

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR12-20

Title	Action Requested
Juvenile Law: Access to Services	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.502, 5.534, 5.650, 5.695, 5.708, and 5.790; renumber and amend rule 5.651 as rule 5.653; renumber rule 5.652 as rule 5.654; adopt new rules 5.651 and 5.652; and revise Judicial Council forms JV-225 and JV-535	January 1, 2013
	Contact
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Proposed by	
Family and Juvenile Law Advisory Committee	
Hon. Kimberly J. Nystrom-Geist, Cochair	
Hon. Dean T. Stout, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends the adoption, amendment, or revision of select rules and forms to render them consistent with recent legislation intended to improve access to educational and developmental services for juvenile dependents and wards. Specifically, the advisory committee recommends that rule 5.652 be adopted and rules 5.650–5.654, 5.695, and 5.790 be amended or renumbered to be consistent with the new requirements of Senate Bill 368 on the limitation of parental authority to make decisions concerning dependent children’s developmental services; that rules 5.651 and 5.653 be amended to reflect the extension in Assembly Bill 1933 extension of a child’s right to remain in his or her school of origin to “the duration of the jurisdiction of the court”; and that rules 5.695 and 5.708 be amended to be conform to the requirements in AB 791 that the juvenile court, whenever it denies or terminates reunification services, order that the agency provide the child's birth certificate to the caregiver and, if the child is over 16, to the child. Finally, the committee recommends that rule 5.790 be amended to include a provision that requires the court to make findings regarding the probation department’s family-finding investigation required by Welfare and Institutions Code section 628(d), which was added by AB 938 in 2009.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

This proposal recommends the adoption, amendment, or revision of select rules and forms to render them consistent with recent legislation that improves access to educational and developmental services for juvenile dependents and wards. Specifically, Senate Bill 368 establishes new requirements for the limitation of parental authority to make decisions concerning dependent children's developmental services; Assembly Bill 1933 extends a child's right to remain in his or her school of origin to "the duration of the jurisdiction of the court"; and AB 791 requires the juvenile court, whenever it denies or terminates reunification services, to order that the agency provide the child's birth certificate to the caregiver and, if the child is over 16, to the child. Two years ago, the Judicial Council amended rule 5.695, which covers the dispositional hearing in dependency, to include judicial findings and orders regarding the family-finding requirements in Welfare and Institutions Code section 309(e),¹ which was added by AB 938. The same legislation added section 628(d), which imposed nearly identical requirements in delinquency cases, but the corresponding dispositional hearing rule in delinquency, rule 5.790, was not amended. The committee recommends amending rule 5.790 to include a provision for judicial findings and orders regarding the probation department's family-finding investigation, consistent with statute.

Senate Bill 368: Developmental Services

Senate Bill 368 (Stats. 2011, ch. 471) amended sections 319, 361, and 726, among others, to authorize the court to limit the right of a parent or guardian to make developmental-services decisions for the child and to appoint a representative to make those decisions on the child's behalf. Under the former law, court-appointed educational representatives lacked express authority to access regional center services and other developmental services essential to the growth and well-being of foster children. SB 368 gives a "developmental services decision maker" the authority to access a child's regional center records and to seek developmental services from a regional center on behalf of the child.

The substantive and procedural requirements for the limiting the right to make developmental services decisions for the child parallel the requirements for limiting the right to make educational decisions. In most cases, too, the responsible adult serving as the child's educational representative would also serve as the developmental decision maker. The requirements diverge somewhat, however, with respect to the authority and duties of the two spheres of decisionmaking.

The committee, therefore, recommends the following:

- Incorporating the authority to limit developmental services decision-making rights into existing rules 5.650, 5.695, 5.708, and 5.790, which currently authorize the limitation of educational rights.

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

- Splitting off the second part of rule 5.650 into a separate rule, which would address the appointment, rights, and responsibilities of the educational representative.
- Making clarifying and technical amendments to the rule, including amendments to cross-references.
- Adding a definition of “developmental services decision maker” to rule 5.502.
- Adding a new subdivision on the appointment of a developmental services decision maker to rule 5.534.
- Adopting a new, separate rule—5.652—to address the appointment, authority, and duties of the “developmental services decision maker” required by SB 368.
- Renumbering existing rule 5.651 as 5.653 and amending it to clarify references to developmental services decision making, to eliminate the simple restatement of statutory language, and to correct cross-references.
- Renumber existing rule 5.652 as 5.654.
- Revising *Your Child’s Health and Education* (form JV-225) to solicit information about the child’s receipt of developmental services.
- Revising *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child’s Educational Needs* (form JV-535) to allow the court to use this form to limit a parent’s right to make developmental decisions for a child, to appoint a developmental services decision maker, and to specify elements of the decision maker’s authority.

It has also come to the committee’s attention that parents and their attorneys are often reluctant to submit form JV-225 because the form requires the parent to sign it under penalty of perjury and states: “This means that if I lie on this form, I am guilty of a crime.” The requirement substantially hinders the form’s goal of collecting as much information about the child’s medical and educational history as possible. The committee recommends that the requirement be rescinded and stricken from the form.

Assembly Bill 1933: Right to Continue in School of Origin

In response to research indicating that school mobility contributes to lower performance and to the federal Fostering Connections to Success Act (Pub.L. 110-351, 122 Stat. 3949) and Assembly Bill 1933 (Stats. 2010, ch. 563), which amended section 48853.5 of the Education Code to extend a foster child’s right to continue in his or her school of origin from “the duration of the academic school year” to “the duration of the jurisdiction of the court.” The committee recommends the following:

- Amending renumbered rule 5.653(e)(4)(A) to incorporate this change.
- Updating the references in rule 5.653(b)(1)(C) to restructured section 48853.5.

Assembly Bill 791: Receipt of Birth Certificate

Assembly Bill 791 (Stats. 2011, ch. 59) amended sections 361.5 and 366.21 to require the juvenile court, when it denies or terminates reunification services to a parent or guardian, to order that the child's caregiver receive the child's birth certificate. The bill also requires the court to order, when appropriate, that a child 16 years of age or older receive his or her birth certificate. These requirements improve a foster child's access to educational and extracurricular activities and provide an opportunity to correct any inaccurate information on the birth certificate. The committee recommends the following:

- Amending rules 5.695(h), which addresses the provision or denial of reunification services at the dispositional hearing, and 5.708(n), which addresses the requirements for setting a hearing under section 366.26, to implement the statutory requirements.
- Amending rule 5.695(h) to remove elements that simply restate statutory language.

Assembly Bill 938: Family Finding and Engagement

Assembly Bill 938 (Stats. 2009, ch. 431) added sections 309(e) and 628(d) to require the social worker or probation officer to use due diligence to identify and locate a child's relatives, as defined, within 30 days of the child's removal from the home and to notify located relatives of certain statutorily specified information. Existing rule 5.637(a), effective January 1, 2010, reiterates these requirements for both social workers and probation officers.

The Judicial Council also amended rule 5.695 to establish a procedure in dependency proceedings for the court to consider whether the social services agency has used due diligence in conducting its investigation to identify, locate, and notify relatives, and to affirm the court's authority to order the agency to conduct the required investigation if it has not done so. Rule 5.790 was not amended at the time to establish a corresponding procedure for delinquency proceedings, despite the applicability of both section 628(d) and rule 5.637 to probation officers in delinquency cases. Because of the need to amend rule 5.790 now to conform to SB 368, the committee also recommends the following:

- Amending rule 5.790 to establish a procedure for the court to review the probation officer's compliance with section 628(d) and rule 5.637 and make findings and orders consistent with that review.

Alternatives considered

The committee does not recommend leaving the rules and forms unmodified. The modifications in this proposal are required to bring the rules and forms into conformity with statute, to make

technical amendments, and to simplify the rules by eliminating language that simply duplicates statute. The sole departure from these criteria is the recommendation to remove the requirements that parents complete *Your Child's Health and Education* (form JV-225) under penalty of perjury. The committee recommends removing this requirement because, as explained above, it has had a chilling effect on the provision of information regarding a child's health and education.

Implementation Requirements, Costs, and Operational Impacts

The costs of implementing the proposal would be modest. The amendments to rules 5.650 and 5.651 and the adoption of rule 5.652, as well as some of the revisions to forms JV-225 and JV-535, would authorize the juvenile court to consider limiting parental control over decisions affecting a child's developmental services. This might increase the length of some hearings. One amendment to rule 5.650, however, would relieve the court of the need to use form JV-535 every time it considered whether to limit a parent's right to make educational or developmental services decisions, leading to increased court efficiency and flexibility. The form revisions would require courts to incur one-time costs associated with printing and distributing new forms.

The amendment to rule 5.790 regarding family finding would require the juvenile court to consider whether the probation department had fulfilled its statutory and rule-based duty to use due diligence to conduct an investigation to identify, locate, and notify the relatives of a child at risk of entering foster care within thirty days of that child's removal from parental custody. Rule 5.695 already requires the court to make these findings at dispositional hearings in dependency proceedings. Although the requirement might increase the length of dispositional hearings in delinquency cases, the committee has not received any feedback indicating that the requirement has caused undue delays in dependency proceedings over the year since it took effect. The requirement is, however, calculated to reduce long-term costs to the courts and social services agencies by augmenting the pool of potential caregivers for children and youth and providing them with a better chance of establishing lifelong connections with loving relatives.

In addition, rule 5.637 already reflects the probation department's statutory duty to conduct this investigation; the addition of the findings to rule 5.790 would not impose any additional duties on the department.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should form JV-535 be revised to include an option for the court to indicate that a parent or guardian has retained educational or developmental services decisionmaking rights and to record contact information?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Rules 5.502, 5.534, 5.650, 5.651, 5.652, 5.653, 5.654, 5.695, 5.708, and 5.790, at pages 7–31
2. Forms JV-225 and JV-535, at pages 32–39
3. Senate Bill 368 (Stats. 2011, ch. 471), www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0351-0400/sb_368_bill_20111004_chaptered.pdf
4. Assembly Bill 1933 (Stats. 2010, ch. 563), www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1901-1950/ab_1933_bill_20100930_chaptered.pdf
5. Assembly Bill 791 (Stats. 2011, ch. 59), www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0751-0800/ab_791_bill_20110701_chaptered.pdf
6. Assembly Bill 938 (Stats. 2009, ch. 431), www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0901-0950/ab_938_bill_20091011_chaptered.pdf

Rules 5.502, 5.534, 5.650, 5.695, 5.708, and 5.790 of the California Rules of Court would be amended; rule 5.651 would be renumbered as rule 5.653 and amended; rule 5.652 would be renumbered as rule 5.654, and new rules 5.651 and 5.652 would be adopted, effective January 1, 2013, to read:

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

2
3 Definitions (§§ 202(e), 319, 361, 361.5(a)(3), 628.1, 636, 726, 727.3(c)(2), 727.4(d),
4 11400(v), 11400(y); 20 U.S.C. § 1415; 25 U.S.C. § 1903(2))

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

7
8 (1)–(11) ***

9
10 (12) “Developmental services decision maker” means the responsible adult appointed by
11 the court to make developmental services decisions for a child when the court has
12 limited the parent’s or guardian’s rights to make those decisions. The
13 developmental services decision maker acts as the child’s authorized representative,
14 spokesperson, decision maker, and parent in regard to the delivery and receipt of
15 developmental services as discussed in sections 319, 361, and 726.

16
17 ~~(12)~~(13) “Domestic partner” means one of two adults who have chosen to share one
18 another’s lives in an intimate and committed relationship of mutual caring as
19 described in Family Code section 297.

20
21 ~~(13)~~(14) ***

22
23 ~~(14)~~(15) ***

24
25 ~~(15)~~(16) ***

26
27 ~~(16)~~(17) ***

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29 ~~(17)~~(18) ***

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31 ~~(18)~~(19) ***

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33 ~~(19)~~(20) ***

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35 ~~(20)~~(21) ***

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37 ~~(21)~~(22) ***

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39 ~~(22)~~(23) ***

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1 ~~(23)~~(24) ***
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33 ~~(39)~~(40) ***
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35 ~~(40)~~(41) ***
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37 ~~(41)~~(42) ***
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39

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

2
3 (a)–(j) ***

4
5 **(k) Appointment of developmental services decision maker (§§ 319, 361, 726)**

6
7 If the court limits the right of a parent to make developmental services decisions for
8 the child, the court should immediately proceed under rule 5.652 to appoint a
9 developmental services decision maker for the child.

10
11 ~~(k)(l)~~ ***

12
13 ~~(l)(m)~~ ***

14
15 ~~(m)(n)~~ ***

16
17 ~~(n)(o)~~ ***

18
19 ~~(o)(p)~~ ***

20
21 ~~(p)(q)~~ ***

22
23
24 **Rule 5.650. Appointment of educational representative—Limitation of parent’s or**
25 **guardian’s rights to make educational or developmental services decisions**
26 **(§§ 319, 361, 366, 366.27, 726; 20 U.S.C. § 1415; 34 C.F.R. §§ 300.300, 300.519)**

27
28 ~~(a) — Parent’s or guardian’s educational rights limited (§§ 319, 361, 366, 366.27,~~
29 ~~726; 20 U.S.C. § 1415; 34 C.F.R. §§ 300.519, 300.300)~~

30
31 The court may, to the extent necessary to protect the child, limit a parent’s or guardian’s
32 rights to make educational or developmental services decisions for a child who is
33 declared a dependent or ward of the court under section 300, 601, or 602, but the
34 limitations may not exceed those necessary to protect the child. Before disposition, the
35 court may temporarily limit a parent’s or guardian’s right to make educational or
36 developmental decisions under section 319(g). The court may limit a parent’s or
37 guardian’s educational or developmental decision-making rights regardless of whether
38 the child is, or may be eligible for, special education and related services. When it limits
39 the right of a parent or guardian to make educational decisions for a child, the court must
40 use *Findings and Orders Limiting Right to Make Educational Decisions for the Child,*
41 *Appointing Educational Representative, and Determining Child’s Educational Needs*
42 (form JV-535). The court may also use form JV-535 to limit the right of a parent or
43 guardian to make developmental services decisions for the child.

1 **(a) Temporary limitation (§ 319)**

2
3 At the initial hearing or anytime before disposition, the court may, under section
4 319(g), temporarily limit a parent's or guardian's rights to make educational or
5 developmental services decisions for a child. If the court does temporarily limits
6 the parent's or guardian's rights to make educational or developmental services
7 decisions, the court must reconsider the need, if any, to limit educational those
8 rights at the disposition hearing.

9
10 **(b) No delay of initial evaluation for services**

11
12 The child's initial evaluation for special educational or developmental services
13 need not be postponed to await parental or guardian consent or appointment of an
14 educational representative or developmental services decision maker if one or more
15 of the following circumstances are met:

- 16
17 (1) The court has limited or temporarily limited the educational or developmental
18 services decisionmaking rights of the parent or guardian, and consent for an
19 initial assessment has been given by an individual appointed by the court to
20 represent the child;
21
22 (2) The local education agency or regional center cannot discover the
23 whereabouts of the parent or guardian; or
24
25 (3) The parent's rights have been terminated or the guardianship has been set
26 aside.

27
28 **(c) Judicial Determination**

29
30 If the court determines that the child is in need of any assessments, evaluations, or
31 services, including special education, mental health, developmental, and other
32 related services, the court must direct an appropriate person to take the necessary
33 steps to request those assessments, evaluations, or services.

34
35
36 **Rule 5.651. Appointment of educational representative (§§ 319, 361, 366, 366.27,**
37 **726; 20 U.S.C. § 1415; 34 C.F.R. § 300.519)**

38
39 **(b)(a) Order and Appointment**

40
41 In its order limiting the right of a parent or guardian to make educational decisions
42 for a child, the court must document that one of the ~~following~~ actions in (1) or (2)
43 has been taken, or, in the alternative, that a finding under (3) has been made:

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- (1) The court has appointed an educational representative for the child;
- (2) ~~The court has ordered a permanent plan for the child;~~ The child's permanent plan is placement with an identified foster parent, relative caregiver, or nonrelative extended family member, and the court finds that the ~~foster parent, relative caregiver, or nonrelative extended family member~~ identified caregiver may exercise educational rights as provided in Education Code section 56055 and rule 5.502(~~1314~~) and is not prohibited from exercising educational rights by section 361 or 726 or by 34 Code of Federal Regulations section 300.519 or 303.19; or

(3) ***

~~(e)(b)~~ ***

~~(d)(c)~~ **Referral to local educational agency to appoint a surrogate parent for a child who is or may be eligible for special education and related services (§§ 361, 726; Gov. Code, § 7579.5; 20 U.S.C. § 1415)**

(1)-(2) ***

(3) The court must direct the local educational agency that when the local educational agency receives form JV-535, requesting prompt appointment of a surrogate parent, the local educational agency must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court's referral.

(A) ***

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

(i)-(ii) ***

(4) Whenever the surrogate parent resigns or the local educational agency terminates the appointment of a surrogate parent for a dependent or ward under Government Code section 7579.5(h) or replaces the surrogate parent for any other reason, it must notify the court and the child's attorney on form JV-536 within seven calendar days of the resignation, termination, or replacement. The child's attorney may request a hearing for appointment of a new educational representative by filing *Request for Hearing Regarding Child's Education* (form JV-539) and must provide notice of the hearing as

1 provided in (g)(2). The court on its own motion may direct the clerk to set a
2 hearing.

3
4 ~~(e)(d)~~ ***

5
6 ~~(f)(e)~~ **Authority and responsibilities of educational representative (§§ 319, 360, 361,**
7 **635, 706.5, 726; Ed. Code, § 56055; Gov. Code, § 7579.5; 34 C.F.R. § 300.519)**

8
9 (1) ***

10
11 (2) The educational representative has the following additional responsibilities:

12
13 (A)–(B) ***

14
15 (C) Complying with federal and state confidentiality laws including section
16 827 and Government Code section ~~7579.1(f)~~7579.5(f);

17
18 (D)–(E) ***

19
20 (3) ***

21
22 ~~(g)(f)~~ **Educational representative's term of service** **Resignation of representative** (§§
23 **361, 726; Gov. Code § 7579.5)**

24
25 ~~(1) The educational representative must make educational decisions for the child~~
26 ~~until:~~

27
28 ~~(A) The court restores the right of the parent or guardian to make~~
29 ~~educational decisions for the child;~~

30
31 ~~(B) The child reaches 18 years of age, unless the child chooses not to make~~
32 ~~his or her own educational decisions or is deemed incompetent by the~~
33 ~~court;~~

34
35 ~~(C) The court appoints another educational representative for the child~~
36 ~~under this rule;~~

37
38 ~~(D) The court appoints a successor guardian or conservator; or~~

39
40 ~~(E) The court finds that the foster parent, relative caregiver, or nonrelative~~
41 ~~extended family member may make educational decisions for the child~~
42 ~~under Education Code section 56055(a) because:~~

- 1 (i) ~~The child is placed in a planned permanent living arrangement~~
2 ~~under section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or~~
3 ~~727.3(b)(6);~~
4
5 (ii) ~~The court has limited the parent's or guardian's educational~~
6 ~~rights; and~~
7
8 (iii) ~~The foster parent, relative caregiver, or nonrelative extended~~
9 ~~family member is not otherwise excluded from making education~~
10 ~~decisions by the court, by section 361 or 726, or by 34 Code of~~
11 ~~Federal Regulations section 300.519 or 303.19.~~
12

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

25 **(h)(g) Service of order**
26

27 The clerk will provide a copy of the completed form JV-535 and any received form
28 JV-536 or JV-537 to the child if 10 years or older, the child's attorney, the social
29 worker and the probation officer, the foster youth liaison, as defined in Education
30 Code section 48853.5, and the educational representative at the end of the
31 proceeding or no later than seven calendar days after the date of the order. The
32 clerk will make the form available to the parents or guardians, unless otherwise
33 indicated on the form; the CASA volunteer; and, if requested, all other persons
34 provided notice under section 293. Whoever is directed by the court on form
35 JV-535 must provide a copy of the form to the local educational agency.
36

37 **(i)(h) Education and training of educational representative**
38

39 If the educational representative asks for assistance in obtaining education and
40 training in the laws incorporated in rule ~~5.651(a)~~ 5.653(a), the court must direct the
41 clerk, social worker, or probation officer to inform the educational representative of
42 all available resources, including resources available through the California
43 Department of Education and the local educational agency.

1
2 **(j)(i) Notice and participation in juvenile court hearings**

3
4 (1) ***

5
6 (2) The educational representative may use form JV-537 to explain the child's
7 educational needs. The court may allow the educational representative to be
8 present for the purposes of participating in the portions of the juvenile court
9 hearing that concern the child's education, including school placement, and
10 of responding to questions or issues raised by the form. The court may allow
11 the educational representative to participate in any mediation as provided in
12 rule 5.518 at and participate in any juvenile court hearing or mediation unless
13 otherwise prohibited.
14

15 **Advisory Committee Comment**

16
17 Under the Individuals With Disabilities Education Act (IDEA), the court may appoint a surrogate
18 parent for a child to represent the child in all matters relating to the identification, evaluation, and
19 educational placement of the child and to the provision of the child's free, appropriate public
20 education. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519.) Under Welfare and Institutions Code
21 sections 361 and 726, the court may appoint a responsible adult as an educational representative
22 to represent the child's educational needs when the parent's educational rights have been limited.
23 When the court appoints an educational representative, that person is responsible for representing
24 all the child's educational needs, including any special education and related services needs.
25 When making this appointment, the court and all court participants are encouraged to look to all
26 persons in the child's life, including relatives, nonrelated extended family members, and those
27 persons with whom the child has an important relationship, to represent the child's educational
28 needs.
29

30 If the court cannot find anyone to appoint as the child's educational representative and special
31 education needs are not indicated, sections 361 and 726 state that the court can make education
32 decisions for the child with the input of interested persons. However, if the court cannot find
33 someone to appoint as educational representative and special education is indicated, the court
34 must refer the matter to the local educational agency (LEA) for appointment of a surrogate parent.
35 Sections 361 and 726 do not permit the court to make educational decisions for a child in these
36 cases. The surrogate parent assigned by the LEA acts as a parent for the purpose of making
37 educational decisions on behalf of the child. (Gov. Code, § 7579.5(c); Ed. Code, § 56028; 34
38 C.F.R. § 300.30(b)(2); see 20 U.S.C. §§ 1401(9), 1414(d).)
39

1 **Rule 5.652. Appointment of developmental services decision maker (§§ 319, 361,**
2 **726, 4701.6)**

3
4 **(a) Appointment**

5
6 If the court limits the right of a parent or guardian to make developmental services
7 decisions for a child, the court must at the same time appoint a responsible adult to
8 make those decisions for the child unless:

- 9
10 (1) The child’s permanent plan is placement with an identified foster parent,
11 relative caregiver, or nonrelative extended family member, and the court
12 finds that the identified caregiver may represent the child in matters related to
13 developmental services under section 361 or 726 and rule 5.502(12); or
14
15 (2) The court cannot identify a responsible adult to serve as the child’s
16 developmental services decision maker and, if the child is placed with an
17 identified caregiver, and the child’s caregiver is not authorized to represent
18 the child in matters related to developmental services, in which case the court
19 may, with the input of any interested person, make developmental services
20 decisions for the child.

21
22 **(b) Authority**

23
24 The developmental services decision maker may:

- 25
26 (1) Access the child’s information and records as specified in sections 319(g),
27 361(a), and 726(b).
28
29 (2) Act on the child’s behalf
30
31 (A) in the individual program planning process under sections 4646,
32 4646.5, and 4648,
33
34 (B) in the fair hearing process under section 4700 et seq., and
35
36 (C) as otherwise specified in the court order.

37
38 **(c) Duties**

39
40 The developmental services decision maker must:

- 41
42 (1) Ensure that any developmental services provided to the child by a regional
43 center are consistent with the child’s individual program plan and the

1 requirements of the Lanterman Developmental Disabilities Services Act,
2 section 4500 et seq.; and

- 3
4 (2) Comply with all applicable federal and state confidentiality laws, including
5 section 827.

6
7 **(d) Limits on appointment (§§ 361, 726, 4701.6(b))**

- 8
9 (1) The court should consider appointing the same responsible adult as both the
10 educational representative and the developmental services decision maker.
11
12 (2) The court should consider appointing a responsible adult relative, nonrelative
13 extended family member, foster parent, family friend, mentor, or CASA
14 volunteer as the developmental services decision maker if one is available
15 and willing to serve.
16
17 (3) The court may not appoint any individual as the developmental services
18 decision maker if that person would have a conflict of interest as defined by
19 section 361(a), 726(b), or 4701.6(b).

20
21 **(e) Service of order**

22
23 The clerk will provide a copy of the completed form JV-535 to the child if 10 years
24 old or older, the child’s attorney, the social worker or the probation officer, and the
25 developmental services decision maker at the end of the proceeding or no later than
26 seven calendar days after the date of the order. The clerk will make the form
27 available to the parent or guardian unless otherwise indicated on the form; to the
28 CASA volunteer; and, if requested, to any other person provided notice under
29 section 293. Whoever is directed by the court on form JV-535 must provide a copy
30 of that form to the appropriate regional center.

31
32 **(f) Notice and participation in juvenile court hearings**

- 33
34 (1) The developmental services decision maker must receive notice of all
35 juvenile court hearings regarding or affecting the child’s developmental
36 services. This includes the notice and participation provided in rule 5.530 for
37 all regularly scheduled juvenile hearings, in rule 5.512 for joint assessment
38 hearings, and in rule 5.575 for joinder proceedings.
39
40 (2) The court may allow the developmental services decision maker to be present
41 at and to participate in any juvenile court hearing or mediation that concerns
42 the child’s developmental services.

1
2 **Rule ~~5.6515.653~~. Educational rights of children before the juvenile court**

3
4 (a) ***

5
6 (b) **Conduct of hearings related to, or that may affect, a child's education**

7
8 (1) To the extent the information is available, at the initial or detention hearing
9 the court must consider:

10
11 (A) Who holds educational and developmental services decisionmaking
12 rights;

13
14 (B) ~~If~~ Whether the child was enrolled in, and is attending, the child's
15 school of origin as defined in Education Code section 48853.5(e);

16
17 (C) If the child is no longer attending the school of origin, whether;

18
19 (i) ***

20
21 (ii) ~~Prior to~~ Before making any recommendation to move a foster
22 child from his or her school of origin, the educational liaison
23 provided the child and the person holding the right to make
24 educational decisions for the child with a written explanation of
25 the basis for the recommendation and how this recommendation
26 serves the foster child's best interest as provided in Education
27 Code section ~~48853.5(d)(3)~~ 48853.5(d)(6);

28
29 (iii) Without obtaining a waiver, the child was not afforded his or her
30 right to attend his or her school of origin under Education Code
31 section 48853.5(d)(1); and

32
33 (iv) The child was immediately enrolled in the new school as
34 provided in Education Code section ~~48853.5(d)(4)~~ 48853.5(d)(7).

35
36 (D) Whether the parent's or guardian's educational or developmental
37 services decisionmaking rights should be temporarily limited; and

38
39 (E)

40
41 (2) At the disposition hearing and at all subsequent hearings provided for in (a),
42 the juvenile court must address and determine the child's general and special
43 educational needs, identify a plan for meeting those needs, and provide a

1 clear, written statement using ~~Findings and Orders Limiting Right to Make~~
2 ~~Educational Decisions for the Child, Appointing Educational Representative,~~
3 ~~and Determining Child's Educational Needs~~ (form JV-535), specifying who
4 holds the educational and developmental services decisionmaking rights for
5 the child. The court's findings and orders must address the following:
6

7 (A) ***
8

9 (B) ~~Any~~ What services, assessments, or evaluations, including those for
10 special education and related services, ~~that~~ the child may need;
11

12 (C)–(D) ***
13

14 (E) Whether the parent's or guardian's educational or developmental
15 services decisionmaking rights should be limited;
16

17 (i) If the court finds the parent's or guardian's educational and
18 developmental services decisionmaking rights should not be
19 limited, the court must direct the parent to his or her rights and
20 responsibilities in regard to the child's education developmental
21 services as provided in rules 5.650(e) and (f) 5.651(d)–(e) and
22 5.652(b)–(c); or
23

24 (ii) If the court finds the parent's or guardian's educational or
25 developmental services decisionmaking rights should be limited,
26 the court must determine who will hold the child's educational or
27 developmental services decisionmaking rights. The court must
28 explain to the parent or guardian why the court is limiting his or
29 her ~~educational~~ rights and must ~~direct~~ refer the parent or guardian
30 to the rights and responsibilities of the educational representative
31 or developmental services decision maker as provided in rules
32 5.650(e) and (f) 5.651(d)–(e) and 5.652(b)–(c).
33

34 **(c) Reports for hearings related to, or that may affect, a child's education**
35

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

41 (1)–(4) ***
42
43

1 (5) Whether the child may have physical, mental, or learning-related disabilities
2 or other special education needs and is in need of or is already receiving
3 special education and related services as provided by the laws incorporated in
4 rule ~~5.651(a)(3)~~ 5.653(a)(3);

5
6 (6) ***

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

11
12 (8) ***

13
14 (9) Whether the child is or may be eligible for regional center services or is
15 already receiving regional center services. Copies of the current
16 individualized family services (IFSP) plan as defined in section 1436 ~~under~~
17 of title 20 of the United States Code, the current individual program plan
18 (IPP) developed under Welfare and Institutions Code section 4646, and the
19 current life quality assessments as defined in Welfare and Institutions Code
20 section 4570 should be attached to the report;

21
22 (10) Whether the parent's or guardian's educational or developmental services
23 decisionmaking rights have been or should be limited;

24
25 (11) If the social worker or probation officer recommends limiting the parent's or
26 guardian's right to make educational or developmental services decisions, the
27 reasons those rights should be limited and the actions that the parent or
28 guardian may take to restore those rights if they are limited;

29
30 (12) If the parent's or guardian's educational or developmental services
31 decisionmaking rights have been limited, who holds ~~the child's educational~~
32 those rights;

33
34 (13)–(15) ***

35
36 **(d) Continuances or stay of jurisdiction**

37
38 If any continuance provided for in rules 5.686 and 5.782 or stay of jurisdiction
39 provided for in rule 5.645 is granted, the child must continue to receive all services
40 or accommodations required by the laws incorporated in ~~rule 5.651(a)(3)~~.

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

2
3 This subdivision applies to all changes of placement including the initial placement
4 and all subsequent changes of placement.
5

6 (1) At any hearing that relates to or may affect the child’s education and that
7 follows a removal of the child from the school of origin, the court must find
8 that:
9

10 (A) ***

11
12 (B) If the child had a disability and an active individualized education
13 program prior to removal, the social worker or probation officer, at
14 least 10 days before the change of placement, notified in writing the
15 local educational agency that provided a special education program for
16 the child prior to removal and the receiving special education local plan
17 area, as ~~defined~~ used in Government Code section 7579.1, of the
18 impending change of placement.
19

20 (2) ***

21
22 (3) If removal from the school of origin is disputed, the child must be allowed to
23 remain in the school of origin pending this hearing and pending the resolution
24 of any disagreement between the child, parent, guardian, or educational
25 representative and the school district.
26

27 (4) If the court, the child’s attorney, or the person who holds educational rights
28 requests a hearing, at the hearing the court must find that the social worker or
29 probation officer provided a report no later than two court days after form
30 JV-539 was filed, and that the report included the information required by
31 (b)(1)(C)(i) and (ii) and:
32

33 (A) ~~Whether~~ A discussion of whether the local educational agency has
34 allowed the foster child ~~has been allowed~~ to continue his or her
35 education in the school of origin for the duration of the ~~academic~~
36 school-year jurisdiction of the court;
37

38 (B) ~~Whether~~ A discussion of whether a dispute exists regarding the request
39 of a foster child to remain in the school of origin and whether the foster
40 child has been afforded the right to remain in the school of origin
41 pending resolution of the dispute;
42

1 (C) ~~Information addressing~~ A discussion of whether the information
2 sharing and other requirements in section 16501.1(c)(2) and Education
3 Code section 49069.5 have been followed;

4
5 (D) ~~Information~~ A discussion addressing how the proposed change serves
6 the best interest of the child;

7
8 (E)–(G) ***

9
10 (f) ***

11
12
13 ~~Rule 5.653.~~ Rule 5.654. ***

14
15 ***

16
17 **Rule 5.695. Findings and orders of the court—disposition**

18
19 (a)–(b) ***

20
21 (c) **Limitations on parental control (§§ 245.5, 319, 361, 362; Gov. Code, § 7579.5)**

22
23 (1)–(2) ***

24
25 (3) The court must consider whether it is necessary to limit the right of the parent
26 or guardian to make educational or developmental services decisions for the
27 child. If the court limits the right, it must follow the procedures ~~stated~~ in rules
28 5.650–5.652.

29
30 (d)–(e) ***

31
32 (f) **Family-finding determination**

33
34 (1) The court must consider whether the social worker has used due diligence in
35 conducting the investigation to identify, locate, and notify the child’s
36 relatives. The court may consider the activities listed in (g) as examples of
37 due diligence ~~the activities listed in subdivision (g) of this rule.~~

38
39 If the disposition hearing is continued, the court may set a hearing to be held
40 at any time after 30 days from the date of removal to consider whether the
41 social worker has used due diligence in conducting the investigation to
42 identify, locate, and ~~contact~~ notify the child’s relatives.
43

1 (2) The court must make one of the following findings:
2

3 (A) The social worker has used due diligence in conducting ~~its~~ his or her
4 investigation to identify, locate, and notify the child’s relatives; or
5

6 (B) The social worker has not used due diligence in conducting ~~its~~ his or
7 her investigation to identify, locate, and notify the child’s relatives. If
8 the court makes this finding, the court may order the social worker to
9 use due diligence in conducting an investigation to identify, locate, and
10 notify the child’s relatives—except for any individual the social worker
11 identifies who is inappropriate to notify under rule 5.637(b)—and may
12 require a written or oral report to the court at a later time.
13

14 **(g) Due Diligence**
15

16 When making the finding required under ~~paragraph (f)(2) of this rule~~, the court may
17 consider, among other examples of due diligence ~~to identify, locate, and notify the~~
18 ~~child’s relatives~~, whether the social worker has done any of the following:
19

20 (1) Asked the child, in an age-appropriate manner and consistent with the child’s
21 best interest, about his or her relatives;
22

23 (2) Obtained information regarding the location of the child’s relatives;
24

25 (3) Reviewed the child’s case file for any information regarding relatives;
26

27 (4) Telephoned, e-mailed, or visited all identified relatives;
28

29 (5) Asked located relatives for the names and locations of other relatives;
30

31 (6) Used Internet search tools to locate relatives identified as supports; or
32

33 (7) Developed tools, including a genogram, family tree, family map, or other
34 diagram of family relationships, to help the child or parents to identify
35 relatives.
36

37 **(h) Provision of reunification services (§ 361.5)**
38

39 ~~(1) Except as provided in (6), if~~ Whenever a child is removed from the custody
40 of a parent or legal guardian, the court must order the county welfare department to
41 provide reunification services to the child and the child’s mother and statutorily
42 presumed father, or the child’s legal guardian, to facilitate reunification of the
43 family consistent with the requirements, exceptions, and limitations in section

1 361.5. On a finding and declaration of paternity by the juvenile court or proof of a
2 prior declaration of paternity by any court of competent jurisdiction, the juvenile
3 court may order services for the child and the biological father, if the court
4 determines that such services will benefit the child.
5

6 For a child who was three years of age or older on the date of initial removal,
7 services must be provided during the time period beginning with the dispositional
8 hearing and ending 12 months after the date the child entered foster care, as defined
9 by section 361.49. For a child who was under three years of age on the date of
10 initial removal, services must be provided for a period of 6 months from the
11 dispositional hearing, but no longer than 12 months from the date the child entered
12 foster care, as defined by section 361.49. The time period for the provision of
13 family reunification services must be calculated consistent with section 361.5(a).
14 The court must inform the parent or legal guardian of a child who was under three
15 when initially removed that failure to participate regularly and make substantive
16 progress in court-ordered treatment programs may result in the termination of
17 reunification efforts after 6 months from the date of the dispositional hearing.
18

19 ~~(2) If a child is a member of a sibling group removed from parental custody at~~
20 ~~the same time, and one member of the sibling group was under three at the~~
21 ~~time of the initial removal, reunification services for some or all members of~~
22 ~~the sibling group may be limited to 6 months from the dispositional hearing,~~
23 ~~and no later than 12 months from the date the children entered foster care.~~
24 ~~The court must inform the parent or legal guardian of a child who is a~~
25 ~~member of such a sibling group that failure to participate regularly and make~~
26 ~~substantive progress in court-ordered treatment programs may result in~~
27 ~~termination of reunification efforts after 6 months for one or more members~~
28 ~~of the sibling group.~~
29

30 ~~(3) On a finding and declaration of paternity by the juvenile court or proof of a~~
31 ~~prior declaration of paternity by any court of competent jurisdiction, the~~
32 ~~juvenile court may order services for the child and the biological father, if the~~
33 ~~court determines that such services will benefit the child.~~
34

35 ~~(4) Any motion to terminate reunification services before the permanency~~
36 ~~hearing set under section 366.21(f) for a child age three or older, or before~~
37 ~~the 6-month review hearing set under section 366.21(e) for a child under age~~
38 ~~three, must follow the requirements in section 388(e) and rule 5.570. A~~
39 ~~motion to terminate reunification services at the 6-month review hearing is~~
40 ~~not required if the court finds by clear and convincing evidence that one or~~
41 ~~more of the circumstances described in section 361.5(a)(2) and rule~~
42 ~~5.710(e)(1)(A) is true.~~
43

1 ~~(5)(1)~~ If a child is removed from the custody of a parent or guardian, and
2 reunification services are ordered, the court must order visitation between the
3 child and the parent or guardian for whom services are ordered. Visits are to
4 be as frequent as possible, consistent with the well-being of the child.

5
6 ~~(6)~~ — Reunification services must not be provided when the parent has voluntarily
7 relinquished the child and the relinquishment has been filed with the State
8 Department of Social Services, or if the court has appointed a guardian under
9 section 360. Reunification services need not be provided to a mother,
10 statutorily presumed father, or guardian if the court finds, by clear and
11 convincing evidence, any of the following:

12
13 ~~(A)~~ — The whereabouts of the parent or guardian are unknown. This finding
14 must be supported by a declaration or by proof that a reasonably
15 diligent search has failed to locate the parent. Posting or publishing
16 notice is not required.

17
18 ~~(B)~~ — The parent or guardian is suffering from a mental disability described
19 in chapter 2 (commencing with section 7820) of part 4 of division 12 of
20 the Family Code that renders the parent incapable of using those
21 services.

22
23 ~~(C)~~ — The child had been previously declared a dependent under any
24 subdivision of section 300 as a result of physical or sexual abuse;
25 following that adjudication the child had been removed from the
26 custody of the parent or guardian under section 361; the child has been
27 returned to the custody of the parent or guardian from whom the child
28 had been taken originally; and the child is being removed under section
29 361 because of additional physical or sexual abuse.

30
31 ~~(D)~~ — The parent or guardian of the child has caused the death of another
32 child through abuse or neglect.

33
34 ~~(E)~~ — The child was brought within the jurisdiction of the court under (e) of
35 section 300 because of the conduct of that parent or guardian.

36
37 ~~(F)~~ — The child is a dependent as a result of the determination that the child, a
38 sibling, or a half-sibling suffered severe sexual abuse, as defined in
39 section 361.5(b)(6), by the parent or guardian or that the parent or
40 guardian inflicted severe physical harm, as defined in section
41 361.5(b)(6), on the child, a sibling, or a half-sibling, and the court finds
42 that attempts to reunify would not benefit the child. The court must

1 specify on the record the basis for the finding that the child suffered
2 severe sexual abuse or the infliction of severe physical harm.

3
4 ~~(G) — The parent or guardian is not receiving reunification services for a
5 sibling or half sibling of the child, for reasons under (C), (E), or (F).~~

6
7 ~~(H) — The child was conceived as a result of the parent having committed an
8 offense listed in Penal Code section 288 or 288.5, or by an act
9 described by either section but committed outside California.~~

10
11 ~~(I) — The court has found that the child is described by (g) of section 300,
12 that the child was willfully abandoned by the parent or guardian, and
13 that the abandonment constituted serious danger to the child as defined
14 in section 361.5(b)(9).~~

15
16 ~~(J) — The court has terminated reunification services for a sibling or half-
17 sibling of the child because the parent failed to reunify with the sibling
18 or half sibling, and the parent or guardian has not made a reasonable
19 effort to treat the problems that led to the removal of the sibling or half-
20 sibling from that parent or guardian.~~

21
22 ~~(K) — The parental rights of a parent over any sibling or half sibling of the
23 child have been terminated, and the parent has not subsequently made a
24 reasonable effort to treat the problem that led to the removal of the
25 sibling or half sibling.~~

26
27 ~~(L) — The parent or guardian has been convicted of a violent felony as
28 defined in Penal Code section 667.5(e).~~

29
30 ~~(M) — The parent or guardian has a history of extensive, abusive, and chronic
31 use of alcohol or other drugs and has not sought or participated in
32 treatment during the three years immediately prior to the filing of the
33 petition under section 300, or has failed, on at least two prior occasions,
34 to comply with an available and accessible treatment program
35 described in the case plan required by section 358.1, and the removal of
36 the child is based in whole or in part on the risk to the child presented
37 by the use of alcohol or other drugs.~~

38
39 ~~(N) — The parent or guardian, who must be represented by counsel, has
40 advised the court through the execution and submission of *Waiver of*
41 *Reunification Services (Juvenile Dependency)* (form JV-195) that that
42 parent or guardian does not wish to receive family maintenance or
43 reunification services and does not wish the child returned or placed in~~

1 the custody of that parent or guardian. The court may accept the waiver
2 only on a finding on the record that the parent or guardian has
3 knowingly and intelligently waived the right to services.
4

5 ~~(O) On at least one occasion, the parent or guardian has abducted the child~~
6 ~~or a sibling or half-sibling from placement and has refused to disclose~~
7 ~~the abducted child's whereabouts or has refused to return custody of the~~
8 ~~abducted child to the placement or to the social worker.~~
9

10 ~~(7)(2)~~ In deciding whether to order reunification services in any case in which
11 petitioner alleges that section 361.5(b) applies, the court must consider the
12 report prepared by petitioner, which must discuss the factors contained in
13 section 361.5(c).
14

15 ~~(8) If the petitioner alleges that section 361.5(e) applies, the report prepared for~~
16 ~~disposition must address the issue of reunification services. At the disposition~~
17 ~~hearing, the court must consider the factors stated in section 361.5.~~
18

19 ~~(9) If the court finds under (6)(A) that the whereabouts of the parent or guardian~~
20 ~~are unknown and that a diligent search has failed to locate the parent or~~
21 ~~guardian, the court may not order reunification services and must set the~~
22 ~~matter for a 6-month review hearing. If the parent or guardian is located prior~~
23 ~~to the 6-month review and requests reunification services, the welfare~~
24 ~~department must seek a modification of the disposition orders. The time~~
25 ~~limits for reunification services must be calculated from the date of the initial~~
26 ~~removal, and not from the date the parent is located or services are ordered.~~
27

28 ~~(10) If the court finds that allegations under (6)(B) are proved, the court must~~
29 ~~nevertheless order reunification services unless evidence by mental health~~
30 ~~professionals establishes by clear and convincing evidence that the parent is~~
31 ~~unlikely to be able to care for the child within the next 12 months.~~
32

33 ~~(11) If the court finds that the allegations under (6)(C), (D), (F), (G), (H), (I), (J),~~
34 ~~(K), (L), (M), (N), or (O) have been proved, the court may not order~~
35 ~~reunification services unless the party seeking the order for services proves~~
36 ~~by clear and convincing evidence that reunification is in the best interest of~~
37 ~~the child. If (6)(F) is found to apply, the court must consider the factors in~~
38 ~~section 361.5(h) in determining whether the child will benefit from services~~
39 ~~and must specify on the record the factual findings on which it based its~~
40 ~~determination that the child will not benefit.~~
41

42 ~~(12) If the court finds that the allegations under (6)(E) have been proved, the court~~
43 ~~may not order reunification services unless it finds, based on consideration of~~

1 factors in section 361.5(b) and (c), that services are likely to prevent reabuse
2 or continued neglect or that failure to attempt reunification will be
3 detrimental to the child.
4

5 (13) ~~If the mother, statutorily presumed father, or guardian is institutionalized or~~
6 ~~incarcerated, the court must order reunification services unless it finds by~~
7 ~~clear and convincing evidence that the services would be detrimental to the~~
8 ~~child, with consideration of the factors in section 361.5(e). The court may~~
9 ~~order reunification services with an institutionalized or incarcerated~~
10 ~~biological father whose paternity has been declared by the juvenile court or~~
11 ~~another court of competent jurisdiction, if the court determines that such~~
12 ~~services would benefit the child, with consideration of the factors in section~~
13 ~~361.5(e).~~

14
15 (14)(3) ~~If, with the exception of (6)(A) If the court orders no reunification~~
16 ~~services for every parent otherwise eligible for such services under (f)(1) and~~
17 ~~(2) this subdivision, unless by reason of an exception in section 361.5(b)(1),~~
18 ~~the court must conduct a hearing under section 366.26 within 120 days.~~

19
20 (4) If the court orders no reunification services, it must order that the child's
21 caregiver receive the child's birth certificate in accordance with the
22 requirements of section 16010.4 and 16010.5 and, when appropriate, that a
23 child 16 years of age or older also receive his or her birth certificate.
24

25 (15)(5) A judgment, order, or decree setting a hearing under section 366.26 is
26 not an immediately appealable order. Review may be sought only by filing
27 *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*
28 *8.456)* (form JV-825) or other petition for extraordinary writ. If a party
29 wishes to preserve any right to review on appeal of the findings and orders
30 made under this rule, the party must seek an extraordinary writ under rules
31 8.450, 8.452, and 5.600.
32

33 (16)(6) A judgment, order, or decree setting a hearing under section 366.26
34 may be reviewed on appeal following the order of the 366.26 hearing only if
35 the following have occurred:
36

37 (A) An extraordinary writ was sought by the timely filing of *Petition for*
38 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)*
39 (form JV-825) or other petition for extraordinary writ; and
40

41 (B) The petition for extraordinary writ was summarily denied or otherwise
42 not decided on the merits.
43

1 ~~(17)~~(7) Review on appeal of the order setting a hearing under section 366.26 is
2 limited to issues raised in a previous petition for extraordinary writ that were
3 supported by an adequate record.

4
5 ~~(18)~~ Failure to file a petition for extraordinary writ review within the period
6 specified by rules 8.450, 8.452, and 5.600 to substantively address the issues
7 challenged, or to support the challenge by an adequate record, precludes
8 subsequent review on appeal of the findings and orders made under this rule.

9
10 ~~(19)~~(8) When the court orders a hearing under section 366.26, the court must
11 advise orally all parties present, and by first-class mail for parties not present,
12 that if the party wishes to preserve any right to review on appeal of the order
13 setting the hearing under section 366.26, the party must seek an extraordinary
14 writ by filing a *Notice of Intent to File Writ Petition and Request for Record*
15 (*California Rules of Court, Rule 8.450*) (form JV-820) or other notice of
16 intent to file a writ petition and request for record and a *Petition for*
17 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form
18 JV-825) or other petition for extraordinary writ.

19
20 (A) Within 24 hours of the hearing, notice by first-class mail must be
21 provided by the clerk of the court to the last known address of any
22 party who is not present when the court orders the hearing under
23 section 366.26.

24
25 (B) Copies of *Petition for Extraordinary Writ (California Rules of Court,*
26 *Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ*
27 *Petition and Request for Record (California Rules of Court, Rule*
28 *8.450)* (form JV-820) must be available in the courtroom and must
29 accompany all mailed notices informing the parties of their rights.

30
31 (i)-(l) ***

32
33
34 **Rule 5.708. General review hearing requirements**

35
36 (a)-(e) ***

37
38 (f) **Child's education and developmental needs (§§ 361, 366, 366.1)**

39
40 The court must consider the child's educational and developmental needs,
41 including whether it is necessary to limit the rights of the parent or legal guardian
42 to make educational or developmental services decisions for the child, following

1 the requirements and procedures in rules 5.650–~~5.652~~ and ~~5.654~~ and in section
2 361(a).

3
4 **(g)–(m) *****

5
6 **(n) Requirements upon setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**

7
8 The court must make the following orders and determinations when setting a
9 hearing under section 366.26:

10
11 (1) The court must terminate reunification services to the parent or legal
12 guardian; and

13
14 (A) When the court terminates reunification services, it must order that the
15 child’s caregiver receive the child’s birth certificate in accordance with
16 the requirements of sections 16010.4 and 16010.5; and

17
18 (B) In addition, when appropriate, the court must order that a child 16 years
19 of age or older also receive his or her birth certificate.

20
21 (2)–(6) ***

22
23 **(o) *****

24
25
26 **Rule 5.790. Orders of the court**

27
28 **(a)–(e) *****

29
30 **(f) Family finding determination (§ 628(d))**

31
32 (1) The court must consider whether the probation officer has used due diligence
33 in conducting the investigation to identify, locate, and notify the child’s
34 relatives. The court may consider the activities listed in (g) as examples of
35 due diligence.

36
37 If the disposition hearing is continued, the court may set a hearing to be held
38 at any time after 30 days from the date of removal to consider whether the
39 probation officer has used due diligence in conducting the investigation to
40 identify, locate, and notify the child’s relatives.

41
42 (2) The court must make one of the following findings:
43

1 (A) The probation officer has used due diligence in conducting the
2 investigation to identify, locate, and notify the child’s relatives; or

3
4 (B) The probation officer has not used due diligence in conducting the
5 investigation to identify, locate, and notify the child’s relatives. If the
6 court makes this finding, the court may order the probation officer to
7 use due diligence in conducting the investigation to identify, locate, and
8 notify the child’s relatives—except for any individual the social worker
9 identifies who is inappropriate to notify under rule 5.637(b)—and may
10 require a written or oral report to the court at a later time.

11
12 **(g) Due Diligence**

13
14 When making the finding required under (f)(2), the court may consider, among
15 other examples of due diligence, whether the probation officer has:

16
17 (1) Asked the child, in an age-appropriate manner and consistent with the child’s
18 best interest, about his or her relatives;

19
20 (2) Obtained information regarding the location of the child’s relatives;

21
22 (3) Reviewed the child’s case file for any information regarding relatives;

23
24 (4) Telephoned, e-mailed, or visited all identified relatives;

25
26 (5) Asked located relatives for the names and locations of other relatives;

27
28 (6) Used Internet search tools to locate relatives identified as supports; or

29
30 (7) Developed tools, including a genogram, family tree, family map, or other
31 diagram of family relationships, to help the child or parents to identify
32 relatives.

33
34 **(h) Wardship orders (§§ 726, 727, 727.1, 730, 731)**

35
36 The court may make any reasonable order for the care, supervision, custody,
37 conduct, maintenance, support, and medical treatment of a child declared a ward.

38
39 (1)–(4) ***

40
41 (5) The court must consider whether it is necessary to limit the right of the parent
42 or guardian to make educational or developmental services decisions for the

1 child. If the court limits this right, it must follow the procedures in rules
2 5.650–5.652.

3

4 ~~(g)~~(i) ***

5

6 ~~(h)~~(j) ***

Clerk stamps date here when form is filed.

**DRAFT
Not approved
by the Judicial Council**

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 phone #: _____

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 Has your child ever been admitted to the hospital for care or treatment of any of the conditions in item **3**?
 Yes No
If yes, please explain: _____

5 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
_____	_____	_____
_____	_____	_____
_____	_____	_____



Child's name: _____

6 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: _____

7 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: _____

8 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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9 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: _____

10 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: _____

11 Does your child wear glasses? Yes No

12 Does your child wear a hearing aid? Yes No

13 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

14 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



Case Number: _____

Child's name: _____

- 14 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?

- d. If applicable, do you have a copy of your child's individualized education program (IEP), section 504 plan, individualized family services plan (IFSP), individual program plan (IPP), 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 limited 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

j. Has your child ever been referred to a regional center for developmental services? Yes No

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

School (*name, city, state*): _____ Dates of attendance: _____

School (*name, city, state*): _____ Dates of attendance: _____

School (*name, city, state*): _____ Dates of attendance: _____

School (*name, city, state*): _____ Dates of attendance: _____

- 16 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? Yes No

If yes, explain why:

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



Case Number: _____

Child's name: _____

d. Do you believe the child may have a disability? Yes No

If yes, please describe:

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

17 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.)

18 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? Yes No

If yes, please describe: _____

(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: _____

19 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: _____

19 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 that the information on this form is true and correct to the best of my knowledge.

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 (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <p style="text-align: center; font-size: 1.2em;">Draft Not approved by the Judicial Council</p>
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 considering 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): _____
 Address: _____ Address: _____
 Telephone: _____ Telephone: _____
 to make educational development services decisions for the child is (specify):
 retained reinstated
 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) or in matters related to developmental services 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) or developmental services decisions for the child.
- (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 following responsible adult, who has no apparent conflict of interest, is appointed as the child's developmental services decision maker:
- (1) Name:
(2) Address:
(3) Telephone:
(4) Relationship to child:
- f. The appointment of any previous educational representative developmental services decision maker is terminated.
- g. 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, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent* (form JV-536), must be attached when this order is served on the local education agency.
- h. 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: _____
----------------------------	---------------------------

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) Individualized family services plan (IFSP)
 - (4) Individual program plan (IPP)
 - (5) Quality of life assessment
 - (6) Other *(explain)*:

13. The educational representative or developmental services decision maker 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 IFSP team to review or revise the child's IFSP.
 - e. submit a written request to the regional center to convene the child's IPP team to review or revise the child's IPP.

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 educational agency and the county office of education 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