

Introduction

Parents have the right to make educational decisions for their children unless their child is in a legal guardianship, their child has been freed for adoption (parental rights terminated), or the juvenile court has limited their educational rights. *WIC* §§ 361, 726; *GC* § 7579.5; *EC* § 56055; *34 CFR* §300.30.

The social worker or probation officer must confirm and indicate in every court report who is the current educational rights holder for the child. *CRC* 5.650

Why Does This Matter?

Important decisions often are not made in a timely manner, if at all, when it is unclear who has the right to make educational decisions for a youth. For example:

- **Special Education Evaluation**

School districts generally cannot start evaluating a student for disabilities that make him/her eligible for special education until the adult with educational rights signs a proposed assessment plan.

- **Individualized Education Program (IEP)**

A student's IEP cannot be implemented without the approval and signature of the adult who holds educational rights.

- **School Placement**

The educational rights-holder has a role in deciding whether the youth will remain in his/her "school of origin" after a residential placement change. *EC* § 48853.5(d).

A foster youth's educational rights-holder may determine it is in the youth's best interest to attend an educational program other than one operated by the local educational agency. *EC* § 48853(a).

Considerations for the Court

Educational matters, including who has the authority to make educational decisions for a foster youth and whether someone else should be appointed, must be considered at every court hearing. *CRC* 5.651(b).

All findings and orders about educational decision-making must be documented in court form JV-535. *CRC* 5.650(b).

Appointing Educational Representatives

The court can limit the right of a parent or guardian to make educational decisions for a child if it is necessary to protect the child. Any limitations must be specified in a court order. *WIC* §§ 361(a), 726(b); *CRC* 5.650(a).

Prior to disposition, the court can temporarily limit the parents' educational rights.

This limitation expires if the petition is dismissed or after a hearing under *WIC* § 361 (Disposition). *WIC* § 319. The court may re-limit educational rights at the Dispositional Hearing or at any subsequent hearing. *WIC* § 361

- **Appointing an Educational Representative**

At the same time the court limits educational rights, it must appoint a "responsible adult" to make educational decisions for the child. *WIC* §§ 361(a), 726(b). (The California Rules of Court refer to this person as an "educational representative." *CRC* 5.502(13), 5.650(b).) The appointment must be made regardless of whether the child has been identified as needing special education or other services.

The educational representative has all of the educational rights normally held by parents. See *CRC* 5.650(e)-(f) for a list of rights and responsibilities. The representative is entitled to receive notice of and participate in hearings related to educational matters and may use court form JV-537 to explain the child's educational needs to the court. *CRC* 5.650(j).

- **Appointing a Surrogate Parent**

If the court is unable to locate a responsible adult for the child, and the child has either been referred to the local educational agency (LEA) for special education or has an IEP, the court shall refer the child to the LEA for appointment of a "surrogate parent" using form JV-535. *WIC* §§ 361(a), 726(b); *GC* §§ 7579.5-6; *CRC* 5.650(b).

The LEA must make reasonable efforts to appoint a surrogate parent within 30 days. *GC* § 7579.5(a). It must select a relative caretaker, foster parent, or CASA if one is willing and able to serve. *GC* § 7579.5(b). Court form JV-536 must be used for communication with the court about appointments and changes. *CRC* 5.650(d).

The surrogate parent makes decisions related to special education evaluation, eligibility, planning, and services. *GC* § 7579.5(c).

- **Court as Educational Decision-Maker**

If 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 may make educational decisions for the child with the input of any interested person. *WIC* §§ 319(g)(2), 361(a); *CRC* 5.650(b).

Limitations on Appointments

- **Court-Appointed Decision-Makers**

A person who has a conflict of interest cannot be appointed to be the educational representative. This includes social workers, probation officers, the child's attorney and group home staff. A foster parent is not deemed to have a conflict of interest solely because he/she receives compensation. *WIC* §§ 361(a), 726(b).

- **Surrogate Parents**

A surrogate parent may not be employed by the California Department of Education, the LEA, or any other agency involved in the education or care of the child. *GC* § 7579.5(i)-(j); *20 USC* § 1415(b)(2)(A); *34 CFR* § 300.519(d)(2).

Length of Court Appointments

An appointment to make educational decisions lasts until one of the following things occurs:

- The youth reaches 18 years of age, at which time the youth holds his/her own educational rights. *EC* §§ 49061(a), 56041.5. (Exceptions are if the youth chooses not to make her own educational decisions or has been deemed by the court to be incompetent to do so).
- Another adult is appointed to make educational decisions. (An educational representative may resign after giving notice to the court and the child's attorney).
- The right of the parent or guardian to make educational decisions is fully restored.
- A successor guardian or conservator is appointed.
- The child is placed in a planned permanent living arrangement, at which time the foster parent, relative caretaker, or non-relative extended family member has the right to make educational decisions. *EC* § 56055; *WIC* §§ 361(a), 726(b); *CRC* 5.650(e)(2), (g). *Remember: the right to make educational decisions only transfers to the caretaker in a planned permanent living arrangement if education rights were previously limited.*

Hearing to Make New Appointment

If a child needs a new educational representative to be appointed, his/her attorney may request a hearing using court form JV-539. *CRC* 5.650(d)(4), (g)(2).

The California Foster Youth Education Task Force is a coalition of more than 35 organizations dedicated to improving educational outcomes for foster youth. For more information, please contact Erin Saberi, Casey Family Programs, at 916.503.2950 or esaberi@casey.org.

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