

Educational Decision-Making 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. See *WIC §§ 319(g), 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 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 interests to attend an educational program other than one operated by the local educational agency. *EC § 48853(a)(3)*. The educational rights holder also has a role in deciding whether the child will remain in his/her "school of origin" after a residential placement change. See *EC § 48853.5(e)*.



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. *CRC 5.649, 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. 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(g), 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) (optional 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(g), 361(a), 366(a)(1)(C), 726(b)-(c); see also CRC 5.650, 5.534(j)*. The California Rules of Court refer to this person as an "educational rights holder." *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 educational rights holder. *WIC §§ 319(g)(2), 361(a)(3), 726(c)(1); CRC 5.650(c)(1)*.



The educational rights holder has all of the educational decision-making rights normally held by parents or guardian. See *CRC 5.650(e)-(f)* for a list of rights and responsibilities. S/he 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(g); 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*. 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 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*.

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Educational Decision-Making Rights (continued)

- **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)(3), 726(c)(1); GC §§ 7579.5-7579.6; CRC 5.650(a)(2)(A)(i), (d); see also WIC § 319(g)(3), (5).* 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 court-appointed special advocate (CASA) if one is willing and able to serve. *GC § 7579.5(b).* 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).*

- **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(g)(3), 361(a)(3); CRC 5.650(a)(2).*

LIMITATIONS ON APPOINTMENTS

- **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 his or her 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 s/he receives compensation. *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).*

- **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)(5), 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, at which time s/he holds his/her own educational rights, *see, e.g., EC §§ 49061(a), 56041.5*, unless the youth chooses not to make his/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.
- 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 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(j)(2), 5.650(a)(1), (b), (e)(1).

If an appointed educational rights holder resigns from the appointment, s/he must tell the court and the child’s attorney and may use 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 nonminor dependents with developmental disabilities, as established by SB 368 (2011). *See WIC §§ 319(g), 361(a), 726(b)-(c); CRC 5.502(13), 5.534(j), 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. *See <www.dds.ca.gov/RC/Home.cfm>* for more information.

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, visit the website at www.cfyetf.org.

This fact sheet is current as of February 2014. To report any errors, please e-mail us at cfyetf@gmail.com.