limiting Right to Make Educational Decisions for the*
29 *Child, Appointing Educational Representative, and Determining Child’s*
30 *Educational Need* (form JV-535) ~~to appoint a responsible adult as an~~
31 educational representative ~~when it limits the rights of a parent or guardian to~~
32 make educational decisions for the child, ~~until~~ In its order, the court must
33 document that one of the following actions in (1) or (2) has been taken, or, in
34 the alternative, that a finding under (3) has been made:

35
36 (1) ~~The child reaches 18 years of age, unless the child then chooses not to~~
37 ~~make educational decisions or is deemed incompetent by the court;~~ The
38 court has appointed an educational representative for the child;

39
40 (2) ~~The court appoints another responsible adult to make educational~~
41 ~~decisions for the child under this rule;~~ The court has ordered a
42 permanent plan for the child, and the court finds that the foster parent,
43 relative caregiver, or nonrelative extended family member may exercise

1 educational rights as provided in Education Code section 56055 and
2 rule 5.502(13) and is not prohibited from exercising educational rights
3 by section 361 or 726 or by 34 Code of Federal Regulations section
4 300.519 or 303.19; or
5

6 (3) ~~The court restores the right of the parent or guardian to make~~
7 ~~educational decisions for the child; The court cannot identify a~~
8 ~~responsible adult to serve as the child’s educational representative; and~~
9

10 (A) The child is or may be eligible for special education and related
11 services, and the court is referring the child to the responsible
12 local educational agency for appointment of a surrogate parent
13 under section 361 or 726, title 20 United States Code section
14 1415, and rules 5.502 and 5.650; or
15

16 (B) The child is not eligible for special education and related services,
17 there is no foster parent to exercise the authority granted by
18 section 56055 of the Education Code, and the court will, with the
19 input of any interested person, make educational decisions for the
20 child.
21

22 ~~(4) The court appoints a successor guardian or conservator; or~~
23

24 ~~(5) The child is placed in a planned permanent living arrangement under~~
25 ~~section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6), in~~
26 ~~which case the foster parent, relative caregiver, or nonrelative extended~~
27 ~~family member has the right to make educational decisions for the child~~
28 ~~under Education Code section 56055(a) unless excluded by the court.~~
29

30 (c) **Limits on appointment (§§ 361, 726; Ed. Code, § 56055; Gov. Code, §**
31 **7579.5(i)–(j); 34 C.F.R. §§ 300.519, 303.19)**
32

33 (1) ***
34

35 (2) The court may not appoint any individual as the educational
36 representative if that person is excluded under, or would have a conflict
37 of interest as defined by, section 361(a) or 726(b); Education Code
38 section 56055; Government Code section 7579.5(i)–(j); title 20 United
39 States Code section 1415(b)(2); or 34 Code of Federal Regulations
40 section 300.519 or 303.19.
41

42 (d) **Appointment of surrogate parent Referral to local educational agency to**
43 **appoint a surrogate parent for a child who is or may be eligible for**

1 special education and related services (§§ 361, 726; Gov. Code, §
2 7579.5; 20 U.S.C. § 1415)
3

- 4 (1) If the court has ~~specifically~~ limited a parent's or guardian's right to
5 make educational decisions for a child but cannot identify an
6 ~~responsible adult to make educational decisions~~ educational
7 representative for the child and the child is or may be eligible for
8 special education and related services or already has an individualized
9 education program, the court must use form JV-535 to refer the child to
10 the responsible local educational agency for prompt appointment of a
11 surrogate parent under Government Code section 7579.5.
12
- 13 (2) If the court refers a child to the local educational agency for
14 appointment of a surrogate parent, the court must order that *Local*
15 *Educational Agency Response to JV-535—Appointment of Surrogate*
16 *Parent* (form JV-536) be served by first-class mail on the local
17 educational agency along with form JV-535, no later than seven
18 calendar days after the date of the order.
19
- 20 (3) The court must direct the local education agency that when the local
21 education agency receives form JV-535, requesting prompt
22 appointment of a surrogate parent, the local education agency must
23 make reasonable efforts to assign a surrogate parent within 30 calendar
24 days after the court's referral.
25
- 26 (A) Whenever the local educational agency appoints a surrogate
27 parent for a dependent or ward under Government Code section
28 7579.5(a)(1), it must notify the court on form JV-536 within ~~21~~
29 seven calendar days of the ~~date of the~~ appointment and must send
30 copies of the notice to the social worker or probation officer
31 identified on the form.
32
- 33 (B) If the local education agency does not appoint a surrogate parent
34 within 30 days of receipt of the form, within the next seven
35 calendar days it must notify the court on form JV-536 of the
36 following:
37
- 38 (i) Its inability to appoint a surrogate parent; and
39
- 40 (ii) Its continuing reasonable efforts to assign a surrogate parent.
41
- 42 (4) Whenever the surrogate parent resigns or the local education agency
43 terminates the appointment of a surrogate parent for a dependent or

1 ward under Government Code section 7579.5(h) or replaces the
2 surrogate parent for any other reason, it must notify the court and the
3 child's attorney on form JV-536 within 21 seven calendar days of the
4 date of the resignation, termination, or replacement. The child's
5 attorney may request a hearing for appointment of a new educational
6 representative by filing *Request for Hearing Regarding Child's*
7 *Education* (form JV-539) and must provide notice of the hearing as
8 provided in (g)(2). The court on its own motion may direct the clerk to
9 set a hearing.

10
11 (e) **Unavailability of responsible adult (§§ 361, 726) Transfer of parent's or**
12 **guardian's educational rights to educational representative**

13
14 ~~If the court cannot identify a responsible adult to make educational decisions~~
15 ~~for the child, the appointment of a surrogate parent is not legally warranted,~~
16 ~~and there is no foster parent to exercise the authority granted by Education~~
17 ~~Code section 56055, the court may, with the input of any interested person,~~
18 ~~make educational decisions for the child. When an educational representative~~
19 ~~is appointed, the educational rights of the parent or guardian—including the~~
20 ~~right to notice of educational meetings and activities, participation in~~
21 ~~educational meetings and activities, and decisionmaking authority regarding~~
22 ~~the child's education, including the authority under title 20 United States~~
23 ~~Code sections 1232g and 1401(23), 34 Code of Federal Regulations section~~
24 ~~300.30, and Education Code section 56028—are transferred to the~~
25 ~~educational representative.~~

26
27 (1) When returning a child to a parent or guardian, the court must consider
28 the child's educational needs. The parent's or guardian's educational
29 rights are reinstated when the court returns custody to the parent or
30 guardian unless the court finds that the parent is not able to act in the
31 child's best interest regarding education.

32
33 (2) If the court appoints a guardian for the child under rule 5.735 or 5.815,
34 all of the parent's or guardian's educational rights transfer to the newly
35 appointed guardian unless the court determines that the guardian is not
36 able to act in the child's best interest regarding education.

37
38 (f) **Authority and responsibilities of educational representative (§§ 319, 360,**
39 **361, 635, 706.5, 726; Ed. Code, § 56055; Gov. Code, 7579.5; 34 C.F.R. §**
40 **300.519)**

41
42 (1) The educational representative is responsible for representing the child
43 in the identification, evaluation, and educational placement of the child

1 and with the provision of the child's free, appropriate public education.
2 This includes representing the child in all matters relating to the child's
3 education including:

4
5 (A) The stability of the child's school placement;

6
7 (B) Placement in the least restrictive educational program appropriate
8 to the child's individual needs;

9
10 (C) The child's access to academic resources, services, and
11 extracurricular and enrichment activities;

12
13 (D) The child's access to educational supports necessary to meet state
14 academic achievement standards;

15
16 (E) School disciplinary matters; and

17
18 (F) Other aspects of the provision of a free, appropriate public
19 education.

20
21 (2) The educational representative has the following additional
22 responsibilities:

23
24 (A) Meeting with the child at least once and as often as necessary to
25 make educational decisions that are in the best interest of the
26 child;

27
28 (B) Being culturally sensitive to the child;

29
30 (C) Complying with federal and state confidentiality laws including
31 section 827 and Government Code section 7579.1(f);

32
33 (D) Participating in, and making decisions regarding, all matters
34 affecting the child's educational needs in a manner consistent
35 with the child's best interest; and

36
37 (E) Having knowledge and skills that ensure adequate representation
38 of the child.

39
40 (3) The educational representative acts as the parent or guardian in all
41 educational matters regarding the child and has a right to the following:
42

- 1 (A) To the rights afforded the parent or guardian under the Family
2 Education Rights and Privacy Act, title 20 United States Code
3 section 1232g;
4
- 5 (B) To the rights of a parent relating to school discipline issues,
6 meetings, and proceedings;
7
- 8 (C) To represent a child with exceptional needs in matters relating to
9 identification and assessment of those needs, instructional
10 planning and development, educational placement, reviewing and
11 revising the individualized education program, and other aspects
12 of the provision of a free, appropriate public education;
13
- 14 (D) To attend the child’s individualized education program and other
15 educational meetings, to consult with persons involved in the
16 child’s education, and to sign any consents to education-related
17 services and plans; and
18
- 19 (E) Notwithstanding any other provision of law, to consent to the
20 child’s individualized education program, nonemergency medical
21 services, mental health treatment services, and occupational or
22 physical therapy services provided under chapter 26.5 of title 1 of
23 the Government Code.
24

25 **(g) Educational representative’s term of service (§§ 361, 726; Gov. Code §**
26 **7579.5)**
27

- 28 (1) The educational representative must make educational decisions for the
29 child until:
30
- 31 (A) The court restores the right of the parent or guardian to make
32 educational decisions for the child;
33
- 34 (B) The child reaches 18 years of age, unless the child chooses not to
35 make his or her own educational decisions or is deemed
36 incompetent by the court;
37
- 38 (C) The court appoints another educational representative for the
39 child under this rule;
40
- 41 (D) The court appoints a successor guardian or conservator; or
42

1 (E) The court finds that the foster parent, relative caregiver, or
2 nonrelative extended family member may make educational
3 decisions for the child under Education Code section 56055(a)
4 because:

5
6 (i) The child is placed in a planned permanent living
7 arrangement under section 366.21(g)(3), 366.22, 366.26,
8 727.3(b)(5), or 727.3(b)(6);

9
10 (ii) The court has limited the parent’s or guardian’s educational
11 rights; and

12
13 (iii) The foster parent, relative caregiver, or nonrelative extended
14 family member is not otherwise excluded from making
15 education decisions by the court, by section 361 or 726, or
16 by 34 Code of Federal Regulations section 300.519 or
17 303.19.

18
19 (2) If the educational representative resigns from the appointment, he or
20 she must provide notice to the court and to the child’s attorney and may
21 use *Educational Representative or Surrogate Parent Information* (form
22 JV-537) to provide this notice. Once notice is received, the child’s
23 attorney may request a hearing for appointment of a new educational
24 representative by filing form JV-539 and must provide notice of the
25 hearing to the following: the parents or guardians, unless otherwise
26 indicated on the most recent form JV-535; the social worker; the
27 probation officer; the Court Appointed Special Advocate (CASA)
28 volunteer; and all other persons required to be given notice under
29 section 293. The hearing must be set within 14 days of receipt of the
30 request for hearing. The court on its own motion may direct the clerk to
31 set a hearing.

32
33 **(h) Service of order**

34
35 The clerk will provide a copy of the completed form JV-535 and any
36 received form JV-536 or JV-537 to the child if 10 years or older, the child’s
37 attorney, the social worker and the probation officer, the foster youth liaison,
38 as defined in Education Code section 48853.5, and the educational
39 representative at the end of the proceeding or no later than seven calendar
40 days after the date of the order. The clerk will make the form available to the
41 parents or guardians, unless otherwise indicated on the form; the CASA
42 volunteer; and, if requested, all other persons provided notice under section

1 293. Whoever is directed by the court on form JV-535 must provide a copy
2 of the form to the local education agency.

3
4 **(i) Education and training of educational representative**

5
6 If the educational representative asks for assistance in obtaining education
7 and training in the laws incorporated in rule 5.651(a), the court must direct
8 the clerk, social worker, or probation officer to inform the educational
9 representative of all available resources, including resources available
10 through the California Department of Education and the local education
11 agency.

12
13 **(j) Notice and participation in juvenile court hearings**

14
15 (1) The educational representative must receive notice of all juvenile court
16 hearings regarding or affecting the child's education. This includes the
17 notice and participation provided in rule 5.530 for all regularly
18 scheduled juvenile hearings, rule 5.512 for joint assessment hearings,
19 and rule 5.575 for joinder proceedings.

20
21 (2) The educational representative may use form JV-537 to explain the
22 child's educational needs. The court may allow the educational
23 representative to be present for the purposes of participating in the
24 portions of the juvenile court hearing that concern the child's
25 education, including school placement, and of responding to questions
26 or issues raised by the form. The court may allow the educational
27 representative to participate in any mediation as provided in rule 5.518.

28
29 **Advisory Committee Comment**

30 Under the Individuals With Disabilities Education Act (IDEA), the court may appoint a surrogate
31 parent for a child to represent the child in all matters relating to the identification, evaluation, and
32 educational placement of the child and to the provision of the child's free, appropriate public
33 education. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519.) Under Welfare and Institutions Code
34 sections 361 and 726, the court may appoint a responsible adult as an educational representative
35 to represent the child's educational needs when the parent's educational rights have been limited.
36 When the court appoints an educational representative, that person is responsible for representing
37 all the child's educational needs, including any special education and related services needs.
38 When making this appointment, the court and all court participants are encouraged to look to all
39 persons in the child's life, including relatives, nonrelated extended family members, and those
40 persons with whom the child has an important relationship, to represent the child's educational
41 needs.

42
43 If the court cannot find anyone to appoint as the child's educational representative and special
44 education needs are not indicated, sections 361 and 726 state that the court can make education
45 decisions for the child with the input of interested persons. However, if the court cannot find
46 someone to appoint as educational representative and special education is indicated, the court

1 must refer the matter to the local education agency (LEA) for appointment of a surrogate parent.
2 Sections 361 and 726 do not permit the court to make educational decisions for a child in these
3 cases. The surrogate parent assigned by the LEA acts as a parent for the purpose of making
4 educational decisions on behalf of the child. (Gov. Code, § 7579.5(c); Ed. Code, § 56028; 34
5 C.F.R. § 300.30(b)(2); see 20 U.S.C. §§ 1401(9), 1414(d).)

6
7 **Rule 5.651. Educational rights of children before the juvenile court**

8
9 **(a) Applicability (§§ 213.5, 319, 358, 358.1, 364, 366.21, 366.22, 366.23,**
10 **366.26, 366.28, 366.3, 727.2, 11404.1; Gov. Code, § 7579.1; 20 U.S.C. §**
11 **1400 et seq.; 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq.)**

12
13 This rule has the following applicability and incorporates the rights
14 established by the following laws:

- 15
16 (1) The rule applies to all children for whom petitions have been filed
17 under section 300, 601, or 602;
18
19 (2) The rule applies to every hearing before the court affecting or related to
20 the child’s education, including detention, jurisdiction, disposition, and
21 all regularly scheduled review hearings; and
22
23 (3) The rule incorporates the rights established by the following laws: the
24 Individuals With Disabilities Education Act (20 U.S.C. § 1400 et seq.),
25 the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.),
26 section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.),
27 and the education rights of foster children as provided in Assembly Bill
28 490 (Stats. 2003, ch. 862) and Assembly Bill 1858 (Stats. 2004, ch.
29 914).

30
31 **(b) Conduct of hearings related to, or that may affect, a child’s education**

- 32
33 (1) To the extent the information is available, at the initial or detention
34 hearing the court must consider:
35
36 (A) Who holds educational rights;
37
38 (B) If the child was enrolled in, and is attending, the child’s school of
39 origin as defined in Education code section 48853.5(e);
40
41 (C) If the child is no longer attending the school of origin, whether:
42
43 (i) In accordance with the child’s best interest, the educational
44 liaison, as defined in Education Code section 48853.5(b), in

1 consultation with, and with the agreement of, the child and
2 the parent or guardian or other educational representative,
3 recommends that the child's right to attend the school of
4 origin be waived;

5
6 (ii) Prior to making any recommendation to move a foster child
7 from his or her school of origin, the educational liaison
8 provided the child and the person holding the right to make
9 educational decisions for the child with a written
10 explanation stating the basis for the recommendation and
11 how this recommendation serves the foster child's best
12 interest as provided in Education Code section
13 48853.5(d)(3);

14
15 (iii) Without obtaining a waiver, the child was not afforded his
16 or her right to attend his or her school of origin under
17 Education Code section 48853.5(d)(1); and

18
19 (iv) The child was immediately enrolled in the new school as
20 provided in Education Code section 48853.5(d)(4).

21
22 (D) Whether the parent's or guardian's educational rights should be
23 temporarily limited; and

24
25 (E) Taking into account other statutory considerations regarding
26 placement, whether the out-of-home placement:

27
28 (i) Is the environment best suited to meet the unique needs of
29 children with disabilities and to serve the child's best
30 interest if he or she has a disability; and

31
32 (ii) Promotes educational stability through proximity to the
33 child's school.

34
35 (2) At the disposition hearing and at all subsequent hearings provided for
36 in (a), the juvenile court must address and determine the child's general
37 and special education needs, identify a plan for meeting those needs,
38 and provide a clear, written statement using *Findings and Orders*
39 *Limiting Right to Make Educational Decisions for the Child,*
40 *Appointing Educational Representative, and Determining Child's*
41 *Educational Needs* (form JV-535), specifying the person who holds the
42 educational rights for the child. The court's findings and orders must
43 address the following:

- 1
2 (A) Whether the child’s educational, physical, mental health, and
3 developmental needs are being met;
4
5 (B) Any services, assessments, or evaluations, including those for
6 special education and related services, that the child may need;
7
8 (C) Who is directed to take the necessary steps for the child to begin
9 receiving any necessary assessments, evaluations, or services;
10
11 (D) If the child’s educational placement changed during the reporting
12 period, whether
13
14 (i) The child’s educational records, including any evaluations
15 of a child with a disability, were transferred to the new
16 educational placement within two business days of the
17 request for the child’s enrollment in the new educational
18 placement; and
19
20 (ii) The child is enrolled in and attending school; and
21
22 (E) Whether the parent’s or guardian’s educational rights should be
23 limited;
24
25 (i) If the court finds the parent’s or guardian’s educational
26 rights should not be limited, the court must direct the parent
27 to his or her rights and responsibilities in regard to the
28 child’s education as provided in rule 5.650(e) and (f); or
29
30 (ii) If the court finds the parent’s or guardian’s educational
31 rights should be limited, the court must determine who will
32 hold the child’s educational rights. The court must explain
33 to the parent or guardian why the court is limiting his or her
34 educational rights and must direct the parent or guardian to
35 the rights and responsibilities of the education representative
36 as provided in rule 5.650(e) and (f).

37
38 **(c) Reports for hearings related to, or that may affect, a child’s education**

39
40 This subdivision applies at all hearings, including disposition and joint
41 assessment hearings. The court must ensure that, to the extent the
42 information was available, the social worker and the probation officer
43 provided the following information in the report for the hearing:

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- (1) The child’s age, behavior, educational and developmental achievement, and any discrepancies in achievement in education and in cognitive, physical, and emotional development;
- (2) Identification of the child’s educational, physical, mental health, or developmental needs;
- (3) Whether the child is participating in developmentally appropriate extracurricular and social activities;
- (4) Whether the child is attending a comprehensive, regular, public or private school;
- (5) Whether the child may have physical, mental, or learning-related disabilities or other special education needs and is in need of or is already receiving special education and related services as provided by the laws incorporated in rule 5.651(a)(3);
- (6) If the child is 0 to 3 years old, whether the child may be eligible for or is already receiving services available under the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), and whether those services are appropriate;
- (7) If the child is between 3 and 5 years and is or may be eligible for special education services, whether the child is receiving the early educational opportunities provided by Education Code section 56001;
- (8) Whether the child is receiving appropriate services through a current individualized education program;
- (9) Whether the child is or may be eligible for regional center services or is already receiving regional center services. Copies of the current individual family plan as defined in section 1436 under title 20 of the United States Code and the current life quality assessments as defined in Welfare and Institutions Code section 4570 should be attached to the report;
- (10) Whether the parent’s or guardian’s educational rights have been or should be limited;
- (11) If the social worker or probation officer recommends limiting the parent’s or guardian’s right to make educational decisions, the reasons

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

3
4 (12) If the parent’s or guardian’s educational rights have been limited, who
5 holds the child’s educational rights;

6
7 (13) Recommendations and case plan goals to meet the child’s identified
8 educational, physical, mental health, and developmental needs;

9
10 (14) Whether any orders to direct an appropriate person to take the
11 necessary steps for the child to begin receiving assessments,
12 evaluations, or services, including those for special education and
13 related services, are requested; and

14
15 (15) In the case of joint assessments, a separate statement by each of the two
16 departments regarding whether the respective social worker and
17 probation officer believe that the child may have a disability and
18 whether the child is in need of special education and related services or
19 requires evaluation as required by title 20 United States Code section
20 1412(a)(3), Education Code section 56425, or section 504 of the
21 Rehabilitation Act of 1973.

22
23 **(d) Continuances or stay of jurisdiction**

24
25 If any continuance provided for in rules 5.686 and 5.782 or stay of
26 jurisdiction provided for in rule 5.645 is granted, the child must continue to
27 receive all services or accommodations required by the laws incorporated in
28 rule 5.651(a)(3).

29
30 **(e) Change of placement affecting the child’s right to attend the school of**
31 **origin**

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

35
36 (1) At any hearing that relates to or may affect the child’s education and
37 that follows a removal of the child from the school of origin the court
38 must find that:

39
40 (A) The social worker or probation officer notified the court, the
41 child’s attorney, and the educational representative or surrogate
42 parent that the proposed placement or change of placement would
43 result in a removal of the child from the child’s school of origin.

1 The court must find that the notice was provided within 24 hours,
2 excluding nonjudicial days, of the social worker’s or probation
3 officer’s determination that the proposed change of placement
4 would result in removal of the child from the school of origin.
5

6 (B) If the child had a disability and an active individualized education
7 program prior to removal, the social worker or probation officer,
8 at least 10 days before the change of placement, notified in
9 writing the local educational agency that provided a special
10 education program for the child prior to removal and the receiving
11 special education local plan area, as defined in Government Code
12 section 7579.1, of the impending change of placement.
13

14 (2) After receipt of the notice in (1):
15

16 (A) The child’s attorney must, as appropriate, discuss the proposed
17 move from the school of origin with the child and the person who
18 holds educational rights. The child’s attorney may request a
19 hearing by filing *Request for Hearing Regarding Child’s*
20 *Education* (form JV-539). If requesting a hearing, the child’s
21 attorney must:
22

23 (i) File form JV-539 no later than two court days after receipt
24 of the notice in (1); and
25

26 (ii) Provide notice of the court date, which will be no later than
27 seven calendar days after the form was filed, to the parents
28 or guardians, unless otherwise indicated on form JV-535;
29 the social worker; the probation officer; the educational
30 representative or surrogate parent; the foster youth liaison,
31 as defined in Education Code section 48853.5; the Court
32 Appointed Special Advocate (CASA) volunteer; and all
33 other persons required by section 293.
34

35 (B) The person who holds educational rights may request a hearing by
36 filing form JV-539 no later than two court days after receipt of the
37 notice in (1). After receipt of the form, the clerk must notify the
38 persons in (e)(2)(A)(ii) of the hearing date.
39

40 (C) The court on its own motion may direct the clerk to set a hearing.
41

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

1 pending any disagreement between the child, parent, guardian, or
2 educational representative and the school district.

3
4 (4) If the court, the child’s attorney, or the person who holds educational
5 rights requests a hearing, at the hearing the court must find that the
6 social worker or probation officer provided a report no later than two
7 court days after form JV-539 was filed and that the report included the
8 information required by (b)(1)(C)(i) and (ii) and:

9
10 (A) Whether the foster child has been allowed to continue his or her
11 education in the school of origin for the duration of the academic
12 school year;

13
14 (B) Whether a dispute exists regarding the request of a foster child to
15 remain in the school of origin and whether the foster child has
16 been afforded the right to remain in the school of origin pending
17 resolution of the dispute;

18
19 (C) Information addressing whether the information sharing and other
20 requirements in section 16501.1(c)(2) and Education Code section
21 49069.5 have been followed;

22
23 (D) Information addressing how the proposed change serves the best
24 interest of the child;

25
26 (E) The responses to the proposed change of placement from the child
27 if over 10 years old, the child’s attorney, the parent or guardian,
28 the foster youth liaison, as defined in Education Code section
29 48853.5, and the child’s CASA volunteer, specifying whether
30 each person agrees or disagrees with the proposed change and, if
31 any person disagrees, stating why;

32
33 (F) A statement from the person holding educational rights regarding
34 whether the proposed change of placement is in the child’s best
35 interest and what efforts have been made to keep the child in the
36 school of origin; and

37
38 (G) A statement from the social worker or probation officer
39 confirming that the child has not been segregated in a separate
40 school, or in a separate program within a school, based on the
41 child’s status as a child in foster care.

1 **(f) Court review of proposed change of placement affecting the child’s right**
2 **to attend the school of origin**

3
4 (1) At the hearing set under (e)(2), the court must:

5
6 (A) Determine whether the proposed placement meets the
7 requirements of this rule and Education Code sections 48853.5
8 and 49069.5 and whether the proposed plan is based on the best
9 interest of the child;

10
11 (B) Determine what actions are necessary to ensure the child’s
12 educational and disability rights; and

13
14 (C) Make the necessary findings and orders to enforce these rights,
15 which may include an order to set a hearing under section 362 to
16 join the necessary agencies regarding provision of services,
17 including the provision of transportation services, so that the child
18 may remain in his or her school of origin.

19
20 (2) When considering whether it is in the child’s best interest to remain in
21 the school of origin, the court must consider the following:

22
23 (A) Whether the parent, guardian, or other educational representative
24 believes that remaining in the school of origin is in the child’s
25 best interest;

26
27 (B) How the proposed change of placement will affect the stability of
28 the child’s school placement and the child’s access to academic
29 resources, services, and extracurricular and enrichment activities;

30
31 (C) Whether the proposed school placement would allow the child to
32 be placed in the least restrictive educational program; and

33
34 (D) Whether the child has the educational supports necessary,
35 including those for special education and related services, to meet
36 state academic achievement standards.

37
38 (3) The court may make its findings and orders on *Findings and Orders*
39 *Regarding Transfer From School of Origin* (form JV-538).

40
41 **Advisory Committee Comment**
42

1 This rule incorporates the requirement of, and rights established by, Assembly Bill 490
2 (Steinberg; Stats. 2003, ch. 862), Assembly Bill 1858 (Steinberg; Stats. 2004, ch. 914), the
3 Individuals With Disabilities Education Act (IDEA), the Americans With Disabilities Act (ADA),
4 and section 504 of the Rehabilitation Act of 1973. This rule does not limit these requirements or
5 rights. To the extent necessary, this rule establishes procedures to make these laws meaningful to
6 children in foster care.

7
8 With the passage of Assembly Bill 490, a child in, or at risk of entering, foster care has a statutory
9 right to a meaningful opportunity to meet the state’s academic achievement standards to which all
10 students are held. To afford the child this right, the juvenile court, advocates, placing agencies,
11 care providers, and educators must work together to maintain stable school placements and ensure
12 that the child is placed in the least restrictive educational programs and has access to the
13 academic resources, services, and extracurricular and enrichment activities that are available to
14 other students. This rule, sections 362 and 727, and rule 5.575 provide procedures for ensuring
15 that the child’s educational needs are met.

16
17 Congress has found that improving the educational performance of children with disabilities is an
18 essential prerequisite to ensuring their equality of opportunity, full participation in education, and
19 economic self-sufficiency. Children in foster care are disproportionately represented in the
20 population of children with disabilities and inherently face systemic challenges to attaining self-
21 sufficiency. Children in foster care have rights arising out of the IDEA, the ADA, and section 504
22 of the Rehabilitation Act of 1973. To comply with federal requirements regarding the
23 identification of children with disabilities and the provision of services to those children who
24 qualify, the court, parent or guardian, placing agency, attorneys, CASA volunteer, local education
25 agencies, and educational representatives must affirmatively address the child’s educational
26 needs. The court must continually inquire about the education of the child and the progress being
27 made to enforce any rights the child has under these laws.

28
29 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316,**
30 **316.2)**

31
32 **(a)–(b) *****

33
34 **(c) Health and education information (§ 16010)**

35
36 The court must order each parent and guardian present either to complete ~~the~~
37 *Health and Education Questionnaire Your Child’s Health and Education*
38 (form JV-225) or to provide the information necessary for the social worker
39 or probation officer, court staff, or representative of the local child welfare
40 agency to complete the form. The social worker or probation officer assigned
41 to the dependency matter must provide the child’s attorney with a copy of
42 the completed form. Before each periodic status review hearing, the social
43 worker or probation officer must obtain and include in the reports prepared
44 for the hearing all information necessary to maintain the accuracy of form
45 JV-225.
46

1 **Rule 5.695. Orders of the court**

2
3 **(a)–(b) *****

4
5 **(c) Limitations on parental control (§§ 245.5, 319, 361, 362; Gov. Code, §**
6 **7579.5)**

7
8 **(1)–(2) *****

9
10 **(3)** The court must consider whether it is necessary to limit the right of the
11 parent or guardian to make educational decisions for the child. If the
12 court limits the right, it must ~~appoint a responsible adult as the~~
13 ~~educational representative under~~ follow the procedures stated in rule
14 5.650 to make educational decisions for the child.

15
16 **(d)–(j) *****

17
18 **Rule 5.790. Orders of the court**

19
20 **(a)–(e) *****

21
22 **(f) Wardship orders (§§ 726, 727, 727.1, 730, 731)**

23
24 The court may make any reasonable order for the care, supervision, custody,
25 conduct, maintenance, support, and medical treatment of a child declared a
26 ward.

27
28 **(1)–(4) *****

29
30 **(5)** The court must consider whether it is necessary to limit the right of the
31 parent or guardian to make educational decisions for the child. If the
32 court limits this right, it must ~~appoint a responsible adult as the~~
33 ~~educational representative.~~ ~~The court must~~ follow the procedures stated
34 in rule 5.650.

35
36 **(g)–(h) *****

*Clerk stamps date here when form is filed.***Draft 23
10/11/07 mc
Not approved by the
Judicial Council****(NEW FORMAT)
as of 01/01/2008**

To the social worker or probation officer: If the parent or guardian needs help completing this form, please ensure that he or she receives assistance.

To the parent or guardian: Complete and sign this form. The information requested on this form is necessary to meet the medical, dental, mental health, and educational needs of your child. The court has directed you to provide your child's medical, dental, mental health, and educational information. The court has also directed you to provide your medical, dental, mental health, and educational information and, if you know, the same information about the other parent or guardian. If you need help, the social worker or probation officer will help you fill out this form.

*Fill in court name and street address:***Superior Court of California, County of***Clerk fills in case number when form is filed.***Case Number:**

① Your name: _____
Your relationship to child: _____
Your home address: _____
City: _____ State: _____ Zip code: _____
Your mailing address: _____
City: _____ State: _____ Zip code: _____
Your telephone: _____

② Your child's name: _____
a. Your child's date of birth: _____
b. Where was your child born? _____
City: _____ State: _____ Country: _____

c. Hospital: _____
d. Your child's birth weight: _____

Child's Health

③ Does your child have any physical or mental health challenges? Yes No
If yes, is your child receiving any assistance, services or treatment for these problems? (*Explain*):
a. Allergies: _____
b. Injuries: _____
c. Diseases: _____
d. Disabilities: _____
e. Other: _____
f. Other: _____

④ Is your child taking any medication? Yes No
If yes, please list the medicines and explain why your child is taking them:

Medication and dosage	Reason for taking medication	Date began
_____	_____	_____
_____	_____	_____
_____	_____	_____

⑤ When was your child last seen by a doctor?
Date: _____
Doctor's name: _____
Doctor's office address (*include city, state, zip code*): _____
Doctor's mailing address (*include city, state, zip code*): _____
Doctor's telephone number: _____



Child's name: _____

- 6 When was your child last seen by a dentist?
 Date: _____
 Dentist's name: _____
 Dentist's office address (include city, state, zip code): _____
 Dentist's mailing address (include city, state, zip code): _____
 Dentist's telephone number: _____

- 7 List the names of all doctors, nurses, dentists, hospitals, clinics, and other health-care providers and healers who have seen your child within the past two years:
- | Name | Address (city, state, zip code) | Date of last visit | Reason for visit |
|-------|---------------------------------|--------------------|------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

- 8 What doctor, nurse, dentist, hospital, clinic, or other person has your child's health records?
 a. Medical records: _____
 b. Dental records: _____
 c. Mental health records: _____

- 9 When was your child's eyesight last tested?
 Date of examination: _____
 Who examined your child's sight: _____
 Address (include city, state, zip code): _____
 Telephone number: _____

- 10 Does your child wear glasses? Yes No
 11 Does your child wear a hearing aid? Yes No
 12 Is your child covered by an insurance policy?
 a. Medical Yes No (If yes, specify insurance policy): _____
 b. Dental Yes No (If yes, specify insurance policy): _____
 c. Vision Yes No (If yes, specify insurance policy): _____

Child's Education

- 13 Before your child was removed from your home, what school did your child attend?
 Name of school: _____
 Address (include city, state, zip code): _____
 a. Is your child still allowed and able to attend this school? Yes No
 b. If no, did you agree to give up your child's right to remain at this school? Yes No
 c. Before removal, was your child receiving or had your child received any assistance or help at school or any assessments, evaluations, services, or accommodations to help your child with any physical, mental, or learning-related disabilities or other special educational needs? Yes No
 (1) If yes, what assessments, evaluations, services, or accommodations was your child receiving?

 (2) Who gave your child these educational services?



Child's name: _____

Case Number: _____

- 13 d. If applicable, do you have a copy of your child's individualized education program (IEP), section 504 plan, individual family plan (IFP), or quality of life assessment? Yes No
- e. What language did your child first learn to speak? _____
- f. What is his or her primary language? _____
- g. What language do you most often use when speaking to your child? _____
- h. Has your child ever been identified as English proficient or as an English language learner by a school?
 Yes No
- i. Has your child ever been enrolled in a specialized program to learn English? Yes No

- 14 List all other schools or day care your child has attended:

School (<i>name, city, state</i>): _____	Dates of attendance: _____
School (<i>name, city, state</i>): _____	Dates of attendance: _____
School (<i>name, city, state</i>): _____	Dates of attendance: _____
School (<i>name, city, state</i>): _____	Dates of attendance: _____

- 15 a. What grade is your child in? _____
- b. Does he or she have any special needs? Yes No
If yes, please describe:

- c. If the child is three years old or younger, do you believe that the child may be eligible for services to help with motor, developmental, or other delays?
If yes, explain why:

What assessments, evaluations, services, treatment, or accommodations do you believe the child may need for the delay?

- d. Do you believe the child may have a disability?
If yes, please describe:

What assessments, evaluations, services, treatment, or accommodations do you believe the child may need for the disability?



Child's name: _____

16 Has your right to make educational decisions for the child been limited? Yes No

If yes, who has the right to make educational decisions for the child?

Name: _____

Relationship to child: _____

Biological Parent's Health and Education (You are required by Welfare and Institutions Code section 16010 to provide this information about yourself. If you do not want to provide this information, please talk to your attorney.)

17 a. When were you last seen by a doctor and dentist? _____

(1) What medical problems run in your family?

(2) Do you have medical problems or disabilities?

(3) What medications do you take?

Medication

Reason for taking medications

_____	_____
_____	_____
_____	_____
_____	_____

b. What is your educational history?

(1) School last attended (name, city, state): _____

(2) Last grade completed: _____

18 a. If you know, provide the following information about your child's other parent:

(1) Name of other parent: _____

(2) Relationship to child: _____



Child's name: _____

Case Number: _____

18 a. (3) Other parent's medical problems and disabilities

(Please include physical, mental, and learning problems):

(4) The child's other parent takes the following medications:

Medication

Reason for taking medications

_____	_____
_____	_____
_____	_____

(5) The following medical problems run in the family of my child's other parent:

b. My child's other parent has the following educational history:

(1) School last attended: _____

(2) Last grade completed: _____

I declare under penalty of perjury under the laws of California that the information on this form is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____

Type or print parent's/guardian's name

▶ _____
Parent/guardian signs here

Date: _____

Type or print social worker's name

▶ _____
Social worker signs here

Date: _____

Type or print probation officer's name

▶ _____
Probation officer signs here

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr/> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY Draft 17 10/11/07 mc Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME: CHILD'S DATE OF BIRTH: HEARING DATE AND TIME: _____ DEPT.: _____	
TERMINATION OF DEPENDENCY JURISDICTION— CHILD ATTAINING AGE OF MAJORITY	CASE NUMBER: _____

Directions for the social worker: Check the appropriate boxes in items 1 through 4, complete item 5, attach documents as required, and then sign and date item 8.

Directions for the child (if child is available): Review the boxes checked by the social worker in items 1 through 6. Sign your initials after each item if you received the service or information. Then sign and date item 9.

1. a. The child wants to attend the termination hearing.
 b. The child does not want to attend the termination hearing. The petitioner has attached verification that the child has been informed of the potential consequences of failure to attend the termination hearing.
 c. The child is unavailable and/or has refused to sign this form. Evidence of reasonable efforts to locate the child and to obtain the child's signature is attached.

2. An attached report verifies that the child has received written information concerning his or her dependency case, including information about the child's family history; the child's placement history; the child's educational and medical history; the whereabouts of any siblings under the jurisdiction of the juvenile court; the procedures for accessing the documents that the child is entitled to inspect under Welfare and Institutions Code section 827; and the date on which the jurisdiction of the court will be terminated.

3. The child has been provided with the following documents *(check all that apply)*:
 - a. Certified birth certificate
 - b. Social security card
 - c. Identification card and/or driver's license
 - d. Proof of citizenship or residency status
 - e. Death certificate of parent or parents, if applicable
 - f. Health and education summary
 - g. Proof of dependency/wardship

4. If the child continues to be eligible for services or accommodations pursuant to the Individuals With Disabilities Education Act, the Americans With Disabilities Act, or section 504 of the Rehabilitation Act of 1973, the child has been provided with his or her most recent service or accommodation plan.

CHILD'S NAME: 	CASE NUMBER:
-----------------------	----------------------

5. The child has been receiving services as provided in the Individuals With Disabilities Education Act (34 C.F.R. §§ 300.320(b) and (c), 300.321(b), and
- a. the child has received his or her transition service plan.
 - b. the child has been informed of the rights that will transfer to him or her under this act.
6. The child has received the following:
- a. Assistance with an application for Medi-Cal or other health insurance
 - b. Assistance with an application for college, a vocational training program, or another educational or employment program
 - c. Information on obtaining, or an application to obtain, financial assistance for educational and employment programs
 - d. A referral to transitional housing, if available, or assistance in securing other housing
 - e. Assistance in obtaining employment or other financial support
 - f. Assistance in maintaining relationships with individuals who are important to the child, consistent with the child's best interest *(required only if the child has been in out-of-home placement for six months or longer)*
 - g. Other services ordered by the court *(specify):*
7. Number of pages attached: _____
8. I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF SOCIAL WORKER)

9. I certify that I have received the information and services that I initialed above.

Date:

 (TYPE OR PRINT NAME)

▶ _____
 (CHILD'S SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 24 10/05/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS LIMITING RIGHT TO MAKE EDUCATIONAL DECISIONS FOR THE CHILD, APPOINTING EDUCATIONAL REPRESENTATIVE, AND DETERMINING CHILD'S EDUCATIONAL NEEDS	CASE NUMBER:

1. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (name): _____
 c. Persons present:
 Child Child's attorney Mother Mother's attorney Father
 Father's attorney Guardian Deputy district attorney Probation officer/social worker
 Deputy county counsel CASA volunteer Other (specify): _____
2. Providing the information on this form to the parent or guardian will will not create a safety risk for the child (for example, because of the placement's confidentiality).
 a. The information is to be withheld from the parent or guardian (name each):
 b. The information is to be provided to the parent or guardian (name each):

3. Date of birth: _____
 4. Child's school district: _____
 5. Child's school (name and address): _____
 6. Child's social worker (name and address): _____
 7. Child's supervising social worker (name): _____
 8. Child's probation officer (name and address): _____
 9. Foster youth liaison (as defined in Education Code section 48853.5(b)) (name and address): _____
 10. Child's attorney (name and address): _____

11. **After consideration of the evidence, the court finds and orders under Welfare and Institutions Code section 319(g), 361(a), or 726(b):**
 a. The right of the parent (name): _____ parent (name): _____
 guardian (name): _____ guardian (name): _____
 to make educational decisions for the child is (specify):
 limited by this court temporarily limited by this court (if before disposition).
 b. Parental rights have been terminated, and no one holds educational rights for this child.

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

11. c. Reunification services for the child and family have been terminated or were never ordered and the child is placed in a planned permanent living arrangement with *(identify placement or indicate if placement is confidential)*:
- (1) The court finds that the identified foster parent, relative caregiver, or nonrelative extended family member (as defined in Welfare and Institutions Code section 362.7) may represent the child in all general and special educational matters under Education Code section 56055(a) and is not prohibited from doing so or excluded by Welfare and Institutions Code section 361 or 726 or 34 Code of Federal Regulations section 300.519 or 303.19.
- (2) The following foster parent, relative caregiver, or nonrelative extended family member (as defined in Welfare and Institutions Code section 362.7) may not make educational decisions for the child under Education Code section 56055(b).
- (a) Name:
(b) Address:
(c) Telephone:
(d) Relationship to child:
- d. The following responsible adult, who has no apparent conflict of interest and who is not prohibited by Education Code section 56055 or 34 Code of Federal Regulations section 300.519 or 303.19, is appointed as the child's educational representative:
- (1) Name:
(2) Address:
(3) Telephone:
(4) Relationship to child:
- e. The court cannot identify a responsible adult to make educational decisions for the child, and the child is potentially eligible for special education and related services or already has an individualized education program (IEP). Therefore, the court refers the child to the local educational agency (LEA). The LEA must make reasonable efforts to appoint a surrogate parent for the child under Government Code section 7579.5 within 30 days of the court's referral. The LEA must notify the court of the identity of the appointee on attached form JV-536 within seven calendar days of the date of the appointment, termination, resignation, or replacement of a surrogate parent.
- Note:** If box 11.e. is checked, form JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*, must be attached when this order is served on the local education agency.
- f. The court cannot identify a responsible adult to make educational decisions for the child, and the child does not qualify for special education. The court, with input from any interested person, will make educational decisions for the child.
12. The child has the following educational and developmental needs *(check all that apply)*:
- a. The child is 0–3 years old and has been identified with a disability.
- b. The child is 0–3 years old and is suspected of having a disability.
- c. The child is age 3 years or older and has been identified with a disability.
- d. The child is age 3 years or older and is suspected of having a disability.
- e. The child is currently eligible for special education, general education accommodations and modifications, early intervention services, or regional center developmental services.

CHILD'S NAME: _____	CASE NUMBER: _____
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12. f. The child is receiving services based on the following plan *(check all that apply)*:
- (1) Individualized education program (IEP)
 - (2) Section 504 plan
 - (3) Individual family plan (IFP)
 - (4) Quality of life assessment
 - (5) Other *(explain)*:

13. The educational representative is ordered to *(check all that apply)*:
- a. submit to the local education agency a written referral for special education assessment and assessments under section 504 of the Rehabilitation Act of 1973.
 - b. submit to the regional center a written referral for an eligibility assessment.
 - c. submit to the local education agency a written referral for an assessment, evaluation, or services or a written request to convene the IEP team to review or revise the child's IEP.
 - d. submit a written request to the regional center to convene the IFP team to review or revise the child's IFP.

14. As provided under 34 Code of Federal Regulations § 300.300, the child's initial evaluation for special education services need not be postponed to await parental or guardian consent or appointment of an educational representative because one or more of the following circumstances have been met:
- a. The court has limited or temporarily limited the educational rights of the parent or guardian, and consent for an initial assessment has been given by an individual appointed by the judicial officer to represent the child.
 - b. The local education agency cannot discover the whereabouts of the parent or guardian.
 - c. The parent's rights have been terminated, or the guardianship has been set aside.

The court appoints the following person to represent the child in the request for an initial evaluation *(name, address unless confidential)*:

15. The clerk will provide a copy of the completed JV-535 to the child if 10 years or older, to the child's attorney, to the social worker and probation officer, to the foster youth liaison, and to the educational representative at the end of the proceeding or no later than seven calendar days after the order. The clerk will make the form available to the parents or guardians (unless otherwise indicated on the form), the Court Appointed Special Advocate (CASA) volunteer, and, if requested, to all other persons provided notice under section 293.

16. Within seven calendar days of this order, a copy of this order must be served on the local education agency by *(choose one)*:
- a. a representative of the county welfare department
 - b. a representative of the probation department
 - c. the clerk of this court
 - d. the child's attorney

17. **This order applies to any school or school district in the state of California.**

18. The educational representative, or the person whom the court appointed to represent the child for an initial evaluation, will report to the court regarding the child's education on *(date)*: _____ in Dept. _____ at _____ a.m./p.m.

Date: _____

JUDICIAL OFFICER

LOCAL EDUCATIONAL AGENCY REPRESENTATIVE <i>(Name and address):</i> TELEPHONE NO. <i>(Optional):</i> _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT 13 10/05/07 xyz Not approved by the Judicial Council</p>
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBER:
<p>LOCAL EDUCATIONAL AGENCY RESPONSE TO JV-535—APPOINTMENT OF SURROGATE PARENT</p>	

This form must be completed and returned to the court at the address listed above within seven calendar days of the date of the appointment, termination, or replacement of a surrogate parent.

1. a. Child's school:
 - b. Address of child's school:
 - c. School personnel contact *(name, title, and telephone):*

2. a. Name of surrogate parent:
 - b. Address:
 - c. Telephone:
 - d. Relationship to child:

3. The appointed surrogate parent does not have a conflict of interest with the child. (Welf. & Inst. Code, §§ 361, 726; 34 C.F.R. §§ 300.519, 303.19; Gov. Code, § 7579.1(i), (j).)

4. The appointed surrogate parent will represent the child on educational issues as required by state and federal law.

5. The appointed surrogate parent agrees that this representation is continuous. If the surrogate parent is not able to represent the child's educational needs, the surrogate parent will inform the local education agency.

6. The previous surrogate parent resigned or was terminated under section 7579.5(h) of the Government Code.
 - a. Name of previous surrogate parent:
 - b. Address:
 - c. Telephone:
 - d. Relationship to child:

CHILD'S NAME: _____	CASE NUMBER: _____
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7. The local educational agency has not appointed an surrogate parent within 30 days as required by rule 5.650(d)(3).

Date:

(TYPE OR PRINT NAME)

(LOCAL EDUCATION AGENCY REPRESENTATIVE'S SIGNATURE)

(TITLE)

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	<p><i>FOR COURT USE ONLY</i></p> <p>Draft 15 10/01/07 xyz Not approved by the Judicial Council</p>
<p>CHILD'S NAME:</p>	
<p>EDUCATIONAL REPRESENTATIVE OR SURROGATE PARENT INFORMATION</p>	<p>CASE NUMBER:</p>

To the educational representative or surrogate parent of the child: You may submit written information to the court or to the child's social worker or probation officer, and you may attend review hearings. This optional form may assist you in providing written information to the court. Please type or print clearly in ink and submit the form well in advance of the hearing but no later than seven days prior to the hearing. Please provide five additional copies to the clerk.

1. a. Child's date of birth:
 b. Child's age:
 c. Child's school:
 d. Child's grade level:

2. a. Name of educational representative or surrogate parent:
 b. Address:
 c. Telephone:
 d. I was appointed as educational representative or surrogate parent on *(date)*:
 e. I was appointed as educational representative or surrogate parent by *(name)*:
 (1) Local education agency in *(school district)*:
 (2) Juvenile court in *(county)*:
 (3) Other *(specify)*:
 f. I am resigning from my appointment.

3. Since my appointment as educational representative or surrogate parent, or since my last form JV-537 statement, I have performed the following actions on behalf of the child *(specify)*:

4. I do not have any new or additional information since the last court hearing.
5. I have new or additional information since the last court hearing *(e.g., changed school, school discipline)*:

6. Based on my observations of the child's physical, emotional, mental, and social development, I believe the child
 - a. *(0-3 years old)* may be eligible for early intervention services.
 - b. may have a disability *(explain)*:

7. The child has the following disabilities *(specify)*:

8. The child has the following educational needs *(specify)*:

CHILD'S NAME:	CASE NUMBER:
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9. The child requires the following services to meet his or her educational needs (*specify*):

10. The child is receiving the following education-related services or accommodations (*explain*):

a. These services or accommodations are are not appropriate (*explain*):

b. Date of most recent individualized education plan (IEP) or section 504 plan:

11. On (*date*): _____ I made a request for assessments from the

- a. regional center (*name*):
- b. local education agency (*name*):
- c. other (*name*):

12. a. Type of assessments requested (*check all that apply*):

- (1) Individualized education plan
- (2) Section 504 plan
- (3) Individual family plan
- (4) AB 3632 county mental health assessments
- (5) Psycho-educational assessment
- (6) Other (*specify*):

b. Reason requested (*specify*):

13. If you need more space to respond to any section above, please check this box and attach additional pages.

Number of pages attached: _____

Date:

(TYPE OR PRINT NAME)

 _____
(SIGNATURE OF EDUCATIONAL REPRESENTATIVE OR SURROGATE PARENT)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____</p> <p>E-MAIL ADDRESS <i>(Optional):</i> _____</p> <p>ATTORNEY FOR <i>(Name):</i> _____</p>	<p>FOR COURT USE ONLY</p> <p style="font-size: 1.2em; font-weight: bold;">DRAFT 18</p> <p style="font-size: 1.2em; font-weight: bold;">10/01/07 xyz</p> <p style="font-size: 1.2em; font-weight: bold;">Not approved by the Judicial Council</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS: _____</p> <p>MAILING ADDRESS: _____</p> <p>CITY AND ZIP CODE: _____</p> <p>BRANCH NAME: _____</p>	
<p>CHILD'S NAME: _____</p>	
<p>FINDINGS AND ORDERS REGARDING TRANSFER FROM SCHOOL OF ORIGIN</p>	CASE NUMBER: _____

1. a. Hearing date: _____ Time: _____ Dept.: _____ Room: _____
 b. Judicial officer: _____
 c. Parties and attorneys present: _____

THE COURT FINDS AND ORDERS

2. The social worker probation officer provided a report no later than two court days after form JV-539 was filed. The report included the information required by rule 5.651(e)(4) of the California Rules of Court.
3. The court has read and considered the report.
4. The social worker probation officer provided notice as required by rule 5.651(e) of the California Rules of Court.
5. As soon as the county placing agency became aware of the need to transfer the child in foster care out of the school of origin, the county placing agency contacted the appropriate person at the local education agency.
 a. Name of local education agency contact:
 b. Title:
 c. Telephone:
 d. Date of contact:
6. Before recommending that the child be moved from the school of origin, the foster-care liaison provided the child and parent or educational representative with a written explanation of the recommendation and how this change will serve the child's best interest *(date explanation provided)*:
7. a. The foster-care education liaison, in consultation and agreement with the child and parent or educational representative, waives the child's right to be enrolled in the school of origin.
 b. There is a disagreement between the child; the parent, guardian, or educational representative; and the foster youth liaison regarding the child's request to remain in his or her school of origin.
 (1) The foster youth liaison must provide written communication explaining why it is not in the child's best interest to remain in the school of origin.
 (2) The child must be allowed to remain in and attend the school of origin pending resolution of the dispute.

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

GENERAL POSITIONS AND COMMENTS

List of All Commentators and Their Overall Positions on the Proposal

	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committee Response
1	Michael Bays Chief Deputy Sacramento County Probation Department	A	Y	No narrative comment.	No response required.
2	L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division	A	N	See comments below.	See response below.
3	Jenny Cheung Writ Supervisor Children’s Law Center of Los Angeles	AM	Y	See comments below.	See response below.
4	Hon. Tari L. Cody Juvenile Dependency Judge Superior Court of Ventura County	AM	Y	See comments below.	See response below.
5	Rolanda Pierre Dixon Assistant District Attorney Santa Clara District Attorney’s Office	A	Y	No narrative comment.	No response required.
6	Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.	AM	Y	See comments below.	See response below.
7	Paula Forthun-Baldwin Attorney Inland Regional Center	N	Y	See comments below.	See response below.
8	Dennis B. Jones Executive Officer	AM	Y	See comments below.	See response below.

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	Superior Court of Sacramento County				
9	Robert E. Kalunian Chief Deputy Public Defender Los Angeles County Public Defender’s Office	AM	Y	See comments below.	See response below.
10	Jennifer Kelleher Directing Attorney Legal Advocates for Children and Youth (LACY)—San Jose	AM	Y	See comments below.	See response below.
11	Superior Court of Los Angeles County	A	Y	No narrative comment.	No response required.
12	Hon. Linda A. McFadden Presiding Judge of the Juvenile Court Superior Court of Stanislaus County	AM	N	See comments below.	See response below.
13	Frank Mecca Executive Director County Child Welfare Directors Association Sacramento	AM	Y	See comments below.	See response below.
14	Andrea Nelson Director of Operations Superior Court of Butte County	A	N	See comments below.	See response below.
15	Kathleen O’Connor Assistant County Counsel Sacramento County Department of Health and Human Services— Children’s Services	N	Y	See comments below.	See response below.
16	Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County	AM	Y	See comments below.	See response below.
17	Michael M. Roddy Executive Officer Superior Court of San Diego County	AM	Y	See comments below.	See response below.

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

18	Randi Barrat Assistant Public Defender Arthur Bowie Supervising Assistant Public Defender Sacramento County Office of the Public Defender	AM	Y	See comments below.	See response below.
19	Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center—Los Angeles	AM	Y	See comments below.	See response below.
20	Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services	AM	N	See comments below.	See response below.
21	Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel	AM	Y	See comments below.	See response below.
22	Isabelle Voit Chief Probation Officer Solano County Probation Department	AM	N	See comments below.	See response below.
23	Roy Wallen Chief Deputy Los Angeles County Alternate Public Defender	AM	Y	See comments below.	See response below.
24	Cynthia J. Wojan Juvenile Court Coordinator Superior Court of Solano County	A	N	See comments below.	See response below.
25	Jacqueline Wong Chair National Governors Association Policy Academy on Transition From	A	Y	See comments below.	See response below.

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	Foster Care Education Workgroup—Sacramento				
26	Deborah Escobedo Staff Attorney Maria Ramiu Attorney Youth Law Center San Francisco	AM	Y	See comments below.	See response below.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Committee Response
Robert E. Kalunian Chief Deputy Public Defender Los Angeles County Public Defender’s Office	a. It is concerning that the court will be placed in the role of requesting assessments. This may be beyond the court’s authority, particularly if anything from these court-ordered assessments might be used to incriminate youth.	a. The purpose of these referrals is to assist with appropriate service delivery to the extent a child may be eligible for services. The requirements of 20 U.S.C. section 1412 and Ed. Code, § 56320 are that all children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the court and who are in need of special education and related services, must be identified, located, and assessed. We have revised rules 5.650(a)(3) and 5.651(b)(2)(C) to clarify that the court must direct the appropriate person to take the necessary steps to request, or for the child to begin receiving, those assessments, evaluations, or services. The court is not requesting the assessment.

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	<p>b. There is no privilege between the child and the educational representative. The representative is urged to “use discretion” when sharing information and to do so for the purpose of furthering the interest of the child and is given the right to disclose information as a parent under Family Educational Rights and Privacy Act. This is troublesome to the extent that the representative may have interests that conflict with the defense of the minor. This could be resolved by making the educational representative an agent of either the defense attorney or the dependency attorney.</p>	<p>b. While this rule of court does not establish a privilege between the child and the educational representative, it also does not eliminate any privilege established through other relationships, i.e., if an attorney is appointed to hold this position. Other court participants who currently act on behalf of a child on education issues, including CASAs and foster parents, also do not have a privileged relationship with the child. However, the educational representative is required to make all decisions affecting the child’s educational needs in a manner consistent with the child’s best interest.</p>
<p>Jennifer Kelleher Directing Attorney Legal Advocates for Children and Youth</p>	<p>a. While we generally agree with the spirit behind the proposal, we strongly urge a substantial revision of the proposed amendments, followed by another period for public comment.</p> <p>b. There should be a new form to record changes in the adult appointed by the juvenile court to make educational decisions subsequent to the initial limitation of the parents’ educational rights and appointment of a responsible adult. Having a new form would preserve form JV-535 for use at the time of the initial limitation and reduce the number of court findings when the only change is to the identity of the responsible adult.</p> <p>c. The term “special educational,” which appears in multiple proposed rules, should be replaced with the term “special education” in order to be consistent with the terminology in federal and state special education law. Where appropriate, the Judicial Council may want to consider using the full phrase “special education and related services.” <i>See</i> 20 U.S.C. §§ 1401(9), 1401(29); Ed. Code, § 56031.</p>	<p>a. There were a number of comments indicating the need for guidance in this area of law, and many insightful suggestions have been incorporated that address the concerns raised.</p> <p>b. Each time an educational representative is appointed, the items on form JV-535 must be confirmed as they are subject to change with each new appointment.</p> <p>c. Agree to modify.</p>

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	<p>d. The term “individualized education plan,” which appears in multiple proposed rules, should be replaced with the term “individualized education program” in order to be consistent with the terminology in federal and state special education law. <i>See</i> 20 U.S.C. § 1401(14); Ed. Code, § 56032.</p> <p>e. The phrase “rights to make educational decisions,” which appears in multiple proposed rules, should be replaced with the phrase “right to make educational decisions” in order to be consistent with state statutes. <i>See, e.g.,</i> Welf. & Inst. Code, §§ 319, 361, 366; in order to be internally consistent, <i>see, e.g.,</i> proposed rule 5.650(a); form JV-535.</p> <p>f. The rules should not cite sections of the Code of Federal Regulations that no longer are in effect. The proposed rules contain multiple citations to federal special education regulations from 1999 that have been superseded by the federal regulations that took effect in 2006. The citations to superseded regulations should be deleted.</p>	<p>d. Agree to modify.</p> <p>e. Agree to modify.</p> <p>f. Agree to modify.</p>
<p>Andrea Nelson Director of Operations Superior Court of Butte County</p>	<p>Agree as long as rule 5.504(c)(2) remains in effect providing courts the ability to modify forms as currently allowed under this rule.</p>	<p>Rule 5.504(c)(2) remains in effect.</p>
<p>Kathleen O’Connor Assistant County Counsel Sacramento County Department of Health and Human Services—Children’s Services</p>	<p>These proposed changes are the obvious result of hard work by the advisory committee and demonstrate genuine care and concern about the educational needs of foster children. No one on the front lines would disagree with the committee’s identification of areas where the law falls short, especially AB 490, which raises awareness of the problem without providing any funding whatsoever to permit the local courts, child welfare departments, and educational agencies to implement viable social and educational programs for our children, including providing transportation, educational specialists, and increased numbers of foster homes to permit the child to remain in his school community. However, this is the Legislature’s prerogative—and a problem that only that elected body can cure. This series, while comprehensive, well intended, and deeply reflective, is tantamount to a legislative scheme, which is not the role of or within the powers of the court.</p>	<p>The Judicial Council has the authority to adopt rules of court governing practice and procedure in juvenile court that is not inconsistent with the law under article VI section 6 of the California Constitution and Welf. & Inst. Code, § 265.</p>

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	<p>b. This plan, largely defined in rule 5.651, seeks to make the juvenile court a clearinghouse for federal and state disability and educational claims and other issues that fall well outside the parameters established by the juvenile law statutory scheme. Clearly, there is no evidence that it is the intent of the Legislature that these courts of limited jurisdiction, which handle special proceedings, should have the reach of federal and state courts of general jurisdiction and that there can or should be a bypass of the administrative process developed for enforcement of the rights created by the Individuals With Disabilities Education Act, the Americans With Disabilities Act, the Rehabilitation Act of 1973, and other like legislative schemes.</p> <p>c. The program created by this proposal would redirect substantial resources of the juvenile courts and social service agencies to report writing and expansive hearings—at the cost of available resources used for direct services invested in child protection and permanency and family reunification. It would improperly attempt to have the courts manage the operations and resources of the local social services and probation agencies and create duties well beyond those provided for by statute.</p> <p>d. It is requested that this series, including forms, not be adopted and that it be reviewed with careful consideration of the permissible role of the court and the practical limitations set by the finite resources of local courts and</p>	<p>b. This proposal largely implements provisions in the Welfare and Institutions and Education Codes that pertain to education for children in foster care. Welf. & Inst. Code, § 304 provides that while a child is under the jurisdiction of the juvenile court, the juvenile court shall hear all issues regarding a child’s custody. This proposal creates procedures for the court to oversee placement decisions that affect a child’s educational rights. This proposal is not intended to create procedures to replace the administrative process required by the IDEA, ADA, or section 504.</p> <p>c. This proposal ensures that the court receives the information it needs to consider the impact of proposed placements on the child’s education and implements requirements that the court ensure there is someone who can make educational decisions on behalf of the child. The committee revised rule 5.651 to reduce the work- load impact on the courts, social services agencies, and probation departments by limiting hearings on placement changes to those instances when the hearing is requested by the child’s attorney or the educational representative.</p> <p>d. The committee believes that the proposed rules and forms conform with and implement the applicable state and</p>
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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	<p>agencies. In doing so, any proposed amendments or new rules should use, comport with, and not exceed the provisions of state and federal law in order to avoid “legislating” mandates for services that the Legislature has not created, intended, or funded. The deficiencies in AB 490 and other applicable laws can only be properly cured through legislative enactments and not by promulgation of court rules.</p>	<p>federal law. In response to this comment and others, the committee has revised the rules that will limit the workload impact in a manner that is consistent with the court receiving the information it needs to make informed decisions about the children under its jurisdiction.</p>
<p>Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County</p>	<p>a. In general, we find numerous sections to be troublesome because they assert jurisdiction over a nonparty: the school district. Absent a joinder motion under Welf. & Inst. Code, § 362 after showing a failure to meet a legal obligation to provide services to the child, the juvenile court has no in personam jurisdiction to “order” a nonparty to do anything other than how to file documents in court. These proposed rules assume the school has failed or will fail in its Education Code duties and thus needs a court order to require it to do what it is supposed to do. That is demonstrated, for example, in the requirement of proposed rule 5.650(a)(3) that the local education agency “must communicate” with the court, social worker, etc. Such demands to a nonlitigant are not proper rules “of court.” There are numerous other provisions of this rule that violate that basic jurisdictional principle.</p> <p>b. In our county, we have a School Advisory Committee to the juvenile court. Members of that committee have not indicated that any of these proposed rules have been circulated to them. If school officials have not been consulted by the AOC on these complex proposals, we urge that you do seek their input before proceeding unilaterally to adopt rules that will impose many additional duties on the schools.</p>	<p>a. Agree to modify the rules to remove any requirements directed to the local education agency other than a requirement that when the court refers a child to the LEA for appointment of a surrogate parent the court must direct the LEA to make reasonable efforts to appoint a surrogate parent within the time frames set in state and federal law and that it notify the court when a surrogate parent is appointed or removed. This provision is consistent with Welf. & Inst. Code, § 361 and Gov. Code, § 7579.5.</p> <p>b. In addition to the regular circulation list, this proposal was sent to the following education departments and agencies: California Department of Education including the Foster Youth Services Program, the California School Boards Association, each county’s foster youth liaison, California regional centers, and each county’s superintendent of schools.</p>
<p>Michael M. Roddy Executive Officer Superior Court of San Diego County</p>	<p>Technical changes provided.</p>	<p>Agree to modify.</p>

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

<p>Randi Barrat Assistant Public Defender</p> <p>Arthur Bowie Supervising Assistant Public Defender Sacramento County Office of the Public Defender</p>	<p>The significance of the court’s role in understanding the educational needs of a minor is invaluable in contemplating effective dispositions. The proposed rules and form JV-535 provide a critical piece to advocating in a minor child’s best interest. Consequently, I agree with the proposed rule changes with modification.</p>	<p>Modification requests are addressed in specific rule sections below.</p>
<p>Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center</p>	<p>a. We applaud the intent of the proposals to incorporate applicable federal and state education and disability law into court rules and forms. We agree with many of the proposed changes but seek clarification and amendment in certain areas.</p> <p>b. All references to special education should include a reference to related services per state and federal law.</p>	<p>a. Modification requests are addressed in specific rule sections below.</p> <p>b. Agree to modify references to “special education and related services.”</p>
<p>Isabelle Voit Chief Probation Officer Solano County Probation Department</p>	<p>Although delinquent minors are placed in foster care, currently the language in the Education Code includes social worker, but not probation officer. I would like to see probation officer added. Also, there is language in Welf. & Inst. Code, § 300 et. seq regarding limiting a parent’s educational rights, but there is no language to reflect this responsibility in § 600 et. seq. This language is needed.</p>	<p>Legislation is required to address this comment. However, please see Welf. & Inst. Code, § 726 regarding limiting a parent’s educational rights when the child has been declared a ward of the court.</p>
<p>Roy Wallen Chief Deputy Los Angeles County Alternate Public Defender</p>	<p>a. Who will be on the list of qualified educational representatives and how will the selection process ensure that no conflict of interest exists when ongoing concerns of the frequent relocation of a minor present themselves?</p> <p>b. We have concerns with the issue of confidentiality. Proposed rule of court 5.651(c)(7) requires that the IEP be attached. There is no need for this to be the case on a routine basis.</p> <p>c. Another aspect of this issue is what is considered confidential between the minor and the representative and who determines what to do or how to approach this issue. If the attorney for the minor retains authority to proceed according to his or her ethical duties of protecting and advancing the client’s interest, then the issue may not be as significant.</p>	<p>a. The court determines who is qualified to serve as an educational representative and whether there is a conflict of interest. Concerns about conflicts of interest should be directed to the court.</p> <p>b. Agree to modify to delete the requirement that the IEP be attached.</p> <p>c. This proposal does not change the attorney’s ethical duties or affect the attorney-client privilege.</p>

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	<p>d. We have concerns with what can be characterized as a “communication link” issue in this proposal. Which person or agency has the authority or inherent power to order the initiation of an assessment is critical. Who will have the authority or inherent power to refuse to initiate an assessment? Should a school district be able to ignore a court’s order to prepare an assessment? The broader question is to what extent the courts should be involved in the micromanagement of this process. Probation agencies should be set up to monitor what is happening on a day-to-day basis. The court should only have the power of broad oversight. Delinquency courts are in need of educational liaisons who will work with the juvenile, his or her parents, the juvenile’s attorney, and the court. AB 490 set up such a “communication link” in dependency courts. There is no reason not to have the same process in delinquency courts.</p>	<p>d. AB 490 requirements apply to all children in foster care, whether they are in dependency or delinquency court. The parent, educational representative, or surrogate parent can request that the school district initiate the assessment. The school district decides whether to do the assessment. The court can order the school district to do the assessment only if the school district is joined as a party to the juvenile proceeding under Welf. & Inst. Code, § 362.</p>
<p>Cynthia J. Wojan Juvenile Court Coordinator Superior Court of Solano County</p>	<p>I have some concern that the parent or guardian may have trouble compiling the information or may be easily overwhelmed by a five-page questionnaire.</p>	<p>The committee shares your concern. However, Welf. & Inst. Code, § 16010(f) requires the court to direct each parent at the initial hearing to provide complete medical, dental, mental health, and educational information and the medical background of the child and of the child’s mother and biological father if known. Form JV-225 is designed for parents to provide the necessary information.</p>
<p>Jacqueline Wong Chair National Governors Association Policy Academy on Transition From Foster Care Education Workgroup</p>	<p>The workgroup participants identified the following positive aspects to the proposed rule changes:</p> <ul style="list-style-type: none"> • Monitoring schools for compliance with AB490; • Requiring social workers to provide more information on education to the court; • Amending form JV-365 to specify that the social worker will provide the youth with the proof of dependency or a wardship card; and • Outlining the notification process when placement changes occur for a youth with special needs. 	<p>No response necessary.</p>

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	Overall, the workgroup felt the proposed rules of court support further implementation of AB 490.	
Deborah Escobedo Staff Attorney Maria Ramiu Attorney Youth Law Center	We recommend that all the proposed rules and forms that use the term “educational representative” in lieu of “surrogate parent” be amended to refer back to “surrogate parent.”	The committee agrees to restore the references to surrogate parent in the rules.

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Rule 5.502—Definitions and use of terms

Commentator	Comment Excerpt or Summary	Committee Response
Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.	This requires further clarifying language regarding the educational representative’s responsibilities as related to AB 490 and discipline and special education issues, regardless of whether the court or school district appoints the individual. Often district-appointed educational surrogates only sign IEP documents but do not attend and/or even receive notice of any other educational proceedings. Thus they rarely act in a proactive manner regarding due process and/or AB 490 rights. It is critical that the rules spell out that there is no distinction between the rights and responsibilities of a “surrogate,” who is appointed by the district, and a “responsible adult,” regarding their rights and responsibilities to participate in such AB 490 matters as origin school decisions and to receive notice of disciplinary, as well as special education proceedings for a youth in out-of-home care.	An advisory committee comment was added to rule 5.650 to help clarify the roles and responsibilities of the educational representative and the surrogate parent.
Jennifer Kelleher Directing Attorney LACY	While we admire the goal of clarifying education-related responsibilities and appreciate the attempt to reduce confusion by simplifying terminology, we strongly disagree with the proposal to apply the term “educational representative” to both the person appointed by the juvenile court to make educational decisions for a foster child (called a “responsible adult” under California law, <i>see, e.g.,</i> Welf. & Inst. Code, § 361(a)) and the person appointed by a local educational agency or court to make educational decisions for a child only in the context of special education (called a	The committee agrees to restore the references to surrogate parent where appropriate. Please see changes to rule 5.502(13) and the advisory committee comment to rule 5.650.

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	<p>“surrogate” or “surrogate parent.” Different rights and responsibilities flow from these two roles, and we are confident it would cause more—not less—confusion to conflate them. While a responsible adult has the same authority as a surrogate parent does, the reverse is not true, and the rules should not give the false impression that it is. The rules should maintain the distinction between responsible adults and surrogate parents.</p>	
<p>Kathleen O’Connor Assistant County Counsel Sacramento County Department of Health and Human Services— Children’s Services</p>	<p>a. “Educational representative” and “educational surrogate” are distinct terms, having very different meanings and requirements under state and federal law. This proposed definition, in which these substantively different terms are interchangeable and merged into one definition, takes precise terms and renders them more vague and confusing. (This comment applies to this same proposed amendment as it appears in the other rules in this series, such as rule 5.650(b)(3)(A).)</p> <p>Making reference to federal codes (which lead to more statutory references) in lieu of providing the intended definitions of the terms “spokesperson, educational decision maker, and parent” is exceedingly unhelpful. It seems that if the committee wishes to define the rights and role of the educational representative, appointed under state law, and the educational surrogate for students with disabilities, appointed in accordance with federal law, it would be preferable to provide working definitions rather than citing to statutes.</p> <p>“Educational representatives” should be defined by using the provisions of state law and should not conflict with or exceed statutory law.</p> <p>b. 20 USCA § 1232g(b) contains no such definitions other than limiting “parent,” for purposes of educational records disclosure, to parents of a child qualifying as a dependent for federal tax purposes. (§ 1232g(b)(1)(H).)</p>	<p>a. Please see response to comment from Jennifer Kelleher above.</p> <p>b. Agree to modify.</p>
<p>Randi Barrat Assistant Public Defender</p>	<p>34 C.F.R. § 300.30 includes a more complete list of those defined as “parent” and should be referenced along with IDEA citation.</p>	<p>Agree to modify.</p>

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<p>Arthur Bowie Supervising Assistant Public Defender Sacramento County Office of the Public Defender</p>		
<p>Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center</p>	<p>This proposed text cites 20 U.S.C. § 1232g. This citation appears erroneous because it is unclear what the connection is between the statute and the amendment.</p>	<p>Agree to modify.</p>
<p>Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel</p>	<p>Typographical error, last sentence replace “commending” with “commencing.”</p>	<p>Due to the modifications made to rule 5.502(13), this sentence no longer appears in the rule.</p>
<p>Deborah Escobedo Staff Attorney</p> <p>Maria Ramiu Attorney Youth Law Center</p>	<p>The proposed rule merges the concept of “responsible adult” appointed by the court to make educational decisions for a child under the Welfare and Institutions Code with that of “surrogate parent” as defined under the Individuals With Disabilities Education Improvement Act of 2004 and California Education and Government Code provisions. Under the proposed rule these individuals would be referred to as “educational representatives” and would have the same authority to make all education-related decisions, not just those related to special education and related services.</p> <p>It is important to maintain the distinction between the two individuals because of the process by which they are selected and appointed. When a court identifies and appoints a responsible adult to make educational decisions for a child, it has the benefit of hearing from all interested persons, such as social workers and probation officers, a youth, a child’s parent or parents, interested relatives, foster care parents, and lawyers for all parties. The process for selecting a “surrogate parent” has none of the procedural safeguards. Instead, the selection is left to the sole discretion of the school district, without any court oversight.</p> <p>The term “surrogate parent” must be preserved, and the rules should clarify that a surrogate parent’s authority is limited to making special education decisions and that the appointment is one of last resort when the child has no one acting as “parent” for education decisions.</p>	<p>The committee agrees to restore the references to surrogate parent where appropriate. Please see changes to rule 5.502(13) and the advisory committee comment to rule 5.650.</p>

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	<p>Suggested amendment: “Educational representative” means the responsible adult who holds the educational rights for a child when the parent’s or guardian’s educational rights have been limited. The educational representative acts as the child’s spokesperson, educational decision maker, and parent as defined in title 20 United States Code §§ 1232g(b) and 1401(23). For purposes of this chapter, the term “educational representative” refers to both the <u>the</u> educational representatives appointed by the juvenile court and to educational surrogates as defined under title 20 (commencing with section 1400) of the United States Code.</p>	
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Rule 5.516—Factors to Consider

Commentator	Comment Excerpt or Summary	Committee Response
<p>Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center</p>	<p>a. 5.516(a)(6)(A) (now deleted)—Children may have other disabilities that require special services that are not included in the proposed list. We propose the following text instead: “any physical disabilities, mental disabilities, learning disabilities, or other special education needs of the child.”</p> <p>b. 5.516(a)(6)(B) (now deleted)—Request clarification of the meaning of “placing agency other than the county welfare department or probation department.” The phrase “placing agency” is vague and could lead to confusion.</p>	<p>a. Amendments to rule 5.516 have been deleted.</p> <p>b. Amendments to rule 5.516 have been deleted.</p>

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Rule 5.518—Court-connected child protection/dependency mediation**

Commentator	Comment Excerpt or Summary	Committee Response
L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division	Clarify what “dependency mediators” means.	Rule 5.518 provides the requirements for dependency mediation and the qualifications of a dependency mediator.
Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center	<p>a. 5.518(b)(2)(F)—Amend to read: “The child’s education, which includes the child’s participation, progress, need for assistance, cognitive development, and, if applicable, early childhood education and care, and need for special education and related services.”</p> <p>b. 5.518(e)(3)(A)(vi)—We are concerned that the phrase “special needs” is vague and will lead to confusion or inaction. Amend to read: “The requirements of the laws incorporated in rule 5.651(a) and strategies for appropriately addressing the individual needs of children with disabilities.”</p>	<p>a. Agree to modify as suggested.</p> <p>b. Agree to modify as suggested.</p>
Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services	5.518(e)—What is a dependency mediator?	See committee response to L. David Casey above addressing dependency mediators.
Deborah Escobedo Staff Attorney Maria Ramiu Attorney Youth Law Center	5.518(b)(2)(F)—Forty-seven percent of all prekindergarten–5th grade students enrolled in California schools are children of immigrants and 43 percent of all students enrolled in California schools are classified as limited English proficient (LEP) or were formerly LEP. We also know that 48 percent of all students are Latino and that 85 percent of all LEP students in California are Spanish-speaking. Given these numbers and the fact that approximately 41 percent of all foster youth in California are Latino, it would not be unreasonable to assume that a significant number of foster youth are also LEP or formerly LEP. Under both state and federal law, they are entitled to appropriate educational programs to address their language needs. 20 U.S.C. § 1703(f); Ed. Code, § 300 et. seq.	Agree to modify as suggested..

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	<p>For dependents identified as LEP, it is extremely important to consider their language needs when determining what educational placement is in the best interest of the child under AB 490.</p> <p>Suggested amendments: The child’s education, which includes the child’s participation, progress, need for assistance, cognitive development, and, if applicable, early childhood education and care, and special education needs <u>and the extent to which the child is limited English proficient (LEP) or formerly LEP.</u>”</p>	
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Rule 5.534—General provisions—all proceedings

Commentator	Comment Excerpt or Summary	Committee Response
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>Add “simultaneously” to 5.534(j); “...the court must proceed under rule 5.560(g) to simultaneously appoint a responsible adult...” Welf. & Inst. Code, § 361(a) provides that “the court shall at the same time appoint a responsible adult to make educational decisions.” This language is necessary to ensure that every child has a responsible, identifiable, educational representative at all times.</p>	<p>Agree to modify to say the court must immediately appoint an educational representative.</p>
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>5.534 (j)—The phrase “as an educational representative for the child” should be deleted and replaced with “to make educational decisions for the child.” The latter phrase tracks the language of section 361(a) and removes the implication that there can be multiple “educational representatives” for the same child.</p>	<p>Agree to modify as suggested.</p>

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Rule 5.650—Appointment of responsible adult as educational representative**

Commentator	Comment Excerpt or Summary	Committee Response
<p>L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division</p>	<p>a. 5.650 (a)(3) (now deleted)—This paragraph states “The court, social worker, probation officer, and local education agency must communicate about the child’s educational needs.” Should the educational representative participate in this communication?</p> <p>b. 5.650 (d)(3)(B)—Clarify the timeline expectations. This subparagraph is confusing. It sounds like the intent is to let the court know at day 2 (while the 30 days are still pending) that you won’t be able to make the appointment within 30 days. Could be construed as report to the court on day 32.</p> <p>c. 5.650 (f)(2)(A)—This needs clarification. Meeting with the child at least once in what period of time?</p> <p>d. 5.650 (f)(3)(A)—It is a bit concerning that the educational rights holder is given the right to release records. We need guidelines as to what is appropriate for disclosure and only as related to educational purpose/necessity. There may be sensitive information in a school file, but we need to be careful with the Health Insurance Portability and Accountability Act and the possible listing of mental health issues that affect education or possible psychotropic medication that could be in the education file. Correct “HIPPA” to “HIPAA.”</p> <p>e. 5.650 (g)(1)(A)—This subparagraph states “The educational representative must make education decisions for the child until the court restores the right of the parent or guardian to make educational decisions for the child.” A suggestion would be to add “which is automatic when the child is returned home to the parent” (per pg. 17, (e)(1))</p>	<p>a. This provision was deleted.</p> <p>b. Agree to modify.</p> <p>c. Agree to modify to “Meeting with the child at least once and as often as necessary to make educational decisions that are in the best interest of the child.”</p> <p>d. Agree to modify to specify that the educational representative has the same rights as afforded parents and guardians under federal law. Educational representatives would also be subject to the same limits on disclosure.</p> <p>e. Rule 5.560(e)(1) was revised to provide that the parent’s or guardian’s rights are reinstated unless the court finds that he or she is not able to act in the child’s best interest regarding education. Rule 5.560(g)(1)(A) is</p>

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	<p>f. 5.650 (g)(1)(B)—This subparagraph states “The educational representative must make educational decisions for the child until the child reaches 18 years of age, unless the child then chooses not to make his or her own educational decisions or is deemed incompetent by the court.” Is the intent to be open-ended? A suggestion would be to add “until further order of the court”?</p> <p>g. 5.650 (i)—This paragraph states “If the educational representative asks for assistance with obtaining such education or training, the court, social worker, and probation officer must direct the educational representative to all available resources of such education and training.” What resources? The provision of this type of skill set building is vague and often difficult to find. Could there be a standard state-issued pamphlet on basic educational laws?</p>	<p>consistent.</p> <p>f. This language tracks the statutory language in Welf. & Inst. Code, §§ 361 and 726.</p> <p>g. Counties have different training resources available. To the extent these are available, they should be provided to the educational representative if requested. A state-issued pamphlet on basic education laws will be considered for a future rule cycle.</p>
<p>Jenny Cheung Writ Supervisor Children’s Law Center of Los Angeles</p>	<p>a. 5.650 (a)—Amend title to read “parent’s or ‘guardian’s” educational right.</p> <p>b. 5.650 (a)(2) (now(a)(3))—Change “initiation” to “initiate.”</p> <p>c. 5.650 (f)(2)(A)—Change to read: “meeting with the child at least once and more as needed to ascertain the child’s educational needs.”</p>	<p>a. Agree to modify.</p> <p>b. Rule revised to read: “...the court must direct an appropriate person to take the necessary steps to request those assessments, evaluations, or services.”</p> <p>c. Agree to modify as suggested.</p>
<p>Hon. Tari L. Cody Juvenile Dependency Judge Superior Court of Ventura County</p>	<p>5.650 (h)—The clerk of the court should not be required to mail this order to various parties. The social worker should be responsible.</p>	<p>The committee is sensitive to the workload issue for the clerks. These rules will create additional work for both the social workers and the court clerks. The committee has tried to minimize the additional workload for the clerks by revising the rule to limit the number of people to whom the clerk must provide the order to the child if 10 years or older,</p>

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		<p>the child’s attorney, the social worker or probation officer, the foster youth liaison, and the educational representative. The court may give it to these designated people in court or mail it within seven days of the hearing. In addition, the court may designate the child’s attorney, the social worker, or the probation officer instead of the clerk to serve the local education agency.</p>
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>a. 5.650 (g)—The rules of court should define terms of appointment for an educational surrogate who is the child’s caretaker and who has been given the right to represent the child’s special educational issues because the parent’s educational rights have been limited and the child has been placed in a planned permanent living arrangement. Section 361(a)(5) states the appointed responsible adult will make educational decisions for the child until the child is placed into a planned permanent living arrangement at which time the caretaker “has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.” Section 56055(a) of the Education Code states “a foster parent may exercise, to the extent permitted by federal law, including, but not limited to, Section 300.20 of Title 34 of the Code of Federal Regulations, the rights related to his or her foster child’s education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 (commencing with Section 300. 1) of Title 34 of the Code of Federal Regulations.”</p> <p>b. As a dependency law firm that represents youth, we often specifically identify and appoint an adult, such as a CASA, relative, or former caregiver, to hold educational rights because that person knows the child and will provide consistent advocacy regardless of the child’s home or school placement changes. However, for children whose parent’s educational rights have been limited and who have been placed in a planned permanent living arrangement, section 361(a)(5)’s default provision, which replaces the previously appointed educational representative with the caretaker, interferes with the stability of the representation of the child’s educational rights.</p>	<p>a. Rule 5.650(b) defines the terms of appointment of the child’s caretaker.</p> <p>b. Rule 5.650(g) was revised to provide that the court must find that the caretaker may make educational decisions for the child in order to determine that the caretaker is aware of the rights and agrees to assume the responsibilities.</p>

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	<p>Section 361(a)(5) allows the foster parent, under these circumstances and when not excluded due to a conflict of interest, to represent the child in matters related to the special education. This default provision raises concerns because new caretakers do not usually have the critical background information necessary to address special education and school discipline issues. It further complicates the origin school decision because the educational representative changes at a critical time—how would the new foster parent not have a conflict of interest regarding whether or not the child should remain in the school of origin if remaining in the school of origin may mean the foster parent will need to transport the child to a school that is not local to the new foster parent’s home. Also, Ed. Code, § 56055(a) and § 361(a)(5) has permissive language, stating the caregiver may exercise these rights and has a right to represent the child. However, it is not clear who represents the child’s other educational interest or who represents any of the child’s educational interests if the caretaker does not want to act as the educational representative.</p>	
<p>Dennis B. Jones Court Executive Officer Sacramento Superior Court</p>	<p>a. 5.650(d)(3)(A)—Add probation and social services to the persons who should be sent a copy of the completed form JV-536.</p> <p>b. 5.650(f)—Can be construed to not include special education.</p>	<p>a. Agree to modify.</p> <p>b. Agree to modify.</p>
<p>Robert E. Kalunian Chief Deputy Public Defender Los Angeles County Public Defender’s Office</p>	<p>5.650 (f)—The scope of “representation” needs to be further explored. This section states the educational representative “is entitled to participate in all juvenile court hearings regarding or affecting the child’s education.” It is unclear what the scope of the representative’s participation may entail. In Los Angeles County, we have specially trained resource attorneys who represent children in all types of educational proceedings. Presumably, an educational representative would not be appointed if the child's delinquency counsel objected.</p>	<p>Pursuant to sections 361 and 726, if the court limits the rights of the parents, the court must appoint someone to represent the child on educational issues. Once the court appoints an educational representative or refers the matter to the LEA for appointment of a surrogate parent, the person appointed has the authority and responsibilities outlined in this rule.</p>
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>a. 5.650 (a)(3)(A) (now (a)(2)(a))—The proposed rules attempt to authorize the juvenile court to issue orders to initiate special education (and possibly other) assessments, evaluations, or services. However, special education law is clear that parental consent must be obtained in order for an LEA to conduct a special education assessment, with certain exceptions, or to</p>	<p>a. Rule 5.650(a)(2)(a) addresses the appointment of someone to consent to an initial assessment. The language tracks 34 C.F.R. § 300.300. If the court attempts to appoint the child’s attorney</p>

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	<p>provide special education services. <i>See, e.g.,</i> 20 U.S.C. §§ 1414(a)(1)(D), (c)(3); 34 C.F.R. § 300.300(a)–(c); Ed. Code §§ 56321(c)–(d), 56321.1, 56346, 56381(f). Although California law allows the court itself to make education decisions for a foster child if no responsible adult or surrogate parent can be appointed, Welf. & Inst. Code, § 361(a), the court does not appear in the definition of “parent” under special education law, <i>see</i> 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30; Ed. Code, § 56028; <i>see also</i> 20 U.S.C. § 1415(b)(2)(A) (governing surrogate parents); Gov. Code, § 7579.5 (same); Ed. Code, § 56055 (governing foster parents), nor do the special education provisions cited above allowing consent from someone other than the parent or guardian extend that authorization to the court itself.</p> <p>Moreover, the California Education Code explicitly excludes “the state or any political subdivision of government” from meeting the definition of “parent.” Ed. Code, § 56028(b.) Therefore, it would be contrary to law for the court to make decisions about a child’s special education assessments or services. The court lacks authority to order actions by non-parties, so it would have no jurisdiction over an LEA—or, for that matter, any appointed educational decisionmaker—unless the LEA or educational decisionmaker had been joined to the juvenile court case.</p> <p>This proposed rule appears to contemplate consent to an initial special education assessment by the attorney appointed by the court to represent the child in the dependency or delinquency action. Although there is federal and state law that allows an individual appointed to represent the child to consent to special education, it is unclear that these laws refer to attorneys appointed by the juvenile court under section 317. Moreover, requiring a court-appointed attorney to consent to special education assessment seems to require the attorney to exceed the scope of his or her representation contemplated by section 317.</p> <p>b. 5.650 (c)(2)—A citation to 20 U.S.C. § 1415(b)(2) should be added because it also defines which individuals may not be appointed to serve as a surrogate parent.</p> <p>c. 5.650 (d)—Any reference to a local education agency’s authority to</p>	<p>under this subdivision and the attorney believes that the appointment would be outside the scope of his or her representation, the attorney should raise that issue with the court at the time of appointment.</p> <p>b. Agree to modify.</p> <p>c. The rules of court may not be</p>
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	<p>appoint a surrogate parent pursuant to Gov. Code § 7579.5 should note the invalidity of section 7579.5(j)(1) due to its inconsistency with federal law. Gov. Code section 7579.5(j)(1) allows the appointment of “an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.” However, federal special education law prohibits a surrogate from being an employee of the state educational agency, a local education agency, or “any other agency that is involved in the education or care of the child.” 20 U.S.C. 1415(b)(2)(A) (emphasis added); see also 34 C.F.R. § 300.519(d)(2)(i).</p> <p>d. 5.650 (d)(3)—The proposed rule should specify if the days are calendar or court days.</p> <p>e. 5.650(d)(3)(B)—Clarify when the 2 calendar days begin running. In addition, the rule should require use of form JV-536 for purposes of the prescribed communication between the LEA and the court; form JV-536 would have to be modified to include an item for the LEA to complete, explaining its delay in appointing a surrogate.</p> <p>f. 5.650(d)(3)(B)(ii)—This proposed rule does not make sense. If the LEA does not provide notice that it failed to appoint a surrogate parent within 30 days until after the 30-day period has expired, it cannot possibly assure the court it is continuing to make efforts to appoint a surrogate parent within the time period that already has passed.</p> <p>g. 5.650(f)—This proposed rule conflates the rights and responsibilities of a responsible adult and a surrogate parent. It is very problematic for the reasons discussed above under the heading “Educational Representative.”</p> <p>h. 5.650(f)(1)—The term “general” should be deleted. It suggests the proposed rule applies only to general education students and not to special education students.</p> <p>i. 5.650(f)(1)(B)—Any reference to a requirement that a child be educated in the “least restrictive” program should be clear that the level of restriction must be appropriate to the child's individual needs.</p>	<p>inconsistent with the state statute. Only a court can declare a state statute invalid because it is inconsistent with federal law. The committee is not aware that a court has done so.</p> <p>d. The rule specifies calendar days.</p> <p>e. Agree to modify to within seven calendar days after the 30 days has run and the LEA can’t appoint the surrogate and to require use of JV-536.</p> <p>f. Agree to modify.</p> <p>g. Please see the committee’s response to rule 5.502(13).</p> <p>h. Agree to modify.</p> <p>i. Agree to modify as suggested.</p>
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	<p>j. 5.650(f)(3)—The lettering is incorrect. The letters “B” and “C” repeat.</p> <p>k. 5.650(g)(1)(A)—The proposed rule should include the automatic reinstatement of educational rights described in proposed rule 5.650(e)(1) when a parent or guardian regains custody of a child.</p> <p>l. 5.650(g)(2)—This proposed rule should require that the notice of resignation from making educational decisions in writing.</p> <p>m. 5.650(j)—Allowing a court or LEA- appointed educational representative to participate in juvenile court hearings and mediations affecting the child’s education raise serious confidentiality concerns. The rule should not create a right for the representative to be present and participate in all of the court hearings and mediations it currently contemplates. No objection to the educational representative submitting written information or participating when the right flows from other appointment responsibilities.</p>	<p>j. Agree to modify.</p> <p>k. Rule 5.560(e)(1) was revised to provide that the parent’s or guardian’s rights are reinstated unless the court finds that he or she is not able to act in the child’s best interest regarding education.</p> <p>l. Agree to modify.</p> <p>m. Modified to make the educational representative’s presence at a hearing discretionary with the court.</p>
<p>Frank Mecca Executive Director County Child Welfare Directors Association</p>	<p>a. 5.650(a)(2) (now (a)(3))—Change to: If the court determines that the child is in need of any assessments, evaluations, or services, the court may make the necessary orders to initiate those assessments, evaluations, or services.</p> <p>The court currently has permissive authority to order assessments, evaluations, and services, and we believe this is unnecessary to compel the courts to do so for every child. This change would prevent the court from taking into account whether the services are legally available from the educational system or other funded sources. This would also constitute an unfunded county mandate. Currently, the Court may order the Child Welfare Agency to initiate or request services for which the child may be eligible and the child welfare social worker in turn makes the referral and reports back to the court.</p>	<p>a. Agree to modify. We have revised rules 5.650(a)(3) and 5.651(b)(2)(C) to clarify that the court must direct the appropriate person to take the necessary steps to request, or for the child to begin receiving, those assessments, evaluations, or services. The court is not requesting the assessment.</p>

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	<p>b. We agree in concept of the importance to communicate the child’s educational needs. The current method for this communication is from the child welfare worker to the court utilizing the court report, the case plan and the Transitional Independent Living Plan. The proposed language lacks a standard to define “communication.” Additionally, the LEA is not a party to the juvenile court matters. However, the proposed language is silent on the case plan, which is the central means by which the court and Child Welfare ensure appropriate services. The case plan includes assessing: the most family-like placement, proximity to school and parents, and the most appropriate home to meet the child's needs and educational stability.</p> <p>c. 5.650(b)(3)(B)—Amend as follows: The court will make educational decisions for the child with input from any <u>interested person deemed to have a direct and legitimate interest in the particular case</u>. This amendment makes this provision consistent with section 346.</p> <p>d. 5.650(j)—The educational representative, unless the care giver, is not a required party to receive notice and this also imposes additional unfunded workload issues. This also raises the question of whether it is legal to send a non-party notice of hearing. Additionally, how will this affect appeals? Would this confer appellate/due process rights to educational representatives? Would precedent be set to afford similar rights to all service providers and advocates?</p>	<p>b. Agree to modify to delete the provision concerning communication. Additional reporting requirements are included in rule 5.651. The substance and child-specific information in case plans currently varies throughout the state. This rule and rule 5.651 clarify the information necessary for the court to make an informed decision about the child’s education. The information can be provided through the case plan to the extent that it is available to the social worker.</p> <p>c. The language in the rule tracks the language in sections 361 and 726.</p> <p>d. Although educational representatives are not parties, the educational representative must be provided notice and an opportunity to provide information to the court regarding the child’s education to ensure the court is able to make an informed decision about a child’s education. The committee does not intend for the rule to make the educational representative a party or to give any rights to the educational representative not specified in the rule.</p>
<p>Randi Barrat Assistant Public Defender</p> <p>Arthur Bowie Supervising Assistant Public Defender</p>	<p>a. 5.650 (a)(2) (now (a)(3))—Education Code Section 56029 limits referral for special education assessment to a parent/guardian, teacher or service provider or foster parent. While it makes sense that facts may be presented to the Court that indicate assessment is necessary, current California Standards of Judicial Administration R. 5.40(h) states: A child who comes before the</p>	<p>a. Agree to modify. We have revised rules 5.650(a)(3) and 5.651(b)(2)(C) to clarify that the court must direct the appropriate person to take the necessary steps to request, or for the child to begin</p>

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<p>Sacramento County Office of the Public Defender</p>	<p>court and is suspected of having exceptional needs or other educational disabilities should be referred in writing for an assessment to the child’s school principal or to the school district’s special education office. (See Ed. Code, §§ 56320-56329.) The child's parent, teacher, or other service provider may make the required written referral for assessment. (See Ed. Code, § 56029.)</p> <p>There is no statutory authority for the Court on its own, to make the required written request for assessment. However, it seems appropriate for the Court to order a Parent or Educational Representative, service provider or foster parent to make the necessary written request for assessment. In doing so, the Court must necessarily ensure that a Parent or an Educational Representative has been appointed to provide informed consent for assessment in order for the assessment process to commence. For this reason, Proposed section (a)(3)(A) conflicts with state and federal law. The circumstances of proposed sections (a)(3)(B)-(C) would necessitate appointment of a surrogate under federal and state law and thus conflict with proposed section (a)(3) all together.</p> <p>Additionally, once parent consent for assessment is received, the 60 day timeline for conducting the assessments and convening a meeting to discuss the results must occur in which the parent must be present in order to contribute and provide consent for offered services or assert disagreement with the results. Ed. Code, §§ 56329, 56343, 56343.5; 20 U.S.C. § 1414. If a Judge were to provide the initial consent for assessment it follows that the Judge would either need to be the participating Parent, or appoint an Educational Representative for this purpose</p> <p>b. 5.650(c)—Proposed section (c): This provision should specifically reference Gov. Code, §§ 7579.5(i)–(j) excluding specific personnel as who would have per se conflict unless they are retired from those offices.</p> <p>c. 5.650(e)—The role of a surrogate parent under IDEA is an exhaustive list of rights and responsibilities in which the surrogate stands in the shoes of the natural parent for purposes of educational assessment, placement, Individual Education Program development and pursuit of administrative remedy, civil</p>	<p>receiving, those assessments, evaluations, or services. The court is not requesting the assessment.</p> <p>b. Agree to modify.</p> <p>c. Agree to modify as suggested.</p>
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	<p>action and attorneys fees. Because this comprehensive role is not reflected in the general scope expressed in this proposed section, this provision should expressly state that the role of the educational representative for an individual with exceptional needs shall be considered under the definition of “parent” pursuant to 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30; Ed. Code, § 56028. It is important that this be addressed consistent throughout the Rules to allay confusion that might ensue over the terminology and its scope.</p> <p>d. 5.650(f) and (i)—These sections exclude a federal mandate for surrogates appointed for an individual with exceptional needs stating that a surrogate “...has knowledge and skills that ensure adequate representation of the child.” 34 C.F.R. § 300.519 (d)(2)(iii). As a result, where an education representative is appointed to represent an individual with exceptional needs, that person must have knowledge of special education rights and responsibilities. The failure to include this in section (f) and the permissive language regarding training in section (i) is inconsistent with state and federal special education law and confuses the important distinctions between representing an individual with exceptional needs.</p>	<p>d. Agree to modify to add a subparagraph (E) to 5.650(f)(2) that reads “Having knowledge and skills that ensure adequate representation of the child.” With regard to 5.650(i), direction to resources is only required if resources are available for such training and education.</p>
<p>Kathleen O’Connor Assistant County Counsel Sacramento County Department of Health and Human Services— Children’s Services</p>	<p>5.650(b)(3)—See comment regarding rule 5.502(13).</p>	<p>See response to 5.502(13).</p>
<p>Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County</p>	<p>a. Rule 5.650(a)(2) (now (a)(3) refers to a person appointed by “the judge” to represent the child. Many of such orders are issued by “referees.” The word “court” or “judicial officer” should be substituted for “judge” in that sentence.</p> <p>b. 5.650(d)(3)(A)—Requires the educational agency to notify the “court” within 5 days of an appointment of an educational representative. We have two suggestions in this regard:</p> <p>If the notice is sent to the juvenile court, generally, that will require extra steps for the clerks of the court to locate the proper department. We suggest that you modify that to require the school to “notify the <u>department of the</u></p>	<p>a. Agree to modify.</p> <p>b. Not all courts would want to have the notice sent to a particular department. Courts may wish to notify the education agencies in their jurisdiction if they want the notice directed to a particular department.</p>

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	<p>court <u>that issued the JV-535 order</u> within 5 calendar days....”</p> <p>We also urge that you add a requirement that a copy of the notice must be sent by the educational agency directly to the child welfare agency or probation department. Those agencies have a greater need for the information than does the court.</p> <p>c. 5.650(f)(1)—Refers to the educational representative’s responsibilities relating to the child’s “general” education. To make it clear and consistent with initial definition in Rule 5.502(13), it should refer to both general “and special” education.</p> <p>d. 5.650(f)—A subsection (E) needs to be added to Rule 5.650(f)(3) to require the appointed educational representative to file the JV-537 Educational Representative Information form with the court, when appropriate.</p> <p>e. 5.650(f)—The purpose of Rule 5.560(f) (i.e. outlining the duties of the court appointed educational representative) would be better served by also preparing a handout/brochure so that the person appointed is aware of the duties. Laypersons certainly won’t know to look in the Rules of Court.</p> <p>f. 5.650(g)(2)—Prohibiting the volunteer educational representative from resigning unless certain steps are taken is rather outrageous and completely ineffective. You can’t and shouldn’t stop someone from quitting. The court’s only remedy would be to hold the miscreant in contempt; not something we want to do to volunteers and not something that will encourage others to volunteer.</p> <p>g. 5.560(h)—Contains vague, overbroad and, at the same time, incomplete list of persons who need to be noticed of the completed JV-535 form.</p> <p>The reference to Welfare and Institutions Code section 293 should be limited to subsections (a)(1)-(4) and (f). The “current caretaker” should be added to the list.</p>	<p>Agree to modify regarding notice to the social worker and probation officer.</p> <p>c. Agree to modify.</p> <p>d. Subdivision (j) explains that the educational representative may file this form.</p> <p>e. The committee will consider the suggested handout/brochure for future rule cycles.</p> <p>f. Rule modified to require that the educational representative notify the court and child’s attorney about resignation.</p> <p>g. Agree to modify. The rule was revised to clarify that provide is meant to give the clerk the option of providing the form to those present in court in lieu of mailing if the court has the capability of producing the orders at the hearing. The time to mail was revised to seven</p>
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	<p>Requiring the clerk to “provide” a copy is vague. Does that mean it must be mailed within the “two business days,” or does it mean that it must be in the hands of the person to be noticed?</p> <p>The time limit to “provide” a copy of the order should be “seven” business days, rather than the impractical “two” now contained in the proposed rule. Getting the signed document to clerical staff and into the mail that quickly is not necessary or practical, even if “provide a copy” doesn’t mean “in the hands of” the person.</p>	<p>calendar days.</p>
<p>Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center</p>	<p>a. 5.650(a)(2) (now (a)(3))—In our experience, it is more likely that assessments will be ordered when the court’s attention is focused on specific needs such as special education or mental health. Amend to read: if the court determines that the child is in need of any assessments, evaluations, or services including but not limited to those for special education, mental health, and other related services, the court must make the necessary orders to initiate those assessments, evaluations, or services.</p> <p>b. 5.650(a)(3) (now (a)(2))—We suggest that this subsection be clarified to define the required communication. Amend to read: The court, social worker, probation officer, and local education agency must communicate, in writing and initialed to comply with federal and state confidentiality laws, before each scheduled court hearing, about the child’s educational needs and the information required, including the whereabouts of the parents or guardian, to initiation assessments, evaluations, or services. The child’s initial evaluation for special education and related services does not need to be postponed to await parental or guardian consent or appointment of an educational representative if one or more of the following circumstances are met.</p> <p>We request clarification regarding what happens when the conditions listed in 5.650(a)(3)(A)–(C) occur. The section should indicate whether the court then makes an order for assessments, evaluations, or services, including but not limited to assessments, evaluations, or services for special education, mental health or other related services.</p>	<p>a. Agree to modify.</p> <p>b. The provision regarding communication was deleted.</p> <p>Agree to clarify what happens if the items in 5.650(a)(2)(A)–(C) occur. Subdivisions 5.650(a)(2) and 5.650(a)(3)(A)–(C) were switched. This is intended to clarify that if the conditions listed in the new 5.650(a)(2)(A)–(C), occur, the court may</p>

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	<p>c. 5.650(a)(3)(A) (now (a)(2)(A))—We are concerned with the phrase “individual appointed by the judge to represent the child.” Taken together, the proposed amendments limit the appointment of individuals to represent education needs of the child solely to “educational representatives,” not to some other representative appointed by the judge. Only the parent, legal guardian, or educational representative has the authority to consent to an initial assessment for special education, mental health, or other related services. Additional, clarification is required for what type of assessment is contemplated by this rule.</p> <p>d. 5.650(a)(3)(B) (now (a)(2)(B))—We are concerned that the phrase “reasonable efforts” to discover the whereabouts of the parent or guardian is vague and ineffective. In our experience, the local education agency either makes no attempt to locate the parent, or continues trying to reach them for too long, thereby failing to take action on the child’s education needs. The local education agency should be required to demonstrate, in writing, the efforts it has made to the court which will determine whether the efforts were indeed reasonable.</p> <p>e. 5.650(b)(1)—We strongly agree with the proposed language that the court must at the same time it limits the right of a parent or guardian, order appointment of a responsible adult.</p> <p>f. 5.650(d)(2)—It would be helpful to insert a timeframe for this section as to when the local education agency must be served after the court’s order referring a child to the local education agency for appointment of an educational representative. We suggest: If the court refers a child to the local educational agency for appointment of an educational representative, the court must order that <i>Local Educational Agency Response to JV-535—Appointment of Educational Representative</i> (form JV-536) be served, within two court days of the date the order was made, by first-class mail on the local educational agency along with form JV-535.</p>	<p>then direct an appropriate person to take the necessary steps to request the initial assessment.</p> <p>c. This subdivision applies to initial evaluations.</p> <p>See response to Jennifer Kelleher above concerning consent provisions for an initial evaluation.</p> <p>d. Agree to modify. Please also see changes to rule 5.650 (d)(3)(B)(ii).</p> <p>e. No response is required.</p> <p>f. Agree to modify by requiring that notice be given of the court’s order no later than seven days after the court’s order.</p>
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	<p>g. 5.650(d)(3)—In our experience, allowing the LEA 30 days to assign an educational representative is too long, as the task is not complicated and any increased delays in the special education evaluation process have a detrimental effect on the child. We suggest a limit of ten days. The LEA should have a list of potential educational representatives. The task involves merely calling the people on the list.</p> <p>h. 5.650(d)(3)(B)—Because the appointment of an educational representative is essential in order to take action to address the needs of children with suspected disabilities who do not have a parent or legal guardian we believe that a specific person at the local educational agency should be identified to take responsibility for the task of appointing in educational representative and communicating with the court about the appointment. In our experience, individual schools and district officials are frequently unaware of their responsibility to appoint an educational representative and continually refer the issue to other officials. Instead we suggest that that 5.650(d)(3)(B) should state: If the director of Child Welfare or Pupil Services or a comparable office at the local educational agency does not make this appointments within 10 days, the director must notify the court in writing within two calendar days of the following.”</p> <p>i. 5.650(d)(3)(B)(ii)—As discussed regarding 5.650(a)(3)(B), we are highly concerned about the ambiguity of the phrase “reasonable efforts” because it appears to sanction widely varying degrees of effort. Subsection (B)(ii) should state, instead: Its continuing reasonable efforts, described in detail in a written statement, to assign an educational representative within 10 days of receipt of form JV-535.</p>	<p>g. 20 U.S.C. § 1415(b)(2)(B) and Gov. Code, § 7579.5 provide that the LEA “shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent.”</p> <p>h. Under these circumstances, the court does not have authority to order a specific employee to comply with the court order. Rule 5.650(d)(3)(B) requires the LEA to notify the court if it does not appoint a surrogate parent within 30 days. The LEA must notify the court within the next seven calendar days.</p> <p>i. The language “reasonable efforts” reflects the language in 20 U.S.C. § 1415(b)(2)(B) and Gov. Code, § 7579.5 provide that the LEA “shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent.”</p>
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	<p>j. 5.650(f)(1)—This section should include a provision stating that the educational representative’s responsibilities also include representation of the child in discipline proceedings at the school and district level.</p> <p>k. 5.650(f)(1)(E) (now (f)(1)(F))—Every student is entitled to a free appropriate public education. This provision should be amended as follows: Other aspects of the provision of a free and appropriate public education” in alignment with the IDEA and the California Education Code.</p> <p>l. 5.650(f)(2)(C)—Because the rules contemplate increased communication between the schools and the courts, it is imperative to ensure that federal and state confidentiality laws are followed. This provision is problematic because it allows the educational representative complete discretion to decide when and whether to share information. It is a very rare situation where disclosure of a dependency or delinquency records to a LEA will serve the child’s best interest. In our experience, these records are shared frequently with LEAs despite confidentiality laws. We have encountered many situations where the LEA receives information of charges pending against the child in delinquency court and immediately transfers the child to an alternative school program. The confidentiality laws should be explicitly stated in the subsection as follows: Complying with federal and state confidentiality laws when sharing information with appropriate persons for the purpose of furthering the interest of the child. Information about dependency or delinquency case shall not be shared except as provided in section 827.</p> <p>m. 5.650(f)(3)(B) (now (f)(3)(C))—This comment refers to the second (B) subdivision. Include “free and appropriate public education.”</p> <p>n. 5.650(g)(2)—We request clarification as to which attorneys and which parties should receive notice. Clarification is requested as to which type of notice is required and within what time frame. Amend as follows: The educational representative may resign from the appointment only after he or she gives verbal or written notice to the local educational agency, court, all parties, including minor and minor’s parent or legal guardian, social services agency, Department of Probation, and Department of Mental Health or other</p>	<p>j. Agree to modify.</p> <p>k. Agree to modify as suggested.</p> <p>l. Agree to modify to state: “Complying with federal and state confidentiality laws including section 827 and Gov. Code, § 7579.1(f).”</p> <p>m. Agree to modify as suggested.</p> <p>n. The committee recognizes that the educational representative is a volunteer and that the rules should not create obstacles to resigning if that is what the educational representative wishes. The committee revised rule 5.650(g)(2) to require that on resignation, the</p>
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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	<p>involved parties, and attorneys including the defense attorney, dependency attorney, and education attorney if applicable, within five days of resignation.</p>	<p>educational representative notify the court and the child’s attorney.</p>
<p>Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services</p>	<p>a. 5.650(a)(3)—Add to the communication list the educational representative.</p> <p>b. 5.650(d)(3)(B)—Timeline expectations need to be clearer. Sounds like the intent is to let the court know at day 2 (while the 30 days are still pending)</p> <p>c. 5.650(f)(2)(A)—Meet with the child at least once overall? Once per review period? Needs clarity.</p> <p>d. 5.650(f)(3)(A)—Concerning that the educational representative is given the right to release these records. Needs guidelines as to what is appropriate for disclosure and only as related to educational purpose/necessity. Not sure what sensitive information may be in school file but need to be careful with HIPAA and possible listing of mental health issues that effect education or possible psychotropic medication that could be in the education file.</p> <p>e. 5.650(g)(1)(A)—May want to add “which is automatic when the child is returned home to the parent.”</p> <p>f. 5.650(g)(1)(B)—Is the intent to be open-ended? May want to add “until further order of the court” or until 21 or 24 (current ILS cut off).</p> <p>g. 5.650(i)—With what resources? The provisions of these types of skill set building are vague and often difficult to find. Could there be a standard state issued pamphlet on basic educational laws?</p>	<p>a. The provision concerning communication was deleted.</p> <p>b. Time frame was extended to seven calendar days and that seven days starts to run after the 30 days are over.</p> <p>c. Agree to modify.</p> <p>d. Rule 5.650(f)(2)(C) was revised to require the educational representative to comply with all federal and state confidentiality laws as Gov. Code, § 7579.5(f) requires of surrogate parents.</p> <p>e. Rule 5.560(e)(1) was revised to provide that the parent’s or guardian’s rights are reinstated unless the court finds that he or she is not able to act in the child’s best interest regarding education. Rule 5.560(g)(1)(A) is consistent.</p> <p>f. This language tracks the statutory language in Welf. & Inst. Code, §§ 361 and 726.</p> <p>g. Direction to resources is only required if resources are available for such training and education. Agree to modify 5.650(i) to read “If the</p>

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		<p>educational representative 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 representative of all available resources, including resources available through the California Department of Education and the local education agency.”</p> <p>The committee will consider a pamphlet for a future rule cycle.</p>
<p>Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel</p>	<p>a. 5.650(a)(2) (now (a)(3))—Does this section pertain to education assessments, evaluations and or services? If this includes special education assessments, the court cannot order them under IDEA and federal regulations. The court may order an individual to initiate an assessment request but for the evaluation to occur an educational rights holder must consent pursuant to federal law.</p> <p>b. 5.650(a)(3) (now (a)(2))—The subsections (A)–(C) should instead be drafted to describe those who can consent to an initial evaluation: parent/guardian, educational representative appointed by the court; surrogate parent appointed by the LEA if the parent is not available and court cannot appoint an educational representative, or a foster parent pursuant to Education Code section 56055 if parent’s rights have been limited by the court.</p> <p>c. 5.650(a)(3) (now (a)(2))—The last sentence is incongruent with federal and state law pertaining to special education. The evaluation must have the consent of the educational decision maker before it goes forward.</p> <p>d. 5.650(b)(3)(B)—Typographical error, third line, “initiation” changed to “initiate.”</p>	<p>a. This section applies to all education assessments, evaluations and services. Subdivision (a)(3) was revised to state: “...the court must direct the appropriate person to take the necessary steps to request those assessment, evaluations, and services.”</p> <p>b. This section addresses how the court and social worker or probation officer may proceed on the child’s initial evaluation if the parent or guardian is unavailable.</p> <p>c. See response to Jennifer Kelleher above concerning consent provisions for an initial evaluation.</p> <p>d. Agree to modify.</p>

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	<p>e. 5.650(b)(3)(B)—This subsection should reflect the language of section 361(a)(5). Federal law does not allow the court to make decisions relating to special education.</p> <p>f. 5.650(d)—The distinction between a Surrogate Parent and an Educational Representative is an important one and should not be erased. The Court governs the selection, appointment and removal of the educational representative. The Surrogate Parent is the school district’s responsibility as clearly set forth in both California and Federal laws. Referring to Surrogate Parents as Educational Representatives will cause confusion surrounding training and implementation and blur lines of responsibility for the appointing entities.</p> <p>g. 5.650(d)(3)—References to “educational representative” should remain “surrogate parent.”</p> <p>h. 5.650(f)(3)—Lettering is off, second “(B)-(D)” should be “(D)-(F).”</p> <p>i. 5.650(g)(1)—If this is meant to cover Surrogate Parent duties, include it in the title and reference the code sections that govern them since section 361 and 726 do not. If just for educational representative appointed by court, ok.</p> <p>j. 5.650(g)(2)—Requiring the educational representative to notice the parties and attorneys in a juvenile court action prior to resignation may be too burdensome. Better to have the social worker or probation officer noticed along with the court. Then the court clerk or respective department can notice the parties and attorneys.</p> <p>k. 5.650(i)—Under existing law, school districts are responsible for training Surrogate Parents. That should be referenced here as well.</p> <p>l. 5.650(j)—LEA appointed “Surrogate Parents” should be included in this section as well.</p>	<p>e. Agree to modify.</p> <p>f. Agree to modify.</p> <p>g. See above.</p> <p>h. Agree to modify.</p> <p>i. The educational representative’s term of service includes the term of service provision for a surrogate parent. Agree to modify.</p> <p>j. Agree to modify.</p> <p>k. Agree to modify.</p> <p>l. Please see changes to rule 5.502(13) and the advisory comment to rule 5.650.</p>
<p>Jacqueline Wong Chair</p>	<p>a. 5.650(f)(2)(A)—Amend to read “prior to any meeting regarding educational matters for a student, the educational representative should</p>	<p>a. Agree to modify to read: “Meeting with the child at least once</p>

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<p>National Governor’s Association Policy Academy on Transition from Foster Care Education Workgroup</p>	<p>review educational records and maintain consistent contact with the student to meet and discuss the educational needs and desires of the youth at least once every three (3) months and provide information on the educational progress to the social worker for reviews every six (6) months”</p> <p>b. 5.650(i)—Amend to read: “The educational representative may obtain education and training” to “The educational representative must be provided education and training”</p>	<p>and as often as necessary to make educational decisions that are in the best interest of the child.” Also, the committee added a subparagraph (E) to 5.650(f)(2) that reads: “Having knowledge and skills that ensure adequate representation of the child.”</p> <p>b. Agree to modify to provide that the court must direct the clerk,, social worker, and probation officer to inform the educational representative of all available training resources if the educational representative asks.</p>
<p>Deborah Escobedo Staff Attorney</p> <p>Maria Ramiu Attorney Youth Law Center</p>	<p>5.650(f)(2)(A)—Although Education Code section 7595.5(d) requires that surrogate parents only have to meet with a child “at least one time,” we do not believe that this is an appropriate standard to apply to an educational representative appointed by the court. Suggested changes: Meeting with the child at least once <u>as often as necessary to make educational decisions that are in the best interest of the child, but not less frequently than once a month;</u></p>	<p>See response to Jacqueline Wong above.</p>

Rule 5.651—Educational rights of children before the juvenile court

Commentator	Comment Excerpt or Summary	Committee Response
<p>L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division</p>	<p>a. 5.651(b)—States that the court must “provide a clear, written statement specifying the person who holds the educational rights for the child” A suggestion might be to add “(i.e. the JV-535 form).”</p>	<p>a. Rule 5.651(b) was revised to say: to the extent the information is available, at the initial or detention hearing, the court must consider.” A new JV-535 form is not necessary at the end of each hearing. The court may state that the last JV-535 continues to be accurate.</p>

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	<p>b. 5.651(e) (now (e)(1)(A) and (B))—Needs clarification. What does “add notification, reporting, and monitoring procedures for proposed changes...” mean? Who is to be notified and by whom?</p> <p>c. 5.651(e)(2) (now (e)(1)(B))—States that the school must be notified 10 days in advance of a change of placement if that child has an IEP. It is possible that there might not be a 10-day notice. May want to add “except in situations of an emergency move in which case within 24 hours of move.” Would need to then define “emergency.”</p>	<p>b. Agree to modify to specify that the child’s attorney and the educational representative or the surrogate parent are to be notified.</p> <p>c. This timeline is required by Gov. Code, § 7579.1(a).</p>
<p>Jenny Cheung Writ Supervisor Children’s Law Center of Los Angeles</p>	<p>5.651(d)—Change title to read “Continuances or stay of jurisdiction.”</p>	<p>Agree to modify.</p>
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>a. 5.651(c)(12)—Change “Whether the child has an educational representative” to “Identify the child’s educational representative, if parents’ rights have been limited.”</p> <p>b. 5.651(f)(3)—Add (C): The child must be allowed to remain in their school of origin pending any disagreement between the child, their parent or educational representative, and the school district, regarding this right.</p>	<p>a. Agree to modify to state: “If the parent’s or guardian’s educational rights have been limited, who holds the child’s educational rights....”</p> <p>b. This language was added at rule 5.651(e)(4).</p>
<p>Robert E. Kalunian Chief Deputy Public Defender Los Angeles County Public Defender’s Office</p>	<p>5.651(c)(7) (now (c)(8))—The court would obtain access to the child’s individualized education plan. Guidelines should be developed which address the confidentiality concerns.</p>	<p>The requirement that the IEP be attached was deleted.</p>
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>a. 5.651(a)(1)—The phrase “and children subject to voluntary placement agreements” should be deleted. The juvenile court does not have jurisdiction to review a child’s placement or educational issues unless and until a juvenile dependency petition has been filed.</p> <p>b. 5.651(b)—The statement indicating who holds educational rights should include how the educational representative was appointed so the scope of the individual's authority can be ascertained readily.</p>	<p>a. Agree to modify.</p> <p>b. Please see changes to rule 5.502(13) and the advisory comment to rule 5.650.</p>

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	<p>c. 5.651(b)(1)—If the required information is not in the reports, the matter should be continued for completion of the reports. Moreover, any “information” solicited by the court should be sworn testimony.</p> <p>d. 5.651(b)(2)—While it is certainly a good idea to have the court consider these issues as early as the initial or detention hearing, it may not be realistic to expect the court to make all of these findings based on the information available at this stage. Full implementation of this rule may be difficult to achieve.</p> <p>e. 5.651(b)(3)(F)(i) (now 5.651(b)(2)(E)(i))—This rule should be deleted. Where the parent’s educational rights are not being limited, it does not make sense to refer the parent to the rights and responsibilities of a court- or LEA-appointed educational representative. (See also our comments on rule 5.650(e)-(f)).</p> <p>f. 5.651(c)(11)—The phrase “and the actions that the parent or guardian can take to restore those rights if they are limited” should be deleted. This phrase implies that the parent or guardian can undertake some efforts or complete some services to restore those rights. Any such requirements should be part of a case plan for reunification if the court determines that is the plan for the child. This phrase also implies that the parent or guardian has the ability or an entitlement to have those rights restored. However, in some cases, it may never be appropriate to restore the parent’s or guardian’s right to make educational decisions (e.g., in cases where the parents are not offered reunification services at disposition).</p>	<p>c. This rule does not preclude a contested hearing or sworn testimony. It does require that before completion of the hearing, contested or uncontested, the court obtain this information to the extent the information is available to the social worker or probation officer.</p> <p>d. The committee agrees that the court may not have all the information it needs. The court’s findings and orders will be limited to information available to the court.</p> <p>e. Referring the parent to his or her educational rights and responsibilities informs the parent of what is expected in regard to representing the child’s educational needs.</p> <p>f. The committee agrees that it may be appropriate to include such terms in the case plan. In addition, if the court has determined that the parents’ educational rights must be limited, it is appropriate to inform the parents what actions they may take for the court to consider reinstatement. While some children are placed in permanent adoptive, guardian, or relative homes, unfortunately many children languish in foster care. It will always benefit the child and the court if parents are informed and are playing an active and supportive role in the child’s life. Nothing in this provision allows the</p>
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	<p>g. 5.651(e)-(f)—Although the intention behind these proposed rules is to promote placement stability and limit a child’s need to change schools as a result of placement changes, the rules would be very difficult to implement and enforce due to tensions between the timelines mandated and the reality of how placement changes typically occur. In addition, we are very concerned that these proposed rules create extensive new requirements and procedures beyond those set forth in the applicable law, while simultaneously overshadowing—and perhaps even attempting to supersede—the rights and procedures set forth in section 48853.5 of the California Education Code. For these reasons, we recommend deleting these proposed rules and their accompanying Proposed Form JV-538.</p> <p>h. These proposed rules contemplate that the social worker or probation officer and court will have all of the information relevant to the child’s right to attend his or her school of origin, the child’s best interest, and the child’s educational and other services, including information from both the old and new LEAs, within the prescribed timelines. Again, until there is certainty about the new placement, this information may not be available.</p> <p>i. Basing the timelines in these proposed rules on segments of 24 hours and 2 business days will require some actions to be completed on weekends and holidays.</p> <p>j. 5.651(e)(1)(B) (now (e)(1)(A))—Most placement changes occur when a 7-day notice is given by the care provider. Upon receiving the 7-day notice, the social worker or probation officer begins seeking a new placement. At this stage, any change of placement “may” have an impact on the school the child will attend. Until there is certainty in where the child will be placed, the social worker or probation officer cannot be sure a change of school will</p>	<p>court to reinstate those rights if it would not be in the child’s best interest. However, if and until parental rights are terminated, the court cannot presume that the parent will not participate in the child’s life.</p> <p>g. This rule is proposed to provide the juvenile court and its participants a procedure that allows the court to ensure the AB 490 rights of children in foster care relating to their school of origin. Modifications have been made to address timeline and reporting concerns.</p> <p>h. Agree to modify by stating that the court must direct the social worker or probation officer to provide the information to the extent the information is available.</p> <p>i. Agree to modify timelines to specify court days or to exclude nonjudicial days.</p> <p>j. We have heard from commentators that because of the 7-day notice options for caretakers the requirements and rights included in AB 490 can be difficult to follow. However, if a 7-day notice is given, it does not have to result</p>
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	<p>not be in the child’s best interest. This certainty may not exist 24 hours after a 7-day notice has been given. Thus to avoid risking noncompliance, the social worker or probation officer will have to provide notice under this rule in virtually every case, even those in which the passage of a few more days would reveal the notice and resulting arrangements to have been unnecessary because a change of school will not be required.</p> <p>k. 5.651(e)(3) (now (e)(4))—Once 5 days have passed from the 7-day notice and the court’s findings are due, the placement change very well may have occurred. If the court finds the placement and/or school change is not—or was not—in the child best interest and decide to set a hearing the hearing would certainly occur after the child’s placement has changed and any orders resulting from that hearing may result in additional changes of placement or school.</p>	<p>in removal from the school of origin. As Ed. Code, § 48853.5(d)(6) suggests, “The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.”</p> <p>Agree to modify timeline and reporting requirements.</p> <p>k. While the law does not require a report or hearing, Ed. Code, § 48853.5(d)(5) states: “If any dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.” The court does have oversight over the placing agency’s change of placement decision.</p>
<p>Hon. Linda McFadden Presiding Judge of the Juvenile Court Superior Court of Stanislaus County</p>	<p>5.651(f)(1)—Change the time for the court to review from 2 calendar days to 2 court days. With the calendar day requirement, if the report were filed the Wednesday before the 4 day Thanksgiving holiday, the court will have to handle the matter during the holiday weekend.</p>	<p>Please see changes to rule 5.651(e). If the court, child’s attorney, or the person who hold’s educational rights requests a hearing, a hearing date must held no later than seven calendar days after the form was filed.</p>
<p>Frank Mecca</p>	<p>a. 5.651(a)(2)—While we agree in concept that the educational rights of</p>	<p>a. The committee agrees that court</p>

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<p>Executive Director County Child Welfare Directors Association</p>	<p>children before the juvenile court apply at every hearing, we are concerned this section implies that the child welfare agency will be required to report at every hearing relating to the child, including detention reports, which are prepared within a short time frame when information may not be available. Interim reports for specific purposes other than education also would be subject to this requirement.</p> <p>b. 5.651(e)—Recommend deleting. Requiring hearings when children are being considered for a change in placement that would change the school of origin is outside the scope of Education Code section 48853.5. Proper transfer of a pupil, per Education Code section 49069.5, is the joint responsibility of LEA and the County Placing Agency.</p>	<p>oversight of the educational rights of children applies to every hearing. Rule 5.651 was revised to require the court to direct the social worker or probation officer to provide information only to the extent that it is available.</p> <p>b. Rule 5.651(e) was revised to provide for hearings only when requested by the child’s attorney, the person who holds educational rights, or the court. Ed. Code, § 49069.5(b) does state: “The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency.” However, the child’s placements, services, and well-being are under the jurisdiction of the juvenile court under Welf. & Inst. Code, § 304.</p>
<p>Kathleen O’Connor Assistant County Counsel Sacramento Department of Health and Human Services—Children’s Services</p>	<p>a. 5.651(c)—This proposal would create duties beyond those provided for by statute. Rule 5.651(c) dictates that reports address some 14 areas of assessment, few of which are required by governing statute. (See, for example, Welf. & Inst. Code, §§ 358, 358.1, 362(a), 366.1.)</p> <p>b. 5.651(e)—This proposal would create duties beyond those provided for by statute. Rule 5.651(e) requires that when a change of placement “affects the child’s right to attend the school of origin,” there must be notice to all parties to the dependency action, the CASA, the educational representative and the “appropriate person” at the local educational agency within 24 hours</p>	<p>a. The court has oversight over the child’s education. The Judicial Council has the authority to adopt rules for court administration, practice, and procedure. The information that is specified in rule 5.651(c) is information that the court needs to make a determination whether the child is receiving the educational services to which he or she is entitled under state and federal law.</p> <p>b. Under Cal. Const., art. VI, § 6 and Welf. & Inst. Code, § 265, the Judicial Council has the authority to adopt rules of court governing practice and procedure in juvenile court that are not</p>

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	<p>and a written report within 2 days of the decision. Rule 5.651(e) also mandates that, for a child with a disability having an active IEP, that at least 10 days prior to the change of placement, there be written notice to the local educational agency providing the special education program and the receiving special education local plan area.</p> <p>c. 5.651(e)—As a practical matter, and despite best efforts, these mandates are unrealistic and would be largely impossible to meet. Many, many changes in placements for dependents and wards are emergency or 7-day notice changes that occur often in the midst of chaotic circumstances. At the time the need for a change of placement arises, most cases would have to be characterized as “may result in a removal from...the school of origin,” thereby triggering this process because at that time the new placement has not usually been identified and secured. The common objectives in the placement change process, especially during the first days, are to locate an available placement in the child’s community and school area, stabilize the child in the new placement and tend to any immediate physical or emotional needs of the child. A requirement that a formal, and possibly contested, hearing be had prior to many if not most placement changes would be paralytic for the juvenile system.</p> <p>d. 5.651(f)—This proposal would create duties beyond those provided for by statute. Rule 5.651(f) requires a hearing within two calendar days of the court’s determination that the proposed placement change fails to comply with the law.</p>	<p>inconsistent with statute. Agree to modify regarding timelines and reporting procedures. The 10-day notice provision regarding a child with an IEP is required by Gov. Code, § 7579.1(a).</p> <p>c. Agree to modify to provide that the court must find that the social worker or probation officer notified the court child’s attorney and the person who holds educational rights if the change of placement resulted in a removal from the school of origin. A hearing would be held only if it is requested by the child’s attorney, the person who holds educational rights, or the court. The notice must be sent within 24 hours, excluding nonjudicial days, and the hearing must be held within seven calendar days of the request.</p> <p>d. See responses above.</p>
<p>Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County</p>	<p>a. 5.651(b)(2 (now (b)(1))—Provides several difficulties at the initial hearing:</p> <p>It contains a lengthy list of items, most of which cannot be obtained in that short order for many, if not most, in-custody children. The only essential item to be evaluated at that point is item (C), the school of origin issue.</p> <p>The requirement in the rule is for the court to “determine” the ten facts listed in the subparts of (A) through (E) of that rule. What does “determine”</p>	<p>a. The committee agrees that the social worker or probation officer may not have all of the information at the time of the hearing. The rule was revised to condition the findings on the information being available. If the information is not in the report, the court should ask the social worker or the probation officer if they have the</p>

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	<p>mean. If it means that evidence must be considered and a “finding” made, that is impractical at this early stage of the proceedings and will be extremely time consuming. We suggest that “determine” be changed to “consider” to require the court to look into the educational issue as far as is practical at the moment.</p> <p>Subsection (E) refers to the situation if the child is “temporary placed.” First, that appears to be a typo and should be “temporarily” placed. Second, to what does “placed” refer? Does it mean placement in the juvenile court vocabulary (i.e. removal from the home and detained somewhere) or in the educational vocabulary (i.e. a school site)? The (i) through (iv) factors don’t seem to have anything to do with education and don’t belong in this rule; they belong in another rule concerning the social worker’s duty to find an appropriate residence. (If someone was looking for these requirements, they would never think of looking in the middle of an educational rights rule.) Only the factor in (v) belongs in this particular rule.</p> <p>b. 5.651(b)(3) (now(b)(2))—Requires eight “findings and orders” at all of the hearings identified in subsection (a). Subsection (a) refers not to just the dispositional and review hearings, where education is certainly a proper issue, but also to the “jurisdictional” hearing. The truth of the allegation in the petition is the issue at the jurisdictional hearing. We suggest that the reference to “(a)” be deleted and substitute “dispositional and placement review hearings.</p> <p>c. 5.651 (c)—Requires the social worker or probation officer to “address” in the “social study” and in the “joint assessment” (apparently a reference to Welf. & Inst. Code, § 241.1) reports on fifteen different areas. Most of these factors will not be an issue, or will be obvious, in any particular case. Requiring the report to address each one of them will be time consuming and unnecessarily increase the length of reports. The information is more properly included in a separate “case plan” than in the social study or joint</p>	<p>information. Agree to change “temporary” to “temporarily” and to change “determine” to “consider.”</p> <p>Agree to revise to include only the AB 490 requirements addressing education and special needs.</p> <p>b. Rule 5.651(b)(3) (now (b)(2)) states that the provisions under that paragraph apply at the disposition hearing and all <i>subsequent</i> hearings provided for in 5.651(a), which include all regularly scheduled review hearings. The jurisdiction hearing is prior to the disposition hearing and is therefore not included in this paragraph. Please see above regarding the eight findings and orders required.</p> <p>c. The committee believes that court oversight of the educational rights of children applies to every hearing. Rule 5.651 was revised to require the court to direct the social worker or probation officer to provide information only to the extent that it is available. The</p>
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	<p>assessment report.</p> <p>The reference in subsection (c)(5) to rule “5.651(a)” should be limited to “5.651(a)(3).”</p> <p>d. 5.651(e)—Would require that the court be notified every time it is necessary to move a child’s school because the foster care home is changed. This is impractical and burdensome. While it is appropriate to notify the “parties,” as the rule would require, it is unnecessary to notify the court in every instance. The parties will be able to determine if there is anything appropriate to bring to the court’s attention. The truth of the matter is that neither the court nor anyone else can control many of the re-placements of children. If a foster care home or institution provides a “quit” notice, that can’t be stopped. If the child runs away from a prior placement and the original home or facility is not available or willing to take the child back, that can’t be stopped. If the move is to an adoptive home, we wouldn’t want to stop the placement. None of those movements require court action, so notifying the court is not necessary, until the parties have a proposed action.</p> <p>e. 5.651(f)—Provides for a review hearing within two days every time a child’s foster care placement is changed. For the reasons stated above, this is inappropriate and burdensome to the court’s calendar. Usually, there will be no purpose or beneficial outcome to the hearing. It is very unclear what orders could be made at such a hearing. We can’t order the school to take the child back into the school. The school is not a party to the action and thus there is no <i>in personam</i> jurisdiction to issue orders to it. Even an order that the social worker or probation officer must pay for the transportation to that school will be an idle act in many cases where the opening at the school has already been filled. The parties, upon receiving notice of the re-placement, can evaluate whether a hearing is necessary and make an appropriate motion if an effective order is available. Requiring an automatic</p>	<p>information that is specified in rule 5.651(c) is information that the court needs to make a determination whether the child is receiving educational services to which he or she is entitled under state and federal law.</p> <p>Agree to modify as suggested.</p> <p>d. Rule 5.651(e) was revised to provide that the court must find that the social worker provided notice to the court, the child’s attorney and the person who holds educational rights. Hearings will be set only when requested by the child’s attorney, the person who holds educational rights or the court.</p> <p>e. See response above. Rule 5.651(e) was revised to provide that if a hearing is requested it must be set within seven days.</p>
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<p>Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center</p>	<p>hearing in all cases is very wasteful of court resources.</p> <p>a. 5.651(b)(1) (now (b)(2)(A))—In addition to educational, social, and developmental needs, we think this subsection should include mental health needs. A large majority of the children before the dependency and delinquency court have some need for mental health services.</p> <p>b. 5.651(b)(2)(E)(iv) (now(b)(1)(E)(i))—“Special needs” should be replaced by “unique needs of children with disabilities.” “Special needs” is vague and will lead to confusion.</p> <p>c. 5.651(b)(3)(B) (now (b)(2)(A))—Please include mental health needs in the list to ensure that mental health issues are addressed. Amend to read: “Whether the child’s educational, physical, mental health, and developmental needs are being met.”</p> <p>d. 5.651(b)(3)(C) (now(b)(2)(B))—This provision could be amended to clarify which type of services, assessments, or evaluations are intended. Our suggested language is: “If supported by the evidence, any services, assessments, or evaluations, including but not limited to services, assessments, or evaluations for special education and related services, the child may need.”</p> <p>e. 5.651(c)(3) (now (c)(2))—Include mental health needs.</p> <p>f. 5.651(c)(6) (now(c)(5))—Instead of focusing on learning disabilities, it is more accurate to state “whether the child may have physical, mental, or learning-related disabilities, or other special education needs.”</p> <p>g. 5.651(c)(13)—Include mental health needs.</p> <p>h. 5.651(c)(14)—Amend to clarify the type of services, assessments, or evaluations requested. Our suggested language is “whether any orders to initiate assessments, evaluations, or services, including but not limited to services, assessments or evaluations for special education and related services.”</p>	<p>a. Agree to modify.</p> <p>b. Agree to modify.</p> <p>c. Agree to modify.</p> <p>d. Agree to modify.</p> <p>e. Agree to modify.</p> <p>f. Agree to modify.</p> <p>g. Agree to modify.</p> <p>h. Agree to modify.</p>
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<p>Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services</p>	<p>a. 5.651(b)—May want to add “(i.e., the JV-535 form).”</p> <p>b. 5.651(e)—Who would notify and report?</p> <p>c. 5.651(e)(2) (now (e)(1)(B))—May want to add “except in situations of an emergency move in which case within 24 hours of move.” Would need to define “emergency.”</p>	<p>a. Agree to modify.</p> <p>b. The social worker or probation officer.</p> <p>c. The statutes do not provide an emergency exception. However, to the extent the change of placement happens suddenly, the child must remain in the school of origin unless a waiver is obtained.</p>
<p>Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel</p>	<p>a. 5.651(a)(1)—This rule cannot apply to children who are the subject of voluntary placement agreements because the court does not have jurisdiction to make orders.</p> <p>b. 5.651(b)—Clarification is needed if this section pertains to education assessments, evaluations and/or services. If this includes special education assessments, the court cannot order them under IDEA and Federal Regulations. The court may order an individual to initiate an assessment request but for the evaluation to occur an educational rights holder must consent pursuant to federal law.</p> <p>c. 5.651(b)(2)(A)-(B), (C)(i), (D)-(E) (now (b)(1)(A)-(B), (c)(i),(D)-(E))—Due to time constraints and safety issues, some of this information may not be available to the social worker by the time of the initial hearing.</p> <p>d. 5.651(b)(3)(D) (now (b)(2)(C))—Clarification is needed if this section pertains to education assessments, evaluations and or services. If this includes special education assessments, the court cannot order them under IDEA and Federal Regulations. The court may order an individual to initiate</p>	<p>a. Agree to modify to clarify that it does not apply to voluntary placement agreements.</p> <p>b. The court is required to make a finding as to whether an assessment, evaluation, or service is needed. We have revised rules 5.650(a)(3) and 5.651(b)(2)(C) to clarify that the court must direct the appropriate person to take the necessary steps to request, or for the child to begin receiving, those assessments, evaluations, or services. The court is not requesting the assessment.</p> <p>c. Agree to modify to provide that the court must direct the social worker to provide only the information that is available.</p> <p>d. See response in b. above.</p>

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	<p>an assessment request but for the evaluation to occur an educational rights holder must consent pursuant to federal law.</p> <p>e. 5.651(c)(1)—Replace “delays” for “discrepancies.”</p> <p>f. 5.651(c)(5)—This is too vague and overbroad as written. Which specific area of law should be spelled out (e.g., IDEA, ADA, Section 504) and from which entities compliance is sought.</p> <p>g. 5.651(c)(12)—Identify Educational Representative or Surrogate Parent as confidential.</p> <p>h. 5.651(c)(14)—Under federal law the court cannot order special education evaluations or services for a child.</p> <p>i. 5.651(e)—This rule creates unnecessary work for a placement change that <i>may</i> result in the removal of the child from the child’s school of origin. The 24 hour noticing requirement and the generation of a court report within two calendar days of the decision to change placement impose an unmanageable burden on the social worker/probation officer. These requirements and additional duties would be imposed without any statutory support.</p> <p>j. 5.651(f)—The Court’s calendar will not be able to accommodate the review of all changes of placement that <i>may</i> impact a child’s school of origin. This rule would impede and delay the social worker/probation officer’s mandated duty to quickly and safely place juvenile court children.</p>	<p>e. Agree to modify.</p> <p>f. Agree to clarify which laws apply.</p> <p>g. Agree to modify.</p> <p>h. Agree to modify to specify that court will direct the appropriate person to take the necessary steps for the child to begin receiving assessments, evaluations, or services.</p> <p>i. Rule 5.651(e) was revised to state that the court, the child’s attorney, and the person who holds educational rights receive notice when the placement change will result in removal from the school of origin. Hearings will be set only when requested by the child’s attorney, the person who holds educational rights, or the court. The Judicial Council has the authority to adopt rules of court governing practice and procedure in juvenile court that is not inconsistent with statute.</p> <p>j. See above response. This rule incorporates the statutory mandates requiring a child’s education placement not be changed unless a</p>
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	<p>It would also expand the court’s authority over placement decisions without statutory authority. The California Education Code section 48853.5 vests the decision of whether a child should remain in his/her school of origin with the LEA’s Foster Youth Liaison, the child’s educational decision maker and the foster child. The Court has no statutory authority to review and or approve the decision prior to its implementation. If the court cannot make the referenced findings and orders and continues the case, the delay may disrupt a necessary placement change for the child.</p>	<p>waiver is obtained and that it not be changed pending a dispute. The court has oversight over the placement decisions that affect the child’s education and to ensure that the child receives the rights afforded because of his or her foster care status.</p>
<p>Jacqueline Wong Chair National Governors Association Policy Academy on Transition From Foster Care Education Workgroup</p>	<p>a. 5.651(e)(2) (now (e)(1)(B))—In addition to notifying the local education agency, it is suggested that social workers and probation officers also notify the educational representative and the AB490/Foster Youth LEA Liaison.</p> <p>b. 5.651(e)(1)(A) (now (e)(1))—Clarify that the notification of the “appropriate person of the local education agency” should be clearly stated as the AB490/Foster Youth LEA liaison not the educational representative involved in the process.</p> <p>c. 5.651(e)(4)(D) (now(e)(4)(E))—Include responses from the educational representative and the AB490/Foster Youth LEA Liaison.</p> <p>d. 5.651(f)(2)(D)—Include language that clearly states that along with the consideration of whether or not the child has the educational supports necessary to meet standards, that courts should ensure that these supports are documented in Individualized Education Plans and/or 504 Plans for youth who have been identified for specialized support services.</p> <p>e. 5.651—Change language from “calendar days” to “court days,” where possible, as this will be a much more feasible timetable.</p> <p>f. Consider adding Local Education Agencies and Special Education Local Plan Areas to the groups responsible to “affirmatively address the child’s educational needs.”</p>	<p>a. These persons are not required to receive notice under Gov. Code, § 7579.1(a)(1).</p> <p>b. The rule was revised to provide that notice goes only to the court, the child’s attorney, and the person who holds educational rights.</p> <p>c. Agree to modify.</p> <p>d. Agree to modify to state: “Whether the child has the educational supports necessary, including those for special education and related services, to meet state academic achievement standards.”</p> <p>e. Agree to modify to court or nonjudicial days and to extend the time frames where appropriate.</p> <p>f. Agree to include local education agencies.</p>

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<p>Deborah Escobedo Staff Attorney</p> <p>Maria Ramiu Attorney Youth Law Center</p>	<p>a. 5.651(b)(2)(C) (now (b)(1)(C))—Our proposed amendments make the rule more consistent with the provisions of AB 490, which provide foster youth the right to remain in their school of origin for the balance of the school year when the child welfare agency initially places or subsequently moves a child to a new placement. Education Code § 48853.5(d)(1). They also have the right to remain in their school of origin if any dispute arises as to their school placement, pending the resolution of the dispute. Education Code § 48853.5(d)(5). Amend to read:</p> <p>(i) In accordance with the child’s best interest, the educational liaison, as defined in Education Code section 48853.5(b), in consultation and with the agreement of, the child and the parent or other educational representative, recommends that the child’s right to attend the school of origin be waived; and</p> <p>(ii) Prior to making any recommendation to move a foster child from his or her school of origin, the educational liaison provided the child and the person holding the right to make educational decisions for the foster child with a written explanation stating the basis for the recommendation and how this recommendation serves the foster child’s best interest, pursuant to Education Code section 48853.5(d)(3); and</p> <p>(iii) Without obtaining a waiver, the child was not afforded his or her right to attend his or her school of origin, pursuant to Education Code section 48853.5(d)(1); and</p> <p>(iv) The child was immediately enrolled in the new school; and</p> <p>b. 5.651(e)(4) —The following suggestions will ensure that the report will cover all the rights afforded foster youth with respect to remaining in their school of origin pursuant to the provisions of AB 490 and that they will be carefully reviewed by the court.</p> <p>(1) Information addressing whether the educational liaison, in consultation and agreement with the foster child and the parent, guardian, or other educational representative, in accordance with the child’s best interest,</p>	<p>a. Agree to modify.</p> <p>b. Agree to modify. Please see rule 5.651(e)(4), (b)(1)(C)(i) and (ii), and (f)(1)(D).</p>
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	<p>recommends that the child’s right to attend the school of origin be waived;</p> <p>(2) Whether prior to making any recommendation to move a foster child from his or her school of origin, the child and the person holding the right to make educational decisions for the foster child were provided a written explanation by the educational liaison stating the basis for the recommendation and how this recommendation serves the foster child’s best interest, pursuant to Education Code section 48853.5(d)(3);</p> <p>(3) Whether the foster child has been allowed to continue his or her education in the school of origin for the duration of the academic school year, pursuant to Education Code § 48853.5(d)(1);</p> <p>(4) Whether a dispute exists regarding the request of a foster child to remain in the school of origin and if the foster child has been afforded the right to remain in the school of origin pending resolution of the dispute, pursuant to Education Code section 48853.5(d)(5);</p> <p>(5) Whether the lack of transportation has prevented a foster child from remaining in his or her school of origin for the remainder of the academic school year or if a dispute has arisen concerning the school of origin and whether the local educational agency and the county placing agency have collaborated concerning the provision of transportation to and from the school of origin for the foster child, pursuant to Education Code § 48853.5(d)(6);</p> <p>Paragraphs (B)-(F) should be reassigned (F)-(J).</p> <p>c. 5.651(f)(3)—Notwithstanding the provisions of AB 490, it is often difficult for foster youth to exercise their right to remain in their school of origin if they do not have access to transportation. Too often collaborative efforts with respect to transportation fail to materialize.</p> <p>Recently, the California Department of Education (CDE) reported that 43% of all Foster Youth Services programs identify the “lack of transportation to</p>	<p>c. Agree to modify. Please see revisions to rule 5.651(f)(1)(C) and form JV-538.</p>
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	<p>remain in the school of origin” as a challenge with respect to the implementation of AB 490. CDE’s Counseling, Student Support, and Service Learning Office concluded that school placement decisions for foster youth are too often based on transportation, or the lack thereof, rather than the educational and other interests of the foster youth at issue. The suggested modifications ensure that the issue of transportation for foster youth is addressed by the court when it reviews the right of the child to attend his or her school of origin. Form JV-538 should also be amended accordingly.</p> <p>Suggested amendments:</p> <p>If the court finds that the proposed change of placement or school fails to comply with section 16501.1(c)(2), Education Code section 49069.5, or this rule or is not based on the best interest of the child, the court may set a hearing regarding the proposed change of placement or school. Within two calendar days of the court’s decision, the clerk must notify the parents or guardians, all other persons required by section 293, the CASA volunteer and the educational representative of the court’s findings and orders and whether the court is setting a hearing a hearing; At this hearing,</p> <p>(A) the court must inquire of the social worker, probation officer, and other interested parties why these requirements have not been met, the court must determine what actions are necessary to ensure the child’s educational and disability rights, and the court must make the necessary findings and orders to facilitate these rights, <u>which may include an order directing which agency will provide transportation so that a foster youth can remain in his or her school of origin</u>; and</p>	
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 Rule 5.668 – Commencement of hearing — explanation of proceedings**

Commentator	Comment Excerpt or Summary	Committee Response
<p>Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County</p>	<p>Rule 5.668(c) requires the court to receive a copy of the JV-225 Health and Education Questionnaire. While that document is necessary for the agencies and parties to have, it serves no useful purpose for a copy of the five page document, probably in handwriting, to be filed with the court. It is needed for the day to day care and supervision of the child and if any litigation later becomes necessary to which the form is relevant and admissible, the parties can take appropriate action. It is hard enough to find things in the bulky court files without adding unnecessary forms that are meant for others to use.</p>	<p>Agree to modify by deleting the requirement that the court receive a copy.</p>

Form JV-225—Your Child’s Health and Education

Commentator	Comment Excerpt or Summary	Committee Response
<p>L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division</p>	<p>a. Item 13.a—Item 13 states “is your child still allowed and able to attend this school?” Would the parent know this? Seems it would be rare that they could.</p> <p>b. Item 13.b—Item 13 states “if no, did you agree to give up you child’s right to remain at this school?” At this point parent still has educational rights since these are filled out at the initial detention court hearing. Does a parent’s opinion at this point override a school of origin mandate? I would add to the end of item 13 “Does your child have an IEP? ____ For what services? ____ Date last signed? ____”</p>	<p>a. If the parent still holds educational rights, the child should not be moved from the school of origin without the parent’s waiver of the child’s right to remain in the school of origin.</p> <p>b. Education Code section 48853.5(d)(4)(A) provides that if the parent retains educational rights, the parent may, after the foster youth liaison has consulted with the parent and child, agree that the best interest of the child would be served by a transfer to a school other than the school of origin.</p>

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	<p>c. Item 16—States “has your right to make educational decisions for the child been limited?” This form is filled out at court prior to the initial detention hearing. Nothing would be limited yet unless this was a subsequent removal in which case the JV-225 may not be done. Is the intent that this form is filled out at each hearing? Updated and re-done each time?</p>	<p>Agree to add language regarding the IEP.</p> <p>c. Welf. & Inst. Code, § 16010(f) requires that this information be provided to the court at the initial hearing. However, outside of juvenile court proceedings, a surrogate parent may be appointed to represent the child’s special education needs, thereby limiting the parent’s or guardian’s educational rights.</p>
<p>Jenny Cheung Writ Supervisor Children’s Law Center of Los Angeles</p>	<p>Item 4—Change to read “Medication and dosage.”</p>	<p>Agree to modify.</p>
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>Item 13.c—Add clarifying terms to define assessments, evaluations or services such as a section 504 plan, special education services, or AB 3632 services. Many youth receive Title I or other services for “at-risk” youth. Sometimes parents are unsure of which services come from what sources and using key words, such as IEP, 504, etc., may help to identify whether or not the child had formal services versus informal interventions, while allowing them to include information as to all specific services and accommodations.</p> <p>It would also be helpful to ask, has your child ever had such services or assessments? At which school(s)? Often children are unilaterally exited and/or services are lost because of frequent moves. It is important to know this in case the education liaison and/or current educational representative needs to search for records, or in case latent symptoms start resurfacing.</p>	<p>Agree to modify.</p>
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>a. Items 17 and 18—Should be optional for parents to complete. See comments to rule 5.668.</p>	<p>a. Required by Welf. & Inst. Code, § 16010 (f). The following language was added: “If you do not want to provide this information, please talk to your attorney.”</p>

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<p>Frank Mecca Executive Director Child Welfare Directors Association</p>	<p>Items 17 and 18—The proposed changes would require the parents’ completion of their medical history. This invokes the issue of the parents’ rights and privileges and may require a waiver of medical privilege.</p>	<p>Welf. & Inst. Code, § 16010 (f) requires the parents to provide complete medical, dental, mental health, and educational information, as well as medical background, of the child and of the child’s mother and the child’s biological father if known. Any objections to the statutory requirement must be brought up individually in court. The following language was added: “If you do not want to provide this information, please talk to your attorney.”</p>
<p>Karen Tamis Staff Attorney/Skadden Fellow Education Advocacy Project Disability Rights Legal Center</p>	<p>a. Second paragraph—The social worker or probation officer should be required to provide help to parents or guardians completing the form. Amend to read: To the social worker or probation officer: If the parent or guardian needs help completing this form, you are required to provide this help.</p> <p>b. Item 3—Disabilities should not be lumped under medical problems. It should be separate questions, e.g. “does your child have any physical or mental disabilities?”</p> <p>c. Item 13.c—To ensure all children with disabilities are identified, amend to read: Before removal, was your child receiving any assessments, evaluations, services, or accommodations to help your child with any physical, mental, or learning-related disabilities, or other special education needs?</p> <p>d. Item 15.c—“Special needs” is vague and can lead to confusion.</p>	<p>a. Agree to modify in part. The resources and supports available to assist parents vary in each county. The second introductory paragraph will be modified to state: “If you need help, the social worker or probation officer will help you fill out this form.”</p> <p>b. Agree to modify.</p> <p>c. Agree to modify as suggested.</p> <p>d. This question is meant to be open-ended to elicit information from the parent or guardian regarding the child’s needs.</p>

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

<p>Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services</p>	<p>a. Item 13.a—Would the parent know if the child is still attending this school?</p> <p>b. Item 13.b—At this point, the parent still has educational rights but I am wondering if a parent’s opinion at this point would override a school of origin mandate?</p> <p>c. Item 13.c—Good to see this addressed. I would add to the end “Does your child have an IEP? For what services? Date last signed?”</p> <p>d. Item 16—Nothing would be limited yet unless this was a subsequent removal in which case the JV-225 may not be done. Is the intent that this form be filled out at each hearing? Updated and re-done each time?</p> <p>e. Item 17—Great to see the addition of the parent’s health history. Sometimes this may be the only time we have the parent present and need that information for the child long term.</p> <p>f. End of form needs a period after “crime” just above signature line.</p>	<p>a. Unless the parent’s educational rights have been limited, the parent must be a part of any decision to move a child from a school of origin.</p> <p>b. Ed. Code, § 48853.5(d)(4)(A) provides that if the parent retains educational rights, the parent, after the foster youth liaison has consulted with the parent and child, may agree that the best interest of the child would be served by a transfer to a school other than the school of origin.</p> <p>c. Agree to modify.</p> <p>d. Welf. & Inst. Code, §16010(f) requires that this information be provided to the court at the initial hearing. However, outside of juvenile court proceedings, a surrogate parent may be appointed to represent the child’s special education needs, thereby limiting the parent’s or guardian’s educational rights.</p> <p>e. No response is required..</p> <p>f. Agree to modify.</p>
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<p>Jacqueline Wong Chair National Governors Association Policy Academy on Transition From Foster Care Education Workgroup</p>	<p>a. Item 7—Should state address the “most recent date of visit” instead of “Date of Visit.”</p> <p>b. Item 15—Add question e: “Do you have a copy of an IEP or 504 plan?”</p> <p>c. Item 16—Should clearly state “who has the court appointed to make educational decisions for the child” so that the appropriate person can be identified for education issues.</p>	<p>a. Agree to modify to “date of last visit.”</p> <p>b. Agree to modify. See item 13. d.</p> <p>c. It is possible that without court involvement a surrogate parent was assigned to act on behalf of a child.</p>
<p>Deborah Escobedo Staff Attorney</p> <p>Maria Ramiu Attorney Youth Law Center</p>	<p>For the reasons stated in the comment to rule 5.518(b)(2)(F), we suggest the following additions to form JV-225:</p> <p>e. What language did your child first learn to speak?</p> <p>f. What language do you most often use when speaking to your child?</p> <p>g. Do you know if your child has ever been identified as English proficient or as an English Language Learner by a School?</p> <p>h. Do you know if your child has ever been enrolled in a specialized program to teach them English and/or where they were taught in their primary language?</p>	<p>Agree to modify.</p>

Form JV-365—Termination of Dependency Jurisdiction—Child Attaining Age of Majority

Commentator	Comment Excerpt or Summary	Committee Response
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>4.a, 4.b, 4.c (now deleted)—These items regarding educational rights should be deleted. Following termination of dependency jurisdiction, the juvenile court’s appointment of a responsible adult to make educational decisions for the child would have no legal effect. In addition, the previously dependent child would not have the ability to return to court and request a change or removal of this responsible adult.</p>	<p>Agree to modify.</p>

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Form JV—535 Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child’s Educational Needs**

Commentator	Comment Excerpt or Summary:	Committee Response
<p>L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division</p>	<p>a. Item 2—States that “Providing the information on this form to the parent/guardian will/will not create a safety risk.” May want to add a clarification of “(for example, due to confidentiality of placement and address listed herein).” Social worker would need to be clear that the JV-535 is now being sent/copied to the parent unless otherwise specified and so SW needs to ensure that sensitive info is not released.</p> <p>b. Item 9.e (now 11(e))—At the end of the first sentence “...and related services or already has an individualized education program.” Add “(IEP)” as some only know the IEP by its acronym and may not realize what it stands for/what is being referred to.</p> <p>c. Item 10 (now 12)—Add an additional letter “e. <input type="checkbox"/> child has or needs an IEP.”</p> <p>d. Item 11 (now 16)—Between c & d, add “or” (as it is not the expectation that the LEA receive a copy from all 4 parties is it? If so, then add “and”).</p>	<p>a. Agree to modify.</p> <p>b. Agree to modify.</p> <p>c. Agree to modify.</p> <p>d. Agree to modify.</p>
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>a. Item 9.c.1 (now 11(c)(1))—This form requires clarification between checkbox 9.c.(1) and 9.d. Under Welf. & Inst. Code, § 361(a)(5), if a child is in a PPLA, the foster parent (identified caregiver) may hold educational rights, without court appointment. This demonstrates a conflict between 361(a)(5) and the intent to ensure a child’s educational stability through the appointment of a consistent educational surrogate. Box 9.d. (now 11(d)) allows the court to appoint a responsible adult “until the next hearing, or until the court orders otherwise.” However, paraphrasing Ed. Code, § 56055 and Welf. & Inst. Code, § 361(a)(5), a “responsible adult” holds education rights until one of the following occurs: (5) the child enters into PPLA, at which time the foster parent has the right to represent the child in educational matters— a default provision. I agree with the suggestion of the form that a specifically-</p>	<p>a. Rule 5.560(g)(1)(e) was revised to require that the court make a finding that the foster parent may make educational decisions for the child in order to determine that the caretaker agrees to serve as the educational representative and does not have any conflicts.</p>

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	<p>appointed educational representative may continue to hold education rights, despite a change in PPLA foster placement. However, Districts often assert that the rights default to any subsequent PPLA foster parent if parents’ ed rights are suspended and the respective foster parent is not specifically excluded (via a JV-535) from holding education rights. Although this may indicate a need for legislative clarification, it also identifies a need for a checkbox to generally exclude any subsequent foster parent, if the court’s intent is to specifically appoint another individual until it orders otherwise. See discussion under proposed rule of court 5.650 also.</p> <p>b. Item 9.e (now 11.e) requires an additional statement that, should the child exit special education services or is otherwise found ineligible, the District must notify the court of the termination of appointment within 5 days, via a JV-536 form.</p> <p>c. Item 11 (now 11.e)—Under checkbox 11, it is necessary that the court order the respective individual to serve the JV-535/536 upon the LEA within 2 business days as well.</p>	<p>b. This comment falls under the requirement that the district notify the court if the surrogate parent is terminated.</p> <p>c. Agree to modify.</p>
<p>Dennis B. Jones Executive Officer Superior Court of Sacramento County</p>	<p>a. Item 9.c.1 (now 11.c.1)—Item 11(c)(2) provides a place for the name, address, relationships of the person but the same information is not indicated on (c)(1).</p> <p>b. Labels of “general education” and “special education” would be helpful for the users.</p>	<p>a. Item 11.d provides space for this information.</p> <p>b. Item 11.c addresses circumstances when a foster parent, who has no conflict, is found by the court to be able to be the child’s educational representative regarding all general and special education issues. Item 11.d addresses who the court has appointed, including a caretaker, to represent all of the child’s educational needs. Item 11.e does specify that the court is referring to the LEA because the child is or may be eligible for special education and related services. The circumstances in item 11.f can only arise when the child is not</p>

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		eligible for special education or related services.
Jennifer Kelleher Directing Attorney LACY	Item 9.e (Item 11.e)—See proposed comments on rule 5.650(d).	Rules of court cannot declare California statutes inconsistent with federal law.
Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County	<p>a. Item 9.c (now 11.c)—includes a phrase that is not used by the court as a legal placement plan: “planned permanent living arrangement.” That phrase, though originally recommended to the courts by the Judicial Council in its annual review of placements, has been disfavored by the federal funding authority and that type “long-term placement” (the disfavored phrase that the “planned permanent living arrangement” replaced) is now described as “placement with __, with a goal of __.” We suggest you replace the “child is placed in a planned permanent living arrangement” phrase with “reunification services for the child and family have been terminated and the child is now placed with:”</p> <p>Should require in the parenthetical note that the placement person/institution’s address be included. The name alone will not be helpful.</p> <p>b. Item 9.c.1 (now 11.c.1)—Subsection (1) properly identifies that the long-term foster parent (without using that phrase) has a legal right to be the representative, even without a court appointment. We need a separate rule of court that identifies the order of preference for appointment: (1) current caregiver for a child for whom reunification services have been terminated; (2) relatives with a long-term parent-like relationship with the child; (3) etc.</p> <p>c. Item 9.d (now 11.d)—Section 9.d. (which could become 9.c.) the phrase “is appointed to make educational decisions” should be amended to insert “general and special education decisions” to make that duty clear to the appointee.</p> <p>d. Item 9.e (now 11.e)—Section 9.e. (which could become 9.d.) requires the school that appoints educational representatives for children with individualized education plans when the court can’t find one on its own to make a “prompt appointment” and then “notify the court of the identity of</p>	<p>a. Agree to modify. However, the address space is provided in item 11.d.</p> <p>b. The committee will consider this change in future rule proposals.</p> <p>c. Agree to modify to state “is appointed as the child’s educational representative.”</p> <p>d. Agree to modify.</p>

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	<p>the appointee.” Though the proposed order does include the requirement that the court must be noticed of the appointee’s identity within 5 days of the appointment, the form does not specify in the order as to when the “prompt” appointment should be made. This section should be amended to include the phrase of “prompt appointment within no more than 30 days after receipt of this order.”</p> <p>e. Item 9.f (now 11.f)—Section 9.f. (which could become section 9.d.) uses the vague, and now inappropriate, phrase that “appointment of an educational representative is not legally warranted.” It has been our experience that many social workers, probation officers, attorneys and judges do not understand that the vague reference of “appointment of an educational representative is not legally warranted” means the child who does not qualify for special education. Since the schools only have the authority to appoint a surrogate for special education students, and not for general education students, this section is the default only when the court cannot specifically name a representative for a general education, not special education, student. Under the new procedure every child whose parents have had their educational rights limited needs an educational “representative.” So one is “warranted” in every case, even if the child is not qualified for special education. Therefore, the “appointment of an educational representative is not legally warranted” phrase should be changed to “does not qualify for special education.”</p> <p>f. Note box (now 11.e)—The bolded one sentence “Note:” after section 11 (now 16) should be moved up to be immediately below what is currently box 9.e (now 11.e). It will be much easier to notice it where it applies.</p> <p>Similarly, it would be better for the remaining sentence (“A copy of this form...”) to specifically be a part of section 11 (now 16), rather than trailing it. The first sentence of section 11 could be rewritten to say “A copy of this order must be served on the local educational agency, counsel for the parties, the social worker, probation officer, CASA volunteer, tribe, Indian custodian and educational representative within two business days of the order by....”</p>	<p>e. Agree to modify.</p> <p>f. Agree to modify.</p>
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<p>Randi Barrat Assistant Public Defender</p> <p>Arthur Bowie Supervising Assistant Public Defender Sacramento County Office of the Public Defender</p>	<p>a. Item no. 9 (now 11)—This section seems to primarily address those children who are already eligible for special education and are in planned permanent living arrangements. Yet an educational representative will still be needed in the various scenarios when a child who is not already identified as an individual with exceptional needs or in planned permanent living arrangements and the parents’ education rights have been limited or temporarily limited.</p> <p>b. Item no. 9.c.1 (now 11.c.1)—Reference to Education Code section 56055 refers exclusively to special education rights and responsibilities as does Section 300.519 of Title 34 of the Code of Federal Regulation for school age children covered under Part B of Individuals with Disabilities Education Act (2004) (hereinafter referred to as IDEA) and reference to 34 C.F.R. Section 303.19 for children. Birth–3 yrs old covered under Part C of IDEA. Two primary problems exist that cause confusion: (1) If the Judicial Council intends to refer to foster parents who may exercise special education rights on behalf of a child with a disability under the scope of the definition of “parent” the correct parallel citations are as follows: Ed Code Section 56028 and 56055; 34 C.F.R. Sections 300.30 and 303.19. Additionally, for the purposes of this area of the law, relative caregivers, or nonrelative extended family members are by definition, foster parents under Ed Code Section 56055 and thus, use of those extra terms seems redundant and confusing. (2) It is unclear whether the Judicial Council intends this provision to also identify foster parents for children placed in a planned permanent living arrangement pursuant to Welfare and Institutions Code sections 366.21,22,26 or 727.3 as educational representatives for children who have <i>not</i> been identified as a child with a disability and require special education since the citations given specifically denote special education rights. Because Ed Code Section 56055 falls under Part 30 of the Education Code and specifically relates to special education entitlements, the scope of this Rule is uncertain.</p> <p>c. Item no. 9.d (now 11.d)—It is unclear if the Judicial Council intends the JV-535 form to designate an educational representative for children in all</p>	<p>a. Agree to modify.</p> <p>b. Agree to include references to sections 361 and 726 to clarify that item 11.c address circumstances when a foster parent, who has no conflict, is found by the court to be able to be the child’s educational representative regarding all general and special education issues.</p> <p>c. Please see above. The reference to 34 C.F.R. § 303.19 is to guide the court</p>
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	<p>phases of placement, and whether or not the child is a general education student or a special education student.</p> <p>The proposed JV-535 form cites Rule of Court 5.695(c) which references Welfare and Institutions Code section 245.5 giving the Court authority to make orders for the best interest of the child in part, regarding education. Although the rule also references Government Code Section 7579.5, a special education provision, the Welfare and Institutions Code citation refers to all children generally. It should also be noted that Gov Code Section 7579.6 also provides authority for a Judge to directly appoint a surrogate parent for a ward who is an individual with exceptional needs. The JV-535 Form also cites to W & I Code Sections 361(a) and 726 which address the authority of the Court to limit educational rights of a parent and appoint someone to make educational decisions, but in no way distinguishes between special education and general education students.</p> <p>If the Judicial Council intends for this section to cover all children, regardless of disability, whose parents’ rights to make education decisions are limited, then it is confusing to only cite to conflict of interest provisions in special education law. W&I Code Sections 361(a) and 726(b) also proscribe conflict of interest not specific to special education. While Social Workers and Probation Officers are expressly excluded as surrogate parents/educational representatives under Gov Code Section 7579.5 (unless retired), these persons may also pose a conflict of interest in the following matters related to general education students (those not receiving special education):</p> <ol style="list-style-type: none"> (1) Behavior and discipline hearings related to suspension and expulsion pursuant to Ed Code Section 48900 et seq. (2) Receipt of notice of suspension incident reports. (3) Consent to various releases. (4) Initiation of a Student Study Team review or a referral/review of a Section 504 Plan pursuant to the Rehabilitation Act of 1973 of accommodations/modifications for a child with a disability that affects a major life activity but does not require special education. <p>Further, appointments of surrogate parents for special education must not</p>	<p>regarding the requirements of a foster parent acting as a surrogate parent. If the foster parent does not meet these requirements, he or she would be prohibited from acting in this role.</p>
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	<p>have a conflict of interest as described in Gov Code Section 7579.5 and 34 C.F.R. Section 300.519. California prohibits appointments of foster parents if specifically ordered pursuant to Ed Code 56055(b)-(c). The Judicial Council draft provision confuses these distinct aspects of the federal and state law. It is unclear why the federal regulation, 34 CFR Section 303.19 definition of “parent” for Part C of IDEA, is referenced here— that definition does not express conflict of interest. However, an appropriately appointed parent surrogate is within the scope of the definition of a “parent” and would not have a conflict of interest under federal and state law. If the definition for “parent” is necessary here, it should be string cited with its parallel counterparts in federal and state statute: 34 C.F.R. Section 300.30; Ed Code Section 56028.</p> <p>d. Item no. 10 (now 12)—It is unclear what this provision is intended to declare: Is it a finding <i>and</i> order, or is it meant to initiate an inquiry into the education or developmental needs of the child?</p> <p>The current phrasing of this item suggests that information has been presented to the court that a need presently exists, but the options to check suggest otherwise by using “may”; ... <i>child may be eligible...</i>, <i>may have a disability...</i> Thus, it is unclear if the initial item phrasing is merely identifying that the child is having problems in school or with a major life activity, and further inquiry is needed to determine if the problem is due to a disability or other risk factors that can qualify the child for intervention and services.</p> <p>This provision should be divided into two separate provisions which make a finding and an order to clarify how the child’s educational and developmental needs may be met:</p> <p><i>10 (now 12). The child may have the following educational needs or education and developmental needs: (check all that apply)</i></p> <ul style="list-style-type: none"> <i>a. The child is between the age of birth to 3 years old and has been identified with a disability</i> <i>b. The child is between the age of birth to 3 years old and is suspected of having a disability.</i> 	<p>d. Agree to modify.</p>
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	<p>c. <i>The child is age 3 years or older and has been identified with a disability.</i></p> <p>d. <i>The child is age 3 years or older and is suspected of having a disability.</i></p> <p>e. <i>The child is currently eligible for special education or general education accommodations and modifications or early intervention services or regional center/developmental services.</i></p> <p>11 (now 13). <i>The educational representative is ordered to (check all that apply):</i></p> <p>a. <i>Submit a written referral for special education assessment and assessment under Section 504 of the Rehabilitation Act of 1973 to the Local Education Agency.</i></p> <p>b. <i>Submit a written referral for assessment for eligibility for Regional Center services.</i></p> <p>c. <i>Submit a written request to the Local Education Agency to convene the IEP Team to review or revise the child’s IEP.</i></p> <p>d. <i>Submit a written request to the Regional Center to convene the IPP Team to review or revise the child’s IPP.</i></p> <p>To report back to the Court on _____ in Dept. ____ at _____ am/pm (*Please note this could be fulfilled by submission of the proposed JV-537 form)</p>	
<p>Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services</p>	<p>a. Item 2—May want to clarify i.e., “example, due to confidentiality of placement and address listed herein.” The social worker would need to be clear that the JV-535 is now being sent/copied to the parent unless otherwise specified and so the social worker needs to ensure that sensitive information is not released.</p> <p>b. Item 9.e (now 11.e)—At the end of the first sentence I would add “(IEP)” as some only know the IEP by its acronym.</p> <p>c. Item 10 (now 12.f)—Add an additional letter “e. child has or needs on IEP.”</p> <p>d. Item 11 (now 16)—Between c and d add “or”</p>	<p>a. Agree to modify by adding example provided.</p> <p>b. Agree to modify.</p> <p>c. Agree to modify.</p> <p>d. Agree to modify.</p>

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

<p>Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel</p>	<p>a. Item 9.e (now 11.e)—Should remain “surrogate parent.”</p> <p>b. Item 9.f (now 11.f)—Should also include “surrogate parent.” See comments to 5.650(d).</p>	<p>a. Please see proposed advisory comment to rule 5.650.</p> <p>b. Agree to modify.</p>
<p>Deborah Escobedo Staff Attorney</p> <p>Maria Ramiu Attorney Youth Law Center</p>	<p>This form should be modified to include language to require that the order also be served on the school site in which the youth is enrolled, the LEA’s Educational Liaison, the youth’s caregiver, and, when appropriate, a school district’s special education office. This will ensure that the identity of the person responsible for making educational decisions for the child is known to all relevant individuals and entities.</p>	<p>Rule 5.650 (h) requires the JV-535 to be served on the foster youth liaison, the child’s attorney, and the educational representative. To the extent necessary, these persons may provide the form to the child’s school site and special education office. If the caretaker is not the educational representative, the form must be made available to the caretaker upon request.</p>

Form 536—Local Educational Agency Response to JV-535—Appointment of Surrogate Parent

Commentator	Comment Excerpt or Summary	Committee Response
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>Where a specific JV-535 exists, the District must file the JV-536 back with the court within 35 days of receipt. This allows the requisite 30 days to appoint, and 5 days to file. This form should also indicate that the appointed individual holds the rights and responsibilities of an educational representative appointed pursuant to Welf. & Inst. Code, § 361, including those responsibilities relative to AB 490, and 20 USC §§ 1232g(b) and 1401(23), as stated in proposed Rule of Court 5.502.</p>	<p>Agree to modify.</p>
<p>Dennis B. Jones Executive Officer Superior Court of Sacramento County</p>	<p>Form JV-536 should include a note that the local education agency should also send a copy of the form to Probation or CPS.</p>	<p>Agree to modify.</p>
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>a. Item 3—See comments on proposed rule 5.650(d).</p>	<p>a. The rules of court cannot declare California statutes to be inconsistent with federal law.</p>

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

	b. An item should be added to this proposed form to allow the LEA to notify the juvenile court it has failed to appoint a surrogate parent within 30 days, as required by proposed rule 5.650(d)(3).	b. Agree to modify.
Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel	Should remain “Surrogate Parent.” See comments to 5.650(d).	Agree to modify.

Form 537—Educational Representative or Surrogate Parent Information

Commentator	Comment Excerpt or Summary	Committee Response
Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.	13.a (now 12.a)—Add AB 3632 County Mental Health. This is important to add because it requires the LEA to make a referral to an outside agency and this is often met with extreme delays and/or lack of appropriate follow up, especially if a child moves to a new home before the County completes its assessment. Add a checkbox to include a request for an order for independent psycho-educational assessments. These are often necessary where the child has continuing educational concerns which the District’s assessments do not accurately/effectively identify. This is especially critical to help identify appropriate interventions for trauma-based mental health disabilities.	Agree to modify.
Dennis B. Jones Executive Officer Superior Court of Sacramento County	Footer—Footer references rule 5.650(k). This should be corrected to 5.650 (j)(2).	Agree to modify.
Jennifer Kelleher Directing Attorney LACY	The child's social worker or probation officer should be required to provide a copy of this proposed form to the child's educational representative enough in advance of each hearing where such information may be considered to enable the individual to supply meaningful input in a timely manner. In addition, this form should include an option for the educational decision maker to have his or her address and telephone number kept confidential.	There is no legal authority for the educational representative to make a determination that his or her address should be kept confidential. The form should be made available to the educational representative upon appointment and at all hearings.
Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court	a. Add the statement that 5 copies of the form must be filed with the court. Often this type of information, especially since it will be coming from a non-	a. Agree to modify.

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Juvenile Law: Ensuring Foster Children’s Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and 539)

<p>Superior Court of Sacramento County</p>	<p>lawyer, will be brought to the court on the day of a hearing, and not filed in advance. Delays are caused when the representative/surrogate- advocate shows up with a single copy of the document, and whether it is filed in advance or not, it should not be the job of the court clerk to make copies and serve the individual parties.</p> <p>b. Footer—The citation in the footer to Cal. Rules of Court, rule 5.650(k) is wrong. It should be to rule 5.650(j)(2).</p>	<p>b. Agree to modify.</p>
<p>Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel</p>	<p>Surrogate Parent should be included.</p>	<p>Agree to modify.</p>

Form 538—Findings and Orders Regarding Transfer From School of Origin

Commentator	Comment Excerpt or Summary	Committee Response
<p>L. David Casey Senior Deputy San Diego County Office of County Counsel Juvenile Dependency Division</p>	<p>Footnote indicating “Form Approved for Optional Use” → why is this form optional? Could be beneficial with every school move to ensure AB 490 compliance.</p>	<p>Some courts may have developed other ways of ensuring enforcement, and the committee does not want to require duplicative efforts. The committee may consider making the form mandatory in a future rules cycle.</p>
<p>Jenny Cheung Writ Supervisor Children’s Law Center of Los Angeles</p>	<p>No. 1, 2, and 4—Add 1.d “date of contact” after 1.c. Add “date of explanation” box to number 2. For number 4.a, 4.b, and 4.c, add a box for the date of notice, request, and efforts, respectively.</p>	<p>Agree to modify.</p>
<p>Katie Ford Attorney and EJW Fellow Sacramento Child Advocates, Inc.</p>	<p>No. 3—Add box 3.a. to indicate: There is a disagreement between the child, the educational representative, and the foster care education liaison regarding the child’s best interest to enrollment in their school of origin. The educational liaison must provide written documentation of why it’s not in the child’s best interest to remain in the origin school, and the child must be allowed to remain in their origin school pending resolution.</p> <p>Note: This must be filed within 2 days of the child’s home placement move outside of their origin school’s attendance area.</p>	<p>Agree to modify.</p>

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<p>Dennis B. Jones Executive Officer Superior Court of Sacramento County</p>	<p>JV-538 captures the findings and orders of the court. The document requires the bench officer to make certain findings/orders that are not identified as required to be included in the report to the court by the probation officer or social worker. Where will the bench officer get the information?</p>	<p>Please see rule 5.651(b) for the reporting requirements that will assist the court when making the findings and orders on JV-538. Form JV-538 does not include findings and orders regarding rule 5.651(e)(4)(D)-(F) (now (e)(4)(E)-(G)) because the court does not need to make findings regarding the statements of the child, social worker, probation officer, or educational representative.</p>
<p>Jennifer Kelleher Directing Attorney LACY</p>	<p>This proposed form should be deleted in its entirety for the reasons described in our comments on proposed rule 5.651(e)-(f). Although the intention behind the form is laudable, most courts will not have enough information to make most of the findings and orders requested by the form in the time allotted. For example, the actions in time #5 likely will not occur until after the placement change is made.</p>	<p>This form is optional and provides guidance to the court on how to provide oversight over placements that affect the child’s education and to ensure that each child is receiving the education to which he or she is entitled.</p>
<p>Hon. Kenneth G. Peterson Presiding Judge of the Juvenile Court Superior Court of Sacramento County</p>	<p>Title—The title and also the first line above the numbered paragraph of DRAFT 5 of the JV-538 form include the words “Findings and Orders.” But all of the information on the document qualifies as “findings” only. There are no “orders” on the JV-538. Those words should be eliminated.</p>	<p>Changes have been made to clarify that the form contains findings and orders.</p>
<p>Leah Van Lingen Program Specialist Policy and Program Support San Diego County Child Welfare Services</p>	<p>a. Item 5.c—does not flow with the introduction sentence in 5. Suggested rewording “Calculated the grades and credits of the child as of the date the child...”</p> <p>b. Footnote—Why is this form optional? It could be beneficial with every school move to ensure AB 490 compliance.</p>	<p>a. Agree to modify.</p> <p>b. Some courts may have developed other ways of ensuring enforcement, and the committee does not want to require duplicative efforts. The committee may consider making the form mandatory in a future rules cycle.</p>
<p>Avril D. Vazquez Deputy County Counsel Santa Clara County Office of the County Counsel</p>	<p>There is no statutory remedy if the court cannot make these findings and orders. The code sections referenced as support for this form do not designate Court involvement in this process.</p>	<p>Under Cal. Const. art. VI, § 6 and Welf. and Inst. Code, § 265, the Judicial Council has the authority to adopt rules of court governing practice and</p>

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		<p>procedure in juvenile court that are not inconsistent with statute. Section 304 provides that while a child is under the jurisdiction of the juvenile court, the juvenile court shall hear all issues regarding a child’s custody. This proposal creates procedures for the court to oversee placement decisions that affect a child’s educational rights.</p>
<p>Deborah Escobedo Staff Attorney</p> <p>Maria Ramiu Attorney Youth Law Center</p>	<p>See suggestions to rule 5.651(f)(3).</p>	<p>Agree to modify.</p>