

Education Rights



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

Parents generally 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 have been terminated), or the juvenile court has limited their educational rights. *WIC §§ 361, 726, 358.1(e); GC § 7579.5; EC § 56055; 34 CFR § 300.30.*

WHY DOES THIS MATTER?

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

Special Education Evaluation

School districts generally cannot start evaluating a student for disabilities that make her/him eligible for special education until the adult who holds 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

A child's educational rights-holder may determine it is in the child's best interest to attend an educational program other than one operated by the local educational agency. *EC § 48853(a)*. The educational rights-holder also has a role in deciding whether the child will remain in his or her "school of origin" after a residential placement change. *EC § 48853.5(d)*.

COURT'S CONSIDERATIONS

Educational matters, including who has the authority to make educational decisions for a foster child and whether someone else should be appointed to hold educational rights, must be considered at every court hearing. *WIC §§ 366.3 (e), 366.3(g), 727.2(e)(3); CRC 5.651(b)*.

The social worker or probation officer must include information in every court report about educational decision-making, including who holds the child's educational rights. *WIC §§ 366.3 (e)(5), 366.3(g) CRC 5.650.*

APPOINTING EDUCATIONAL DECISION-MAKERS

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

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The juvenile 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)*.

Educational rights can be temporarily limited prior to disposition and as early as the initial detention hearing. This limitation expires at the end of the disposition hearing or when the petition is dismissed, but the court may later renew the limitation, if appropriate. *WIC § 319(g); CRC 5.650(a)*.

If a child needs a new educational representative to be appointed, his attorney may request a hearing using court form JV-539. *CRC 5.650(d)(4), (g)(2)*. At any time, anyone with an interest in the child may ask the court to limit or transfer educational rights by submitting a JV-180 form and a JV-535 form to the court's clerk. *WIC § 388*.

A legal guardian appointed by a juvenile court has the right to make educational decisions unless the court specifically orders otherwise. *34 CFR § 300.30(a)(2-4), (b)(2); EC § 56028; CRC 5.650(e)(2)*.

Court-Appointed Decision-Makers

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), 366(a)(1)(C), 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. He or she 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)*.

School District-Appointed Decision-Makers

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 must refer the child to

the LEA for appointment of a "surrogate parent." *WIC §§ 361(a), 726(b); GC §§ 7579.5-.6; CRC 5.650(b)*. A surrogate parent makes decisions related to special education evaluation, eligibility, planning, and services. *GC § 7579.5(c)*.

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)*. It must use court form JV-536 to tell the court about appointments and changes. *CRC 5.650(d)*.

Court as Educational Decision-Maker

If educational rights have been limited and none of the above options apply, the court itself 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 make educational decisions. This includes but is not limited to the child's social worker, probation officer, court-appointed attorney, and group home staff. A foster parent is not deemed to have a conflict of interest solely because he or she receives compensation. *WIC §§ 361(a), 726(b)*.

• Surrogate Parents

As above, a person who has a conflict of interest cannot be appointed to make educational decisions. 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 occurs:

- The youth reaches 18 years of age, at which time he or she holds his or her own educational rights. *EC §§ 49061(a), 56041.5*. Exceptions are if the youth chooses not to make his or 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.
- The right of the parent or guardian to make educational decisions is fully restored.

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- A successor guardian or conservator is appointed, and the court finds that person able to act in the child's best interest.
- 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, so long as educational rights previously were limited. EC § 56055; WIC §§ 361(a), 726(b); CRC 5.650(e)(2), (g).

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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