

Educational Decision-Making for Foster Youth



California Foster Youth Education Task Force

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INTRODUCTION

Parents generally have the right to make educational and developmental services 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 319(j), 361, 726(a)-(c), 358.1(e); GC 7579.5; EC 56055; 34 CFR 300.30; CRC 5.649.*

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**

Local educational agencies (LEAs) generally cannot start evaluating a student for disabilities that make them eligible for special education services until the adult who holds educational rights signs a proposed assessment plan. *20 USC 1414(a); EC 56506.*

- **Individualized Education Program (IEP)**

A student's IEP cannot be implemented without the approval and signature of the adult who holds educational rights. *20 USC 1414(a); 34 CFR 300.300; EC 56346.*

- **School Placement**

The best interest determination regarding school of origin cannot be made for a child without the educational rights holder (ERH) (although a child must remain in their school of origin as the default placement until the best interest determination is made). A child's ERH may determine it is in the child's best interest to attend an educational program other than one operated by the LEA. *EC 48853(a)(3).*

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 for every child, including for children ages 0-5. *CRC 5.649 and 5.651(b)-(c).* 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. *See CRC 5.651(c) for a list of the information required to be included in these court reports.*

APPOINTING EDUCATIONAL DECISION-MAKERS

- **Court-Appointed Decision-Makers**

A 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 319(j), 361(a), 726(a)-(b); CRC 5.649.* Court form JV-535 is used for this purpose, as well as to document other findings and orders about educational decision-making. *CRC 5.649-5.650; see also court form JV-535(A) (mandatory attachment containing additional education-related information, findings, and orders).*

At the same time a court limits a parent or guardian's educational decision-making rights, it must appoint a "responsible adult" to make educational decisions for the child. *WIC 319(j), 361(a), 366(a)(1)(C), 726(b)-(c); see also CRC 5.650, 5.534(f).* The California Rules of Court refer to this person as an "educational rights holder" (ERH). *CRC 5.502(13); see also CRC 5.649-5.651.* The appointment must be made regardless of whether the child has been identified as needing special education or other services. Before appointing someone who is not known to the child, the court must determine whether there is an adult who is known to the child who is available and willing to serve as the child's ERH. *WIC 319(j)(2), 361(a)(4), 726(c)(1); CRC 5.650(c)(1).*

The ERH has all of the educational decision-making rights normally held by a parent or guardian. *See CRC 5.650(e)-(g) for a list of rights and responsibilities.* The ERH is entitled to receive notice of and participate in court and related proceedings concerning educational matters and may use court form JV-537 to explain the child's educational needs to the

court. *CRC 5.650(j).*

Educational decision-making rights can be temporarily limited prior to the disposition stage of a court case and as early as the initial detention hearing if the child's parent or guardian is unavailable, unable, or unwilling to make educational decisions (and other conditions are met). A temporary 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(j); CRC 5.649(b), 5.650(g)(1)(A).*

At any time, anyone with an interest in the child may ask the court to limit or transfer educational decision-making rights by submitting court forms JV-180 and JV-535 to the court. *See WIC 388, 778.* Moreover, the child's attorney, social worker, or probation officer can request a hearing for appointment of a new educational decision-maker using court form JV-539. *CRC 5.650(d)(4), (g)(2).*

A legal guardian appointed by a juvenile or probate court has the right to make educational decisions unless the court specifically orders otherwise. *CRC 5.650(e)(2); 34 CFR 300.30(a)(3), (b)(2); EC 56028(a)(3).*

- **LEA-Appointed Decision-Makers**

If the court is unable to locate a responsible adult for the child and the child either has been referred to the 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)(4), 726(c)(1); GC 7579.5-7579.6; CRC 5.650(a)(2)(A)(i), (d); see also WIC 319(j)(3), (5).* 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 court-appointed special advocate (CASA) if one is willing and able to serve. *GC 7579.5(b).*

When a surrogate parent is appointed, resigns, or an LEA terminates the appointment, replaces, or appoints another surrogate parent, it must use court form JV-536 to tell the court, the child's attorney, and the child's social worker or probation officer about appointments and changes. *CRC 5.650(d).*

A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters relating to the provision of a



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free appropriate public education to the individual. *EC 56050(b)*. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the IEP including nonemergency medical services, mental health treatment services, and occupational or physical therapy services. *EC 56050(b)*.

• Court as Educational Decision-Maker

If educational decision-making rights have been limited and none of the above options apply, the court itself may make educational decisions for a dependent child with the input of any interested person. *WIC 319(j)(3)*, *361(a)(4)*; *CRC 5.650(a)(2)*. Please refer to the section below regarding who cannot be appointed as an Educational Decision-Maker.

FOSTER PARENTS

If the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of a youth aged 16 or older and the youth has been placed in a planned permanent living arrangement (described in *WIC 16501(i)(2)*), *EC 56055* authorizes a foster parent to exercise parental rights for the duration of the parent/foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, IEP development, and all other matters relating to the provision of a free appropriate public education for the foster child. *EC 56055* authorizes the foster parent to consent in writing to the IEP, including nonemergency medical services, mental health treatment services, and occupational or physical therapy. It is encouraged that court form JV-535 be used in these cases to ensure coordination of services and case planning.

WHO CANNOT BE EDUCATIONAL DECISION-MAKER

• Court-Appointed Decision-Makers

A person who has a conflict of interest cannot be appointed to make educational decisions. A conflict can arise from “any interests that might restrict or bias” the person’s ability to make educational decisions, including but not limited to the receipt of compensation or attorney’s fees for the provision of services pursuant to these sections of the law. A foster parent is not deemed to have a conflict of interest solely because they receive funding for the care of the child. *WIC 361(a)(2)*, *726(c)*; see also *CRC 5.650(c)(2)*. Moreover, under federal special education law, when the court appoints an

educational decision-maker for a foster child with a disability, it may not appoint an employee of the California Department of Education, the LEA, or any other agency that is involved in the education or care of the child. *20 USC 1415(b)(2)(A)*; *34 CFR 300.519(d)(2)*. Therefore, the social worker, probation officer, or group home staff serving the student may not be appointed.

• 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. *20 USC 1415(b)(2)(A)*; *34 CFR 300.519(d)(2)*; *GC 7579.5(i)-(j)*.

RESPONSIBILITIES OF EDUCATIONAL DECISION-MAKERS

In addition to the responsibilities listed above specific to court- or LEA-appointed educational decision-makers, both types are required to meet with the child for whom they are making educational decisions, investigate the child’s needs and whether they are being met, and, for each court review hearing, provide information and recommendations concerning the child’s educational needs either in person or by submitting them in advance to the court or social worker. *WIC 361(a)(6)*, *726(c)(2)*; *CRC 5.650(f)(2)-(4)*.

LENGTH OF COURT APPOINTMENTS

With the exception of temporary appointments prior to the disposition stage of a court case (see above), an appointment to make educational decisions lasts until *one* of the following occurs:

- The youth reaches 18 years of age, or is attending an institution of postsecondary education, at which time the youth holds their own educational rights (e.g., see *EC 49061(a)*, *56041.5*; for a definition of “eligible student,” see <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>), unless the youth chooses not to make their 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.

- A successor guardian or conservator is appointed.
- The youth is 16 years of age or older and is placed in a planned permanent living arrangement, at which time the foster parent, relative caretaker, or nonrelative extended family member has the right to make educational decisions, so long as the parents’ or guardian’s educational decision-making rights previously were limited and the current caregiver is not specifically prohibited by court order from making the child’s educational decisions.

WIC 361(a)(1), *726(b)*; *CRC 5.650(g)*; see also *EC 56055*, *CRC 5.534(f)(2)*, *5.650(a)(1)*, *(b)*, *(e)(1)*.

If an appointed ERH resigns from the appointment, the ERH must tell the court and the child’s attorney and may use the court form JV-537 to do so. *CRC 5.650(g)(2)*.

DEVELOPMENTAL SERVICES DECISION-MAKERS

Much—but not all—of the information in this fact sheet about court-appointed educational decision-makers for foster children also applies to the process for appointing an adult to make decisions about services for children and for non-minor dependents with developmental disabilities, as established by SB 368 (2011). See *WIC 319(j)*, *361(a)*, *726(b)-(c)*; *CRC 5.502(13)*, *5.534(f)*, *5.649-5.651*. Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, autism, and other disabling conditions found to be closely related to intellectual disability. *WIC 4512(a)*. See *WIC 4512(b)* for a definition and list of common services for people with developmental disabilities. Such services often are provided by or through the California Department of Developmental Services and its regional center system.

Please note that children receiving early intervention services through regional centers under Individual Family Service Plans are receiving education services and must have ERHs. Developmental Services Decision-Makers cannot make education decisions for these children.

See <https://www.dds.ca.gov/rc/> for more information.