

Disability Rights Legal Center

DRLC

Formerly Western Law Center For Disability Rights

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Ms. Camilla Kieliger
Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Submitted Via Facismile: (415) 487-2106

Re: Item SPR07-28: Juvenile Law: Ensuring Foster Children's Educational and Disability Rights (amend Cal. Rules of Court, rules 5.502, 5.516, 5.518, 5.534, 5.650, 5.668, 5.695 and 5.790; adopt rule 5.652; revise forms JV-225, JV-365, and JV-535, and JV-536; and approve forms JV-537 and JV-538)

Dear Ms. Kieliger:

We welcome the opportunity to comment about the proposed amendments to Juvenile Law: Ensuring Foster Children's Educational and Disability Rights and the corresponding Judicial Council forms.

The Disability Rights Legal Center (DRLC) has worked to implement the civil rights of people with disabilities for over 30 years. We are the oldest cross-disability legal advocacy organization in the country. We are located at Loyola Law School and work extensively with law students. Our mission is to promote the rights of people with disabilities and the public interest in and awareness of those rights by providing legal and related services. The DRLC provides assistance through its five programs: Civil Rights Litigation Project, Disability Mediation Center, Cancer Legal Resource Center, Education Advocacy Project, and Options Counseling and Lawyer Referral Service. We also have a Community Outreach Program that sponsors an annual mentoring day for youth.

Since joining the DRLC in 2000, the Education Advocacy Project (EAP) has worked to ensure that quality legal representation is available to traditionally underrepresented communities needing special education services. Students of color and low-income students with disabilities are often left out of special education, which leads to segregation, ineffective educational services, failure in school, and involvement in the Juvenile Justice system.

The Education Advocacy Project is comprised of four major components: the Juvenile Justice Program, the Westside Children's Center partnership, the Inland Empire Program, and the planned Moderate Income Service. The Juvenile Justice Program focuses on students that are currently involved with the court system, through the dependency or delinquency systems, and on students who are likely to become involved in the delinquency system. The EAP is currently

hosting a Skadden Fellow who, in collaboration with Loyola Law School's Center for Juvenile Law and Policy, advocates for youth with pending delinquency cases who have special education needs. The EAP also represents students who are clients of the Westside Children's Center in Culver City. The Inland Empire component serves students with disabilities throughout the Inland Empire. The Moderate Income Service will serve families whose incomes fall above the poverty line but who cannot afford private attorneys. Additionally, the EAP serves on the Welfare and Institutions Code section 317(e) Panel at Edelman Children's Court to guide education policy at the courts and to accept client referrals from the dependency and delinquency courts.

The EAP offers a range of services including direct representation, pro bono referrals, brief service consultations, and self-advocacy training. All EAP services and materials are provided in Spanish and English.

Because the Education Advocacy Project represents many students who are supervised by the juvenile court, either in dependency or delinquency, we are highly aware of the need for an increased emphasis in the courtroom on education issues, and particularly on ensuring access to appropriate special education and related services. We applaud the intent of the proposals to incorporate applicable federal and state education and disability law into local rules and forms, and are confident that these changes will positively impact the daily lives of the minors before the court.

We agree with many of the proposed changes, but seek clarification and amendment in certain areas. Below please find a list of comments and proposed line item modifications and suggestions.

Role of Education Representative

- Rule 5.502(13): The proposed text on page 10 cites Title 20 United States Code section 1232g(b). This citation appears to be erroneous because it is unclear what the connection is between the regulation and the amendment.
- Rule 5.516(a)(6)(A): Children may have other disabilities that require special services that are not included in the proposed list. We propose the following text instead: "any physical disabilities, mental disabilities, learning disabilities, or other special education needs of the child."
- Rule 5.516(a)(6)(B): We request clarification of the meaning of "placing agency other than the county welfare department or probation department." The phrase "placing agency" is vague and could lead to confusion.

- Rule 5.518: Related services are an integral component of appropriate special education services. We strongly believe that all references to special education should include a reference to related services. This comment applies to all proposed amendments and Judicial Council forms. Related services are essential support services a student requires in order to benefit from the special education program, referred to in California as Designated Instruction and Services. (34 C.F.R. § 300.24; Cal. Educ. Code § 56363; Cal. Code Regs., tit. 5, §§ 3051, *et seq* (2004).) The term "related services" means transportation, such developmental, corrective, and other supportive services including speech-language pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, orientation and mobility services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. (20 U.S.C. §1401(22); 34 C.F.R. § 300.24.)
- Rule 5.518(b)(2)(F): Because of the importance of related services under federal and state education law, this subsection should state, "The child's education, which includes the child's participation, progress, need for assistance, cognitive development, and, if applicable, early childhood education and care, and need for special education and related services."
- Rule 5.518(e)(3)(A)(vi): We are concerned that the phrase "special needs" is vague and will lead to confusion or inaction. The subsection can be rewritten as follows: "The requirements of the laws incorporated in rule 5.652(a) and strategies for appropriately addressing the individual needs of children with disabilities."

Procedures for Limiting Educational Rights

- Rule 5.650
 - 5.650(a)(2): In our experience, it is more likely that assessments will be ordered when the court's attention is focused on specific needs such as special education or mental health. It is more effective for those issues to be articulated in detail. The section could state: "If the court determines that the child is in need of any assessments, evaluations, or services including but not limited to those for special education, mental health, and other related services, the court must make the necessary orders to initiate those assessments, evaluations, or services."
 - 5.650(a)(3): We suggest that this subsection be clarified to define the required communication. We propose the following change: "The court, social worker, probation officer, and local education agency must communicate, in writing and initialed for

compliance with federal and state confidentiality laws, before each scheduled court hearing, about the child's educational needs and the information required, including the whereabouts of the parents or legal guardian, to initiate assessments, evaluations, or services. The child's initial evaluation for special education and related services does not need to be postponed to await parental or legal guardian consent or appointment of an educational representative if one or more of the following circumstances are met." Again, we feel strongly that special education and related services should always be referred to together because they are both essential components of an appropriate education program for children with disabilities. We request clarification as to what happens when the conditions listed in 5.650(a)(3)(A-C) occur. The section should indicate whether the court then makes an order for assessments, evaluations, or services, including but not limited to assessments, evaluations, or services for special education, mental health, or other related services.

- 5.650(a)(3)(A): We are concerned with the phrase "individual appointed by the judge to represent the child." Taken together, the proposed amendments limit the appointment of individuals to represent education needs of the child solely to "educational representatives," not to some other representative appointed by the judge. Only the parent, legal guardian, or educational representative has the authority to consent to an initial assessment for special education, mental health, or other related services. Additionally, clarification is required for what type of assessment is contemplated by this rule. Therefore, this subsection could be rewritten to state, "The court has limited or temporarily limited the educational rights of the parent or guardian, and consent for an initial assessment for special education, mental health and other related services has been given by an educational representative appointed by the judge to represent the child."
- 5.650(a)(3)(B): We are concerned that the phrase "reasonable efforts" to discover the whereabouts of the parent or guardian is vague and ineffective. In our experience, the local education agency either makes no attempt to locate the parent, or continues trying to reach them for too long, thereby failing to take action on the child's education needs. The local education agency should be required to demonstrate, in writing, the efforts it has made to the court which will determine whether the efforts were indeed reasonable.
- 5.650(b)(1): We strongly agree with the proposed language of 5.650(b) that the court must at the same time it limits the right of a parent or guardian, order appointment of a responsible adult.
- 5.650(d)(2): It would be helpful to insert a timeframe for this section as to when the local education agency must be served after the court's order referring a child to the local education agency for appointment of an educational representative. We suggest "If the court refers a child to the local educational agency for appointment of an educational representative, the court must order that *Local Educational Agency Response to JV-535*—

Appointment of Educational Representative be served, within two court days of the date the order was made, by first-class mail on the local educational agency along with form JV-535.”

- 5.650(d)(3): In our experience, allowing the local educational agency 30 days to assign an educational representative is too long, as the task is not complicated and any increased delays in the special education evaluation process have a detrimental effect on the child. We suggest a limit of ten (10) days. The local educational agency should have a list of potential educational representatives. The task involves merely calling the people on the list.
- 5.650(d)(3)(B): Because the appointment of an educational representative is essential in order to take action to address the needs of children with suspected disabilities who do not have a parent or legal guardian (i.e. request an assessment, consent to an assessment plan, consent for special education and related services, and advocate at discipline proceedings), we believe that a specific person at the local educational agency should be identified to take responsibility for the task of appointing an educational representative and communicating with the court about the appointment. In our experience, individual schools and district officials are frequently unaware of their responsibility to appoint an educational representative and continually refer the issue to other officials. Instead, we suggest that 5.650(d)(3)(B) should state “If the Director of Child Welfare or Pupil Services or a comparable office at the local educational agency does not make this appointment within 10 days, the Director must notify the court in writing within two calendar days of the following.”
- 5.650(d)(3)(B)(ii): As discussed regarding 5.650(a)(3)(B), we are highly concerned about the ambiguity of the phrase “reasonable efforts,” because it appears to sanction widely varying degrees of effort. Subsection (B)(ii) should state, instead, “Its continuing reasonable efforts, described in detail in a written statement, to assign an educational representative within 10 days of receipt of form JV-535.”
- 5.650(f)(1): It is imperative that children are represented at these proceedings by someone with the authority to make educational decisions because of the serious potential consequences of disciplinary action on a child’s educational progress. This section should include a provision stating that the educational representative’s responsibilities also include representation of the child in discipline proceedings at the school and district level.
- 5.650(f)(1)(E): Every student is entitled to a free appropriate public education, not merely a free appropriate education. This provision should be amended as follows: “Other aspects of the provision of a free and appropriate public education” in alignment with the IDEA and California Education Code.

- 5.650(f)(2)(C): Because the rules contemplate increased communication between the schools and the courts, it is imperative to ensure that federal and state confidentiality laws are followed. This provision is problematic because it allows the educational representative complete discretion to decide when and whether to share information. It is a very rare situation where disclosure of a dependency or delinquency record to a local educational agency will serve the child's best interests. In our experience, children's dependency and delinquency records are shared frequently with local educational agencies despite confidentiality laws precluding such disclosure. We have encountered many situations where the local educational agency receives information of charges pending against the child in delinquency court and immediately transfers the child to an alternative school program, even when the charges are not related to the school setting and have not been proven. The confidentiality laws should be explicitly stated in the subsection as follows: "Complying with federal and state confidentiality laws when sharing information with appropriate persons for the purpose of furthering the interest of the child. Information about a dependency or delinquency case shall not be shared except as provided in Welfare and Institutions Code section 827."
- 5.650(f)(3)(B): (On a side note, the subdivisions under 5.650(f)(3) are incorrectly lettered. This comment refers to the second "B" subdivision.) Again, the rule should include "free and appropriate public education," instead of just "free appropriate education." It is the responsibility of the local educational agency to provide a public education that is free and appropriate.
- 5.650(g)(2): We request clarification as to which attorneys and which parties should receive notice under this provision. Clarification is requested as to which type of notice is required and within what time frame. An amended version is as follows: "The educational representative may resign from the appointment only after he or she gives notice to the local educational agency; court; all parties, including minor and minor's parent or legal guardian, social services agency, Department of Probation, and Department of Mental Health or other involved parties; and attorneys including the defense attorney, dependency attorney, and education attorney if applicable."

Educational Rights of Children Before the Court

- Rule 5.652(b)(1): In addition to educational, social, and developmental needs, we think this subsection should include mental health needs. A large majority of the children before the dependency and delinquency court have some need for mental health services.
- Rule 5.652(b)(2)(E)(iv): "Special needs" should be replaced by "unique needs of children with disabilities." The phrase "special needs" is vague and will lead to confusion.

- Rule 5.652(b)(3)(B): Please include mental health needs in the list to ensure that mental health issues are addressed. The provision can be amended to read “Whether the child’s educational, physical, mental health, and developmental needs are being met.”
- Rule 5.652(b)(3)(C): This provision could be amended to clarify which type of services, assessments, or evaluations are intended. Our suggested language is “If supported by the evidence, any services, assessments, or evaluations, including but not limited to services, assessments, or evaluations for special education and related services, the child may need.”
- Rule 5.652(c)(3): In addition to educational, physical, or developmental needs, this provision should also include mental health needs.
- Rule 5.652(c)(6): Instead of focusing on learning disabilities, it is more accurate to state “whether the child may have physical, mental, or learning-related disabilities, or other special education needs.”
- Rule 5.652(c)(13): Again, this provision should include mental health in the list of “educational, physical, mental health, and developmental needs.”
- Rule 5.652(c)(14): This provision could be amended to clarify the type of services, assessments, or evaluations are requested. Our suggested language is “whether any orders to initiate assessments, evaluations, or services, including but not limited to services, assessments, or evaluations for special education and related services.”

Judicial Council Forms

- JV-225, Health and Education Questionnaire:
 - In the second paragraph, we believe that the social worker or probation officer should be required to provide help to parents or guardians in completing the form. The text should be: “To the social worker or probation officer: If the parent or guardian needs help completing this form, you are required to provide this help.” Given the importance of the information requested from parents and guardians, it is imperative that assistance is provided to ensure that the forms are fully and accurately completed.
 - Child’s Health: “Disabilities” should not be lumped together under medical problems. It should instead be a separate question, e.g. “Does your child have any physical or mental disabilities?”
 - Child’s Education (13)(c): In order to guarantee that all children with disabilities are identified, this question can be more specific: “Before removal, was your child receiving any assessments, evaluations, services, or accommodations to help your child with any physical or mental disabilities, or other special education needs?”

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- Child's Education (15)(c): The phrase "special needs" is vague and can lead to confusion.

Thank you for the opportunity to comment on the proposed amendments to the juvenile rules and forms. We are confident that these recommendations will further improve the ability of the juvenile court to address the education needs of the children under its supervision. We hope that our comments will make a valuable contribution to the Council's decision-making process.

If you have questions, please feel free to contact me at (213) 736-1337 or karen.tamis@lls.edu.

Sincerely,

DISABILITY RIGHTS LEGAL CENTER

Karen Tamis
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Education Advocacy Project