
**ORANGE COUNTY SOCIAL SERVICES AGENCY
CFS OPERATIONS MANUAL**

Effective Date: December 2, 2008

Number: I-0103

Limiting Educational Rights

Purpose To provide guidelines for limiting a parent's educational rights and appointing an educational representative.

Approved This policy was approved by Mike Ryan, Director of CFS, on December 2, 2008. *Signature on file.*

Background With the passage of Assembly Bill (AB) 490 in 2003, the legislature took the initial step of ensuring equal access for dependent children to educational opportunities and services that all students enjoy. Fundamental to that equality is the identification of a responsible adult who is able to make necessary educational decisions on behalf of the dependent child. Traditionally, parents have the right to make educational decisions for their child unless the child is in a legal guardianship, has been freed for adoption, or the Court has specifically limited the parent's educational rights.

There are instances when the parent is absent or fails to responsibly exercise these rights. The parent's rights must then be limited and an educational representative appointed.

Legal Mandates [United States Code, Title 20, Section 1415\(b\)\(2\)\(A\)](#) discusses restrictions on surrogate parents.

[Code of Federal Regulations, Title 34, Section 300.519](#) defines a surrogate parent.

[Education Code \(EC\) Section 56055](#) provides for appointment of a foster parent as Educational Representative

[Welfare and Institutions Code \(WIC\) Section 319\(g\)](#) allows the Court to temporarily limit the right of parents to make educational decisions for the child and to appoint an educational representative to make those decisions.

[Welfare and Institutions Code \(WIC\) Section 361](#) describes the rights and limitations of the Court to limit a parent's educational rights. It further allows the Court to immediately appoint an educational representative to make educational decisions on behalf of the child.

[California Rules of Court, Rule 5.650](#) describes:

- Appointment of an educational representative
- Authority and responsibilities of an educational representative
- Limits on the appointment of an educational representative
- When to refer to the local educational agency for the appointment of an educational surrogate

[California Rules of Court, Rule 5.502](#) defines the role of the educational representative.

Definitions

Educational representative: An adult who holds the educational rights for a child when the parent or guardians' educational rights have been limited by the Court. The educational representative acts as the child's parent or guardian in all educational matters which includes participating in and making decisions regarding all matters affecting the child's educational needs. The educational representative holds educational and privacy rights as the child's parent.

Surrogate Parent: An individual who:

- Is not an employee of the Special Education Area (SEA), Local Education Area (LEA), or any other agency that is involved in the education or care of the child
- Has no personal or professional interest that conflict with the interests of the child the surrogate parent represents
- Has knowledge and skills that ensure adequate representation of the child

The surrogate parent will serve as the child's parent and will have rights relative to the child's education that a parent has under Title 20 of the Code of Federal Regulations. The surrogate parent may

represent the child in matters relating to special education and related services. This may include the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and all other matters relating to the provision of a Free Appropriate Public Education (FAPE) of the child.

POLICY

Assessment

The assigned Senior Social Worker (SSW) plays a critical role in ensuring that the child's educational needs are met during the course of dependency. One critical area is ensuring that a responsible adult is available and involved in making decisions for a child's education.

When the parent or guardian is not meeting the child's educational needs, the assigned SSW will request that the Court limit the parent or guardians' educational rights and appoint an adult to be the educational representative for the child. **The assigned SSW can make this request at any time.**

Factors that should be considered by the assigned SSW prior to making the request are:

- Whereabouts of parent or guardian
- Incarceration of parent (does not automatically lead to limiting of rights)
- Level of parental cooperation and knowledge regarding the child's educational needs and response to requests from the child's school

Limiting Rights

The Court may limit a parent's or guardian's right to make educational decisions for a child who is declared a dependent under WIC § 300 (at the Disposition Hearing and at any time thereafter), but the limitations may not exceed those necessary to protect the child. The Court may also temporarily limit a parent's or guardian's right to make educational decisions prior to the Disposition Hearing (i.e., at the Detention Hearing).

Detention Hearing

The process of limiting educational rights can begin as early as the Detention Hearing. The assigned SSW, within the body of the Detention court report, will request that the parent's or guardian's rights be temporarily limited. The assigned SSW will address all of the following as justification for limiting rights:

- The parent/guardian is unavailable, unable, or unwilling to exercise educational rights for the child
- The agency has made diligent efforts to locate and secure the participation of the parent/guardian in educational decision-making; and
- The child's educational needs cannot be met without the temporary appointment of an educational representative
 - Examples of the parent's failure to act and resulting impact on child's educational progress or experience will be cited
- Recommendation of an individual to be appointed educational representative

The assigned SSW will complete the *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs (JV-535)* and attach to the Court report. Refer to the JV-535 procedure section below for further information on completing the form.

Disposition Hearing

If the Court temporarily limits the parent's or guardian's right to make educational decisions at the time of detention, the Court must reconsider the need, if any, to limit educational rights at the Disposition Hearing. The Court will also consider any additional information that has been obtained regarding the parent's or guardian's inability or unwillingness to make educational decisions for the child. The information used for the Detention Hearing report will also be used for the Disposition Report. The information will appear in the Education and Recommendation subsections of the Disposition report.

Status Review Hearing and Ex Parte Motion

After Disposition, the assigned SSW can request at any time that the educational rights of the parent or guardian be limited. A Status Review Report or an Ex Parte Motion is the primary means of requesting that rights be limited. In both cases, the

considerations used to limit educational rights at the Detention hearing will also be utilized. The *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs (JV-535)* will then be attached to the Status Review Hearing Report or the Ex Parte Motion.

Note: When using the Status Review Report to begin the process of limiting educational rights, the information above will be included in the Education and Recommendation subsections of the court report.

Educational Representative Guidelines

There are restrictions on the appointment of an educational representative. An individual with a conflict of interest such as a social worker, Foster Family Agency (FFA) worker, or the child's attorney are prohibited from appointment. The conflict of interest is created by the receipt of compensation for services or by attorney fees. A foster parent may not be deemed to have a conflict of interest solely because the foster parent receives compensation for the provision of services. EC § 56055 allows for a foster parent to be appointed as an educational representative.

A relative, foster parent, Non-Relative Extended Family Member (NREFM) or Child Abuse Special Advocate (CASA) are some possible choices for the role of educational representative.

When the Court has limited the parent's or guardian's right to make educational decisions for the child, and has appointed an educational representative to make those decisions, the limitation of rights and appointment of an educational representative will last until one of the following occurs:

- The child reaches 18 years of age (unless the child chooses not to make educational decisions) or is deemed by the Court to be incompetent
- Another educational representative is appointed to make educational decisions for the child
- The right of the parent or guardian to make educational decisions for the child is fully restored
- A successor guardian or conservator is appointed

Surrogate Parent

There may be instances when the Court is unable to identify an educational representative for child and the child is or may be eligible for special education and related services. The Court will refer the child to the responsible Local Educational Agency (LEA) for appointment of a surrogate parent. The assigned SSW will

provide the Court with a blank copy of *Local Educational Response to JV-535-Appointment of Surrogate Parent (JV-536)*. The Court will request that the LEA identify and appoint an educational surrogate for the child.

Documentation Upon receipt of either the *JV-535*, *JV-536*, or a Juvenile Court minute order limiting the parent’s or guardian’s educational rights and appointing an educational representative, the assigned SSW will refer to [CWS/CMS Data Entry Standards—Search, Update, or Enter Education & School/Ed Providers Instructions](#) for instructions on how to enter this information in the child’s Health and Education Passport.

REFERENCES

Hyperlinks Users accessing this document by computer may create a direct connection to the following references by clicking on them.

- [CWS/CMS Data Entry Standards—Search, Update, or Enter Education & School/Ed Providers Instructions](#)

Other Sources Other printed references include the following:

None.

REQUIRED FORMS

Online Forms Required forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child’s Educational Needs	JV-535
Local Educational Agency Response to JV-535—Appointment of Surrogate Parent	JV-536

Hard Copy Forms

Forms listed below must be completed in hard copy (including multi-copy NCR forms). **For reference purposes only**, links are provided to view these hard copy forms, where available.

Form Name

Form Number

None.

CWS/CMS Forms

The following required forms may **only** be obtained in CWS/CMS. **For reference purposes only**, links are provided to view these CWS/CMS forms, where available.

Form Name

Form Number

None.

Brochures

Brochures to distribute in conjunction with this procedure include:

Brochure Name

Brochure Number

None.

PROCEDURE

**Required Actions—
Detention Report,
Disposition Report,
Ex Parte Motion, or
Status Review
Report**

The following steps will be completed by the assigned Senior Social Worker (SSW) when submitting a Detention Report, Disposition Report, Status Review Report, or Ex Parte Motion to limit a parent's or guardian's educational rights.

Staff Responsible	Step	Required Action
Assigned SSW	1.	Assess the parent's or guardian's ability to meet the child's educational needs, per Assessment policy section above.
	2.	Identify an individual suitable for fulfilling the role of educational representative, per Educational Representative Guidelines policy section above.
	3.	Complete the Detention Report, Disposition Report, Status Review Report, or Ex Parte Motion per the Limiting Rights policy section above.

4. Attach *JV-535* to the completed Detention Report, Disposition Report, Status Review Report, or Ex Parte Motion and forward to the Court.
5. If requesting a surrogate parent, attach both a completed *JV-535* and a blank copy of *Local Educational Response to JV-535-Appointment of Surrogate Parent (JV-536)* to the court report.

Required Actions—*JV-535* The following steps will be completed by the assigned SSW when filling out *JV-535*.

<u>Staff Responsible</u>	<u>Step</u>	<u>Required Action</u>
Assigned SSW	1.	Complete items 1 through 10. <ul style="list-style-type: none"> • Item 9 refers to the AB490 liaison
	2.	Complete item 11, as indicated below: <ul style="list-style-type: none"> • Item 11a—Indicate whose rights you wish limited and to what extent • Item 11b—Check if parental rights have been terminated and an educational representative has not been appointed • Item 11(c) (1)—Indicate if the current caretaker is to be the educational representative. If yes, type above the text the name of the caretaker. If the placement has been ordered confidential by the Court, indicate that the placement is confidential • Item 11 (c) (2)—If the caretaker is not to be the educational representative, indicate this by checking box and completing identifying information • Item 11(d)—If an individual other than the caretaker is recommended to be the educational representative, indicate by checking the box and supplying identifying information. An example would be the CASA being appointed the educational representative • Item 11(e)—If no educational representative can be identified and the child is eligible for or currently in special education, this box would be checked. Checking this box requires that a blank <i>JV-536</i>

also be attached to the ex parte or status review report

- **Item 11(f)**—This box is checked if there is no identified educational representative and the child does not qualify for special education. In this instance, the Court will make the required educational decisions with input from interested parties such as the social worker, the caretaker, and the CASA (if assigned)
3. Complete item 12, as indicated below:
- **Item 12**—Indicate if the child has been assessed with a disability. This should be based on a psychological or developmental assessment of the child done by a professional
 - **Item 12 (f)**—Check if the child currently qualifies for any of the listed designations
4. For items 13 through 18, leave blank **except** for item 16, which should be checked for "c," clerk of the Court.