

**FOSTER YOUTH  
IN THE  
JUVENILE COURT**

**Schools Legal Service  
Orange County Department of Education**

**February 2009**

# FOSTER YOUTH IN THE JUVENILE COURT

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## APPENDIX

*These forms are current as of January, 2009. For updated forms, please access the following Internet link to download these forms: <http://courtnfo.ca.gov/forms>*

- Juvenile Court Miscellaneous Order – 520.4
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## **I. EXECUTIVE SUMMARY**

Assembly Bill 490<sup>1</sup> amends various provisions of the Education Code and the Welfare & Institutions Code with respect to foster children (i.e., children who have been removed from their parent's custody by the juvenile court and placed in foster homes), also known as wards and dependents of the juvenile court. This legislation requires school districts to appoint an educational liaison for foster children and requires the educational liaison to assist foster children in their enrollment in school and transfer from one school to another.

A dependent of the juvenile court is a child who has suffered either physical abuse or sexual abuse and, as a result, a petition has been filed in the juvenile court, requesting that the juvenile court take jurisdiction of the child and possibly remove the child from the home.<sup>2</sup> The filing of a petition triggers a series of hearings in which the court may remove the child from the home and place them in a group home or licensed children's institution, or allow the child to remain in the home with court supervision and supervision by the Department of Social Services.

Assembly Bill 490<sup>3</sup> granted certain rights to foster children, including wards and dependents of the juvenile court. Education Code section 48850 states that it is the intent of the Legislature to ensure that all students in foster care have a meaningful opportunity to meet the challenging state academic achievement standards to which all students were held. Section 48850 states that educators, probation and social services departments, care providers, advocates, and the juvenile court shall work together to maintain stable school placements for foster children. Each foster child should be placed in the least restrictive educational program and have access to academic resources, services and extracurricular and enrichment activities that are available to all students.

Education Code section 48853 states that a foster child has a right to remain in his or her school or origin. The school of origin is defined as the school the foster child attended when permanently housed or the school in which the foster child was last enrolled.<sup>4</sup>

Education Code section 48853.5(b) requires each local educational agency to designate a staff person as the educational liaison for foster children. The educational liaison is required to assist foster children with respect to enrollment in school and transferring from one school to another. The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin.<sup>5</sup>

Education Code section 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

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<sup>1</sup> Stats. 2003, ch. 862.

<sup>2</sup> Welfare and Institutions Code section 300.

<sup>3</sup> Stats. 2003, ch. 862.

<sup>4</sup> Education Code section 48853.5(e).

<sup>5</sup> Education Code sections 48853(c), 48853.5(b).

matters relating to the provision of a free appropriate public education for the foster child. Section 56055 only applies if the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the child, and the child has been placed in a planned permanent living arrangement.

The Judicial Council of California has adopted a number of California Rules of Court to implement the statutory provisions relating to the rights of foster children. The court rules authorize the juvenile court to appoint a responsible adult to make educational decisions for the foster child and place great emphasis on keeping the child in the school of origin, unless it is in the best interests of the child to move the child to another school.<sup>6</sup> The juvenile court rules authorize the juvenile court to join a school district as a party to the juvenile court action if proper notice is given.<sup>7</sup> If the juvenile court has limited a parent or guardian's right to make educational decisions for a child, but cannot identify an educational representative (e.g. responsible adult) for the child and the child is or may be eligible for special education and related services or already has an IEP, the court must refer the child to the responsible local educational agency for prompt appointment of a surrogate parent under Government Code section 7579.5.<sup>8</sup>

## **II. DEFINITION OF DEPENDENT OF THE JUVENILE COURT**

Any child who meets the following description is within the jurisdiction of the juvenile court and the juvenile court may adjudge that person to be a dependent child of the court:

1. A child who has suffered or is at substantial risk of suffering serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian;
2. A child who has suffered or is at substantial risk of suffering serious physical harm or illness as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child or the willful or neglectful failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability or substance abuse.

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<sup>6</sup> California Rules of Court, Rule 5.650.

<sup>7</sup> California Rules of Court, Rule 5.575.

<sup>8</sup> California Rules of Court, Rule 5.650(d).



3. A child who is suffering serious emotional damage or is at substantial risk of suffering serious emotional, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior towards self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care.
4. A child who has been sexually abused or is at substantial risk that the child will be sexually abused by his parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.
5. The child is under the age of five years and has suffered severe physical abuse by a parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.
6. A child whose parent or guardian caused the death of another child through abuse or neglect.
7. A child who has been left without any provisions for support, the physical custody of the child has been voluntarily surrendered and the child has not been reclaimed within the fourteen day period specified by law or the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child, or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown and reasonable efforts to locate the parent have been unsuccessful.
8. A child who has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.
9. A child who has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty and the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to acts or acts of cruelty.

10. A child whose sibling has been abused or neglected and there is substantial risk that the child would be abused or neglected.<sup>9</sup>

### **III. PROCESS FOR DECLARING A CHILD A DEPENDENT**

#### **A. The Petition**

The process for declaring a child who has suffered abuse or neglect as described above is initiated by the filing of a petition in the juvenile court. The petition is a document that contains allegations of fact, which if found to be true, will establish that the child was abused or neglected.<sup>10</sup> The filing of a petition triggers a detention hearing, which is the initial hearing in the dependency process in the juvenile court.<sup>11</sup>

#### **B. The Detention Hearing**

At the detention hearing, the juvenile court must make an initial determination as to whether the child should be removed from the home and whether the child should be placed in the temporary custody of the Social Services Agency, or temporarily removed from the home. Notice must be given to the parent or guardian of the allegations and the nature of the proceeding and the court may consider the appointment of counsel for the parent.<sup>12</sup> If a child has been taken into the custody of the Social Services Agency, the detention hearing must be held no later than the expiration of the next court day after a petition has been filed. If the child has not been taken into protective custody, the detention hearing must be held within fifteen judicial days after the filing of the petition.<sup>13</sup>

#### **C. The Jurisdictional Hearing and Dispositional Hearing**

The next step in the process before the juvenile court is the jurisdictional hearing and the dispositional hearing. The jurisdictional hearing and the dispositional hearing are often combined and heard on the same day.

The jurisdictional hearing is held to determine if the allegations in the petition are true. If the court finds that some or all of the allegations in the petition are true, the court will sustain the allegations and a dispositional hearing will be held.<sup>14</sup>

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<sup>9</sup> Welfare and Institutions Code section 300.

<sup>10</sup> Welfare and Institutions Code sections 313(a), 332, California Rules of Court, Rule 5.504.

<sup>11</sup> Welfare and Institutions Code sections 311(a), 325.

<sup>12</sup> Welfare and Institutions Code sections 317, 319, California Rules of Court, Rule 5.670.

<sup>13</sup> Welfare and Institutions Code section 315.

<sup>14</sup> Welfare and Institutions Code sections 353, 355, 356, California Rules of Court, Rules 5.682, 5.684.

The purpose of the dispositional hearing is for the juvenile court to determine the appropriate disposition of the case. The court may remove the child from the home of the parents, place the child in a foster home, request family reunification services, and visitation by the parents.<sup>15</sup>

The jurisdictional hearing must be held within 30 calendar days from the date the petition is filed if the child has not been detained. If the child has been detained, the jurisdictional hearing must be called within fifteen court days from the date of the detention order issued by the court. If the dispositional hearing is not held on the same date as the jurisdictional hearing, the dispositional hearing must be completed within sixty days from the date of the court order authorizing detention.<sup>16</sup> In practice, these timelines are frequently extended or waived and continuances are often granted.

#### **D. The Six Month Review Hearing**

A six month review hearing must be held six months after the date of the disposition hearing.<sup>17</sup> The purpose of a six month review hearing is for the juvenile court to determine whether the child should return to the custody of the parent or guardian, whether family reunification efforts should continue, or whether it is appropriate to terminate family reunification efforts and develop a permanent plan for the child. The juvenile court must also determine whether the Social Services Agency has offered or provided reasonable services to the parent or guardian to assist the parents with the issues that led to the initial removal of the child from the home and continued out-of-home custody of the child.<sup>18</sup>

#### **E. The 12 Month Review Hearing**

A 12 month review hearing must be held within 12 months of the date the child entered foster care or was declared a dependent of the court. Generally, this date is 12 months from the date of the jurisdictional finding or sixty days from the date the child was originally removed from the physical custody of the parent, whichever is earlier.<sup>19</sup>

#### **F. The 18 Month Review Hearing**

An 18 month review hearing must be held within 18 months of the original removal of the child from the physical custody of the parent or guardian.<sup>20</sup> The purpose of the 18 month review hearing is to determine whether the child should return to the custody of the parent or guardian. The juvenile court must also consider whether the Social Services Agency has provided reasonable services to the parent or guardian to overcome the issues that led to the initial removal and continued out-of-home care of the child. As of January 1, 2009, there are very limited circumstances under which the juvenile court will extend reunification services beyond the 18 month time limit to 24

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<sup>15</sup> Welfare and Institutions Code sections 361, 361.2, California Rules of Court, Rule 5.695.

<sup>16</sup> Welfare and Institutions Code section 334.

<sup>17</sup> Welfare and Institutions Code section 366(a)(1).

<sup>18</sup> Welfare and Institutions Code section 366.21(e), California Rules of Court, Rule 5.710.

<sup>19</sup> Welfare and Institutions Code section 366.21(f), California Rules of Court, Rule 5.715.

<sup>20</sup> Welfare and Institutions Code section 366.21(g), California Rules of Court, Rule 5.720.

months.<sup>21</sup> If the child cannot be returned to the custody of a parent or guardian at the time of the 18 month review hearing and there is no basis for extending reunification, the juvenile court must set a hearing under Welfare and Institutions Code section 366.26 to determine a permanent plan for the child.<sup>22</sup>

#### **G. The 24 Month Review Hearing**

If the juvenile court extended reunification services to 24 months, the 24 month review hearing must be held within 24 months of the original removal of the child from the physical custody of the parent or guardian.<sup>23</sup> The purpose of the 24 month review hearing is to determine whether the child should return to the custody of the parent or guardian. The juvenile court must consider whether reasonable services have been offered or provided to the parent or guardian by the Social Services Agency to overcome the issues that led to the initial removal and continued out-of-home custody of the child. If the child cannot be returned to the custody of a parent or guardian at the 24 month review hearing, the juvenile court cannot further extend reunification services and must set a date for a hearing pursuant to Welfare and Institutions Code section 366.26 to determine a permanent plan for the child.<sup>24</sup>

### **IV. REUNIFICATION WITH THE PARENT OR PERMANENT PLACEMENT BY JUVENILE COURT**

Under Welfare and Institutions Code section 366.26, the juvenile court must, within 120 days of the date that reunification services were terminated by the court for the hearing. The purpose of the hearing is to determine what the permanent plan will be for the dependent child. Once reunification services have been terminated, the focus of the juvenile court is on the child's need for permanent placement, rather than on the reunification with the parent or guardian. The juvenile court must review the permanent plan for the child and must consider in order of preference: terminating parental rights and freeing the child for adoption, legal guardianship with a relative, legal guardianship with a nonrelative, and long term foster care.<sup>25</sup>

A postpermanency hearing or periodic review hearing must be held six months from the date that a permanent plan was ordered by the court and every six months thereafter until jurisdiction of the juvenile court is terminated. The purpose of the hearing is for the juvenile court to consider the continuing appropriateness of the permanent plan. The juvenile court will review compliance with the permanent plan and update the child's progress and needs with respect to the permanent plan as needed. If the permanent plan is adoption, once the adoption is finalized, jurisdiction is terminated. If the permanent plan is legal guardianship, once the legal guardianship is established, jurisdiction

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<sup>21</sup> Welfare and Institutions Code section 366.22.

<sup>22</sup> Welfare and Institutions Code section 366.25, 366.3(f), California Rules of Court, Rule 5.740.

<sup>23</sup> Welfare and Institutions Code section 366.25.

<sup>24</sup> Welfare and Institutions Code section 366.25(a)(3).

<sup>25</sup> Welfare and Institutions Code section 366.3.

may be terminated or the case may remain open. If the court has ordered long term foster care, the case remains open with periodic reviews.<sup>26</sup>

**V.**  
**BURDEN OF PROOF IN**  
**JUVENILE COURT PROCEEDINGS**

The Social Services Agency bears the burden of proof by a preponderance of the evidence that a child should be declared a dependent child under Welfare and Institutions Code section 300.<sup>27</sup> The Social Services Agency bears the burden of proof by clear and convincing evidence that a child should be removed from the custody of the parent or guardian and must show that there is no reasonable means by which the child can be protected without removal from the home.<sup>28</sup> If the Social Services Agency is recommending that the child not be returned home to the parent or guardian, the Social Services Agency bears the burden of proof by a preponderance of the evidence to establish that the return of the child to the custody of the parent or guardian would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well being. The juvenile court must make findings and orders regarding whether or not to return the child to the custody of the parent or guardian and must also make findings regarding whether reasonable reunification services have been offered or provided to the parent or guardian.<sup>29</sup>

At the hearing under Welfare and Institutions Code section 366.26, the juvenile court must consider whether the child is adoptable. The Social Services Agency bears the burden of proving by clear and convincing evidence that if parental rights are terminated, it is likely the child will be adopted.<sup>30</sup> If the court makes this finding it must terminate parental rights, unless it is demonstrated that termination of parental rights would be detrimental to the child as set forth in the statute.<sup>31</sup> The person seeking to prove that adoption is detrimental to the child, at this stage of the proceedings, bears the burden of proof.<sup>32</sup>

**VI.**  
**RIGHTS OF FOSTER CHILDREN**

Education Code section 48850 states that it is the intent of the Legislature to ensure all students in foster care and those who are homeless, as defined by the McKinney-Vento Act, have a meaningful opportunity to meet the challenging state academic achievement standards to which all students are held. Section 48850 states that in fulfilling their responsibilities to foster care children, educators, county placing agencies (e.g., probation and social services departments), care providers, advocates and the juvenile court shall work together to maintain stable school placements and to

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<sup>26</sup> Welfare and Institutions Code section 366.3(d)(g)

<sup>27</sup> Welfare and Institutions Code section 361.

<sup>28</sup> Welfare and Institutions Code sections 361(c)(1).

<sup>29</sup> Welfare and Institutions Code section 366(a)(1).

<sup>30</sup> Welfare and Institutions Code section 366.26(b)(1), (3), (c)(3).

<sup>31</sup> Welfare and Institutions Code section 366.26(c).

<sup>32</sup> Welfare and Institutions Code section 366.26(b)(1)(c).

ensure that each student is placed in the least restrictive educational program and has access to the academic resources, services and extracurricular and enrichment activities that are available to all students. In all instances, “educational and school placement decisions must be based on the best interests of the child.”

The McKinney-Vento Act,<sup>33</sup> defines, “homeless children and youth,” as individuals who lack a fixed, regular and adequate nighttime residence and includes:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason; are living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodation; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.
2. Children and youth who have a primary night time residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.
3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings.
4. Migratory children who qualify as homeless for the purpose of this part.

## **VII. PLACEMENT OF FOSTER CHILDREN**

Education Code section 48853 states that a student placed in a licensed children’s institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

1. The pupil has an IEP requiring placement in a nonpublic, nonsectarian school or agency or in another local educational agency.
2. The parent or guardian, or other person holding the right to make educational decisions for the student determines that it is in the best interest of the pupil to be placed in another educational program, or that the student continue in his or her school of origin.

Section 48853(b) states that before any decision is made to place a student in a juvenile court school, the parent or guardian or person holding the right to make any educational decisions for the

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<sup>33</sup> 42 U.S.C. Section 11434(a).

student shall first consider placement in a regular public school. Section 48853(c) states that if any dispute arises as to the school placement of the student, the student has the right to remain in his or her school of origin, pending resolution of the dispute. However, 48853(d) states that Section 48853 does not supersede other laws that govern pupil expulsion. Therefore, if the student had been expelled from the school of origin, the student would not have the right to remain in his or her school of origin.

Section 48853(e) states that Section 48823 does not supersede any other law governing the educational placement in a juvenile court school, of a student detained in a county juvenile hall, or committed to a county juvenile ranch camp, forestry camp, or regional facility. Therefore, if the juvenile court or county placing agency has decided that the student should be placed in a county juvenile hall or committed to a court juvenile ranch camp, forestry camp, or other regional facility, pursuant to another law, Section 48853 does not supersede those provisions of law.

Section 48853(f) states that foster children living in emergency shelters may receive educational services at the emergency shelter, as necessary, for short periods of time for health and safety emergencies or to provide temporary, special and supplementary services to meet the child's unique needs if a decision regarding whether it is in the best interests of the child to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin and the child would otherwise not receive educational services. Educational services may be provided at the shelter pending a determination by the person holding the right to make decisions regarding the educational placement of the child.

Section 48853(g) states that all educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all students. In all instances, educational and school placement decisions shall be based on the best interests of the child.

## **VIII. APPOINTMENT OF EDUCATIONAL LIAISON FOR FOSTER CHILDREN**

The legislation adds Education Code section 48853.5. Section 48853.5 applies to any foster child who has been removed from his or her home pursuant to Welfare & Institutions Code section 309 (temporary custody), is the subject of a petition filed under Section 300 (dependent-victim of abuse or neglect) or 602 (juvenile who has violated the law) of the Welfare & Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare & Institutions Code.

Section 48853.5(b) requires each local educational agency to designate a staff person as the educational liaison for foster children. Section 48853.5(b) requires the educational liaison for foster children to do the following:

1. Ensure and facilitate the proper educational placement, enrollment in school and checkout from school of foster children.
2. Assist foster children when transferring from one school to another or from one school district to another in ensuring proper transfer of credits, records and grades.

Section 48853(c) states that Section 48853.5 does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or guardian retaining educational rights, a responsible adult appointed by the juvenile court to represent a child, a surrogate parent, or a foster parent exercising the authority granted under Education Code section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin.

## **IX. SCHOOL OF ORIGIN**

Section 48853.5(d) states that the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the academic school year regardless of any initial detention or placement, or any subsequent change in placement if the foster child. The educational liaison for foster children, in consultation with and agreement with the foster child and the person holding the right to make educational decisions for the foster child may, in accordance with the foster child's best interest, recommend that the foster child's right to attend the school of origin be waived and the foster child be enrolled in any public school that students living in the attendance area in which the foster child resides are eligible to attend.

Prior to making any recommendation to move a foster child from his or her school of origin, the educational liaison is required to provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation, stating the basis for the recommendation and how the recommendation serves the foster child's best interest. If the educational liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agree that the best interests of the foster child would be served by his or her transfer to a school other than the school of origin, the foster child should immediately be enrolled in the new school.

The new school shall immediately enroll the child even if the foster child is unable to produce records, such as previous academic records, medical records, proof of residency, other documentation or clothing normally required for enrollment such as school uniforms. The educational liaison for the new school shall, within two business days of the foster child's request for enrollment, contact the school last attended by the foster child to obtain all academic and other records. The school liaison for the school last attended shall supply all records to the new school within two business days of receiving the request.

If any dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending the resolution of the dispute.



The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal funds and other funding sources to promote the well-being of foster children through educational stability.

Section 48853.5(e) defines “school of origin” as the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected, the educational liaison, in consultation with and the agreement of the foster child and the person holding the right to make educational decisions for the foster child, shall determine in the best interest of the foster child, the school that shall be deemed the school of origin. Section 48853.5(f) states that 48853.5 does not supersede other laws governing the educational placements in juvenile court schools.

Section 48859 defines a county placing agency as the county social service department or county probation department.

## **X. TRANSFER OF STUDENT RECORDS**

Section 49069.5, as amended, states that the proper and timely transfer of student records between schools is the responsibility of both the local educational agency and the county placing agency. As soon as the county placing agency becomes aware of the need to transfer a student in foster care out of his or her current school, the county placing agency is required to contact the appropriate person at the local educational agency of the student. The county placing agency shall notify the local educational agency of the date that the student will be leaving the school and request that the student be transferred out. Upon receiving a transfer request from a county placing agency, the local educational agency must, within two business days, transfer request form a county placing agency, the local educational agency must, within two business days, transfer the student out of school and deliver the educational information and records of the student to the next educational placement. As part of the transfer process, the local educational agency is required to compile the complete educational record of the student including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the student’s plan under Section 504 of the Rehabilitation Act or IEP.

Section 49069.5(f) states that the local educational agency shall assign the duties listed in Section 49069.5 regarding the transfer of records to “a person competent to handle the transfer procedure and aware of the specific educational record keeping needs of homeless, foster, and other transient children who transfer between schools.” Section 49069.5(g) states, “The local educational agency shall ensure that if the student in foster care is absent from school due to a decision to change the placement of the student made by a court or placing agency, the grades and the credits of the student will be calculated as of the date the student left school, and no lowering of grades will occur as a result of the absence of the student under these circumstances.” Section 49069.5(h) states that the local educational agency shall ensure that if the student in foster care is absent from school due to

a verified court appearance or related court ordered activity, no lowering of his or her grade will occur as a result of the absence of the student under these circumstances.

Section 49076(a)(11) states that any county placing agency for the purpose of fulfilling the requirements of the health and education summary required under the Welfare & Institutions Code or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law or to assist with the school transfer or enrollment of a student shall be permitted access to student records without written parental consent or a judicial order. School districts, county offices of education and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of student information by electronic mail, facsimile, electronic format or other secure means.

Section 49076(c) states that notwithstanding any other provision of law, any school district including any county office of education may participate in an interagency data information system that permits access to a computerized database within and between governmental agencies or districts as to information or records which are nonprivileged, and where release is authorized as to the requesting agency under state or federal law. Each agency and school district is required to develop security procedures or devices to ensure that unauthorized personnel cannot access data contained in the system, and each agency and school district develops procedures or devices to secure privileged or confidential information from unauthorized disclosure.

## **XI. FOSTER PARENTS**

Education Code section 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. Section 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. Section 56055 only applies if the juvenile court has limited the right of the parent or guardian to make educational decisions on the behalf of the child, and the child has been placed in a planned permanent living arrangement.

## **XII. COUNTY PLACING AGENCIES**

Welfare & Institutions Code section 16000, as amended, states that it is the intent of the Legislature to ensure that all students in foster care and those who are homeless, as defined under the McKinney-Vento Act, have the opportunity to meet the challenging state student academic achievement standards to which all students are held. In fulfilling their responsibilities to student in foster care, educators, county placing agencies, care providers, advocates and the juvenile courts are required to work together to maintain stable school placements, and to ensure that each student is placed in the least restrictive educational program and has access to the academic resources and

extracurricular and enrichment activities that are available to all students. In all instances, educational and school placement decisions must be based on the best interests of the child.

Welfare & Institutions Code section 16501.1, as amended, states that the foundation and central unifying tool in child welfare services is the case plan. Section 16501.1(c)(2) states that county placing agencies in developing a case plan shall take into consideration the selection of the most appropriate home that will meet the child's special needs and best interest and also promote educational stability by taking into consideration proximity to the child's school attendance area.

### **XIII. JUVENILE COURT RULES ENACTED TO IMPLEMENT AB 490**

#### **A. Scope of the Juvenile Court Rules**

The Judicial Council of California has adopted a number of California Rules of Court to implement statutory provisions (e.g. Assembly Bill 490) relating to the rights of foster children. These rules apply to all children for whom petitions have been filed under Welfare and Institutions Code section 300 (dependent children) or Section 601 (wards).<sup>34</sup> The court rule incorporates the rights established under the Individuals with Disabilities Education Act,<sup>35</sup> the Americans with Disabilities Act,<sup>36</sup> Section 504 of the Rehabilitation Act of 1973,<sup>37</sup> and the education rights of foster children as provided in Assembly Bill 490.<sup>38</sup>

#### **B. The Initial Hearing or Detention Hearing**

Under the juvenile court rules, to the extent information is available, the juvenile court, at the initial or detention hearing, must consider:

1. Who holds education rights for the child;
2. If the child was enrolled in, and is attending, the child's school of origin;
3. If the child is no longer attending the school of origin, in accordance with the child's best interests, the child's right to attend the school of origin should be waived. Prior to making any recommendation to move the foster child from his or her school of origin, the educational liaison should have provided the child and the person holding the right to make educational decisions for the child with a written

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<sup>34</sup> California Rules of Court, Rule 5.651(a)(1).

<sup>35</sup> 20 U.S.C. Section 1400 et seq.

<sup>36</sup> 42 U.S.C. Section 12101 et seq.

<sup>37</sup> 29 U.S.C. Section 701 et seq.

<sup>38</sup> Stats. 2003, ch. 862. See, also, California Rules of Court, Rule 565.651(a)(3).

explanation stating the basis for the educational liaison's recommendation to attend a school other than the school of origin and how this recommendation serves the foster child's best interests.

4. Whether the parent or guardian's educational rights should be temporarily limited.
5. Taking into account other statutory considerations regarding placement, whether the out-of-home placement is the environment best suited to meet the unique needs of children with disabilities and to serve the child's best interests, if he or she has a disability and whether the out-of-home placement promotes educational stability through proximity to the child's school.<sup>39</sup>

### **C. The Disposition Hearing and Subsequent Hearings**

At the disposition hearing and at all subsequent hearings, the juvenile court must address and determine the child's general and special education needs, identify a plan for meeting these needs and provide a clear, written statement specifying the person who holds the educational rights for the child.<sup>40</sup> The court's findings at the disposition hearing and at all subsequent hearings must address the following:

1. Whether the child's educational, physical, mental health and developmental needs are being met.
2. Any services, assessments, or evaluations, including those for special education and related services, that the child may need.
3. Who is directed to take the necessary steps for the child to begin receiving any necessary assessments, evaluations or services.
4. If the child's educational placement changed during the reporting period, whether the child's educational records, including any evaluations of a child with a disability, were transferred to the new educational placement within two business days of the request for the child's enrollment in the new educational placement, and the child is enrolled and attending the new school.
5. Whether the parent's or guardian's educational rights should be limited. If the court finds the parent's or guardian's educational rights should not be limited, the court must direct the parent to his or

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<sup>39</sup> California Rules of Court, Rule 5.651(b).

<sup>40</sup> California Rules of Court, Rule 5.651(b)(2). The rule further specifies that the court shall use findings and orders limiting rights to make educational decisions for the child, appoint an educational representative, and determine the child's educational needs (Form JV-535).

her rights and responsibilities in regard to the child's education, as provided in Rule 5.650(e) and (f). If the court finds the parent's or guardian's educational rights should be limited, the court must determine who will hold the child's educational rights. The court must explain to the parent or guardian why the court is limiting his or her educational rights and must direct the parent or guardian to the rights and responsibilities of the education representative as provided in Rules 5.650(e) and (f).<sup>41</sup>

#### **D. Social Worker and Probation Officer Reports**

At all hearings before the juvenile court, including disposition and joint assessment hearings, the juvenile court must ensure that, to the extent information is available, the social worker and the probation officer provided the following information in their report for the hearing:

1. The child's age, behavior, educational and developmental achievement, and any discrepancies in achievement in education and in cognitive, physical, and emotional development.
2. Identification of the child's educational, physical, mental health, or developmental needs.
3. Whether the child is participating in developmentally appropriate extracurricular and social activities.
4. Whether the child is attending a comprehensive, regular, public or private school.
5. Whether the child may have physical, mental, or learning-related disabilities or other special education needs and is in need of or is already receiving special education and related services as provided by the laws incorporated in rule 5.651(a)(3).
6. If the child is 0 to 3 years old, whether the child may be eligible for or is already receiving services available under the California Early Intervention Services Act (Government Code section 95000 et seq.), and whether those services are appropriate.
7. If the child is between 3 and 5 years and is or may be eligible for special education services, whether the child is receiving the early educational opportunities provided by Education Code section 56001.

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<sup>41</sup> California Rules of Court, Rule 5.651(b)(2).

8. Whether the child is receiving appropriate services through a current individualized education program.
9. Whether the child is or may be eligible for regional center services or is already receiving regional center services.
10. Whether the parent's or guardian's educational rights have been or should be limited.
11. If the social worker or probation officer recommends limiting the parent's or guardian's right to make educational decisions, the reasons those rights should be limited and the actions that the parent or guardian may take to restore those rights if they are limited.
12. If the parent's or guardian's educational rights have been limited, who holds the child's educational rights.
13. Recommendations and case plan goals to meet the child's identified educational, physical, mental health, and developmental needs.
14. Whether any orders to direct an appropriate person to take the necessary steps for the child to begin receiving assessments, evaluations, or services, including those for special education and related services, are requested.
15. In the case of joint assessments, a separate statement by each of the two departments regarding whether the respective social worker and probation officer believe that the child may have a disability and whether the child is in need of special education and related services or requires evaluation as required by title 20 United States Code section 1412(a)(3), Education Code section 56425, or Section 504 of the Rehabilitation Act of 1973.<sup>42</sup>

**E. Removal from School of Origin**

At any hearing that relates to or may affect the child's education and that follows the removal of the child from the school of origin, the court must find that:

1. The social worker or probation officer notified the juvenile court, the child's attorney, and the educational representative or a surrogate parent that the proposed placement or change of placement would result in removal of the child from the child's school of origin.

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<sup>42</sup> California Rules of Court, Rule 5.651(c).

2. If the child had a disability and an active IEP prior to removal, the social worker or probation officer, at least ten days before the change of placement, notified in writing the local educational agency that provided a special education for the child, prior to removal, and the receiving SELPA of the impending change of placement.<sup>43</sup>

After receipt of notice that the child may be removed from the school of origin, the child's attorney must, as appropriate, discuss the proposed move from the school of origin with the child and the person who holds educational rights. The child's attorney may request a hearing.<sup>44</sup>

If removal from the school of origin is disputed, the child must be allowed to remain in the school of origin pending a hearing and pending any disagreement between the child, parent, guardian, or educational representative and the school district. If a hearing is requested, the juvenile court must find that the social worker or probation officer provided a report that included:

1. Whether the foster child has been allowed to continue his or her education in the school of origin for the duration of the academic school year.
2. Whether a dispute exists regarding the request of a foster child to remain in the school of origin, and whether the foster child has been afforded the right to remain in the school of origin pending resolution of the dispute.
3. Information addressing whether the information sharing and other requirements of Welfare and Institutions Code section 16501.1(c)(2) and Education Code section 49069.5 (i.e. transfer of records) have been followed.
4. Information addressing how the proposed change of placement serves the best interests of the child.
5. The responses to the proposed change of placement from the child if over ten years old, the child's attorney, the parent or guardian, the foster youth liaison, and the child's CASA volunteer, specifying whether each person agrees or disagrees with the proposed change and, if any person disagrees, stating why.
6. A statement from the person holding educational rights regarding whether the proposed change of placement is in the child's best interests and what efforts have been made to keep the child in the school of origin.

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<sup>43</sup> California Rules of Court, Rule 5.651(e).

<sup>44</sup> California Rules of Court, Rule 5.651(e)(2). Form JV-539 must be used to request a hearing.

7. A statement from the social worker or probation officer confirming that the child has not been segregated in a separate school, or in a separate program within a school, based upon the child's status as a child in foster care.<sup>45</sup>

At the hearing regarding the child's removal from the school of origin, the court must:

1. Determine whether the proposed placement meets the requirements of the Rules of Court and Education Code sections 48853.5 and 49069.5 and whether the proposed plan is based on the best interests of the child.
2. Determine what actions are necessary to ensure the child's education and disability rights.
3. Make the necessary findings in order to enforce these rights, which may include an order set a hearing under Section 362 to join the necessary agency regarding provisional services, including the provision of transportation services, so that the child may remain in his or her school of origin.<sup>46</sup>

When considering whether it is in the child's best interest to remain in the school of origin, the juvenile court must consider the following:

1. Whether the parent, guardian, or other educational representative believes that remaining in the school of origin is in the child's best interest.
2. How the proposed change of placement will affect the stability of the child's school placement and the child's access to academic resources, services, and extracurricular and enrichment activities.
3. Whether the proposed school placement would allow the child to be placed in the least restrictive educational program.
4. Whether the child has the educational supports necessary, including those for special education and related services, to meet state academic achievement standards.<sup>47</sup>

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<sup>45</sup> California Rules of Court, Rule 5.651(e)(4).

<sup>46</sup> California Rules of Court, Rule 5.651(f)(1).

<sup>47</sup> California Rules of Court, Rule 5.651(f)(2). The court may make its findings and orders on Findings and Orders Regarding Transfer from School of Origin (Form JV-538).



## **F. Advisory Committee Comments**

The Advisory Committee Comment to California Rule of Court, Rule 5.651, states that the rule incorporates the requirements of Assembly Bill 490, the IDEA, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act. The comment indicates that the juvenile court advocates, placing agencies, care providers, and educators must work together to maintain stable school placements and ensure that the foster child is placed in the least restrictive educational program and has access to the academic resources, services and extracurricular and enrichment activities that are available to other students.

## **G. Joinder of School Districts**

After a child has been adjudged a dependent child or a ward of the juvenile court, the juvenile court may join in the court proceedings any government agency (including school districts) that the court determines has failed to meet a legal obligation to provide services to the child.<sup>48</sup> On application by a party, counsel, CASA volunteer, or on the court's own motion, the juvenile court may set a hearing and require notice to the agency or provider subject to joinder. Notice to the agency or provider must be given on Notice of Hearing on Joinder – Juvenile (Form JV-540). The notice must state the allegations of the agency's or provider's failure to meet a legal obligation, as well as any questions the court wants the agency or provider to address. The hearing must be set to occur within 30 calendar days after the signing of the notice by the court. The clerk of the juvenile court must cause the notice to be served on the agency or provider. The juvenile court may not impose duties on a government agency beyond those required by statute.<sup>49</sup>

## **H. Limiting Parental Rights**

The juvenile court may limit a parent's or guardian's right to make education decisions for a child who is declared a dependent or ward of the court under Section 300, 601 or 602 of the Welfare and Institutions Code, but the limitations may not exceed those necessary to protect the child. Before a disposition, the court may temporarily limit the parent's or guardian's right to make educational decisions.<sup>50</sup> The court may limit a parent's or guardian's educational rights regardless of whether the child is, or may be eligible for, special education and related services.<sup>51</sup>

The child's initial evaluation for special education services need not be postponed to wait for parental or guardian consent, or appointment of an educational representative, if one or more of the following circumstances are met:

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<sup>48</sup> Welfare and Institutions Code sections 362, 727, California Rules of Court, Rule 5.575(a).

<sup>49</sup> California Rules of Court, Rule 5.575.

<sup>50</sup> Welfare and Institutions Code section 319(g).

<sup>51</sup> California Rules of Court, Rule 5.650(a). See, also, Welfare and Institutions Code sections 319, 361, 366, 366.27, 726; 20 U.S.C. Section 1415; 34 C.F.R. Sections 300.519, 300.300.

1. The court has limited or temporarily limited the educational rights of the parent or guardian, and consent for an initial assessment has been given by an individual appointed by the court to represent the child.
2. The local education agency cannot discover the whereabouts of the parent or guardian.
3. The parent's rights have been terminated or the guardianship has been set aside.<sup>52</sup>

If the court determines that the child is in need of any assessments, or evaluations, or services, including special education, mental health, and other related services, the court must direct an appropriate person to take the necessary steps to request those assessments, evaluations, or services.<sup>53</sup>

The juvenile court must use a juvenile court form when it limits the rights of a parent or guardian to make educational decisions for the child.<sup>54</sup> In its order, the court must document that one of the following actions has been taken:

1. The court has appointed an educational representative for the child.
2. The court has ordered a permanent plan for the child and the court finds that the foster parent, relative caregiver, or nonrelative extended family member may exercise educational rights and is not prohibited from exercising educational rights due to a conflict of interest.
3. The court cannot identify a responsible adult to serve as a child's educational representative and the child is or may be eligible for special education and related services and the juvenile court is referring the child to the responsible local educational agency through appointment of a surrogate parent under Welfare and Institutions Code section 361 or 726, or the child is not eligible for special education and related services, there is no foster parent to exercise the authority granted by Education Code section 56055, and the court will, with the input of any interested person, make educational decisions for the child.<sup>55</sup>

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<sup>52</sup> California Rules of Court, Rule 5.650(a)(2).

<sup>53</sup> California Rules of Court, Rule 5.650(a)(3).

<sup>54</sup> California Rules of Court, Rule 5.650(b). The court must use Findings and Orders Limiting Rights to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs (Form JV-535).

<sup>55</sup> California Rules of Court, Rule 5.650(b).

## **I. Appointment of Responsible Adult or Surrogate**

The juvenile court shall consider appointing a responsible adult relative, nonrelative extended family member, foster parent, family friend, mentor, or CASA volunteer as the educational representative if one is available and willing to serve. The court may not appoint any individual as the educational representative if that person is excluded by statute or would have a conflict of interest.<sup>56</sup>

If the juvenile court has limited a parent's or guardian's right to make educational decisions for a child, but cannot identify an educational representative for the child and the child is or may be eligible for special education and related services or already has an IEP, the court must use Form JV-535 to refer the child to the responsible local educational agency for prompt appointment of a surrogate parent under Government Code section 7579.5. If the court refers a child to the local educational agency for appointment of a surrogate parent, the court must order the local educational agency response to JV-534, Appointment of Surrogate Parent (Form JV-536) be served by first class mail on the local educational agency, along with Form JV-535, no later than seven calendar days after the date of the order. The court must direct the local educational agency that when the local educational agency receives Form JV-535, requesting prompt appointment of a surrogate parent, the local educational agency must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court's referral.<sup>57</sup>

Whenever the local educational agency appoints a surrogate parent for a dependent or ward under Government Code section 7579.5(a)(1), the local educational agency must notify the court on Form JV-536 within seven calendar days of the appointment and must send copies of the notice to the social worker or probation officer identified on the form. If the local educational agency does not appoint a surrogate parent within 30 days of receipt of the form, within the next seven calendar days it must notify the court on Form JV-536 of its inability to appoint a surrogate and its continuing reasonable efforts to assign a surrogate parent.<sup>58</sup>

Whenever the surrogate parent resigns or the local educational agency terminates the appointment of a surrogate parent for a dependent or ward under Government Code section 7579.5(h), or replaces the surrogate parent for any other reason, it must notify the juvenile court and the child's attorney on Form JV-536 within seven calendar days of the resignation, termination or replacement. The child's attorney may request a hearing for appointment of a new educational representative by filing Request for Hearing Regarding a Child's Education (Form JV-539), and must provide notice of the hearing as provided in juvenile court rules.<sup>59</sup>

When an educational representative is appointed, the educational rights of the parent or guardian are transferred to the educational representative. These educational rights include the right to notice of educational meetings and activities, participation in educational meetings and activities,

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<sup>56</sup> California Rules of Court, Rule 5.650(c).

<sup>57</sup> California Rules of Court, Rule 5.650(d).

<sup>58</sup> California Rules of Court, Rule 5.650(d)(3).

<sup>59</sup> California Rules of Court, Rule 5.650(d)(4).

and decisionmaking authority regarding the child's education, including the authority to make decisions about a child's special education services.<sup>60</sup>

When returning a child to a parent or guardian, the court must consider the child's educational needs. The parent's or guardian's educational rights are reinstated and the court returns custody to the parent or guardian, unless the court finds that the parent is not able to act in the child's best interests regarding education. If the court appoints a guardian for the child, all of the parent's or guardian's educational rights transfer to the newly appointed guardian, unless the court determines that the guardian is not able to act in the child's best interests regarding education.<sup>61</sup>

The educational representative is responsible for representing the child in the identification, evaluation, and educational placement of the child with the provision of a child's free appropriate public education. This includes representing the child in all matters relating to the child's education, including:

1. The stability of the child's school placement.
2. Placement in the least restrictive educational program appropriate to the child's individual needs.
3. The child's access to academic resources, service and extracurricular and enrichment activities.
4. The child's access to educational supports necessary to meet the state academic achievement standards.
5. School disciplinary matters.
6. Other aspects of the provision of a free appropriate public education.<sup>62</sup>

The educational representative has the following additional responsibilities:

1. Meeting with the child at least once and as often as necessary to make educational decisions within the best interests of the child.
2. Being culturally sensitive to the child.
3. Complying with federal and state confidentiality laws.

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<sup>60</sup> California Rules of Court, Rule 5.650(e)(1), (e)(2).

<sup>61</sup> California Rules of Court, Rule 5.650(e).

<sup>62</sup> California Rules of Court, Rule 5.650(f)(1).

4. Participating in, and making decisions regarding, all matters affecting the child's educational needs in a manner consistent with the child's best interests.
5. Having knowledge and skills that ensure adequate representation of the child.<sup>63</sup>

The educational representative acts as the parent or guardian in all educational matters regarding the child and has a right to the following:

1. To the rights afforded the parent or guardian under FERPA (e.g. access to student records).
2. To the rights of a parent regarding school discipline issues, meetings, and proceedings.
3. To represent a child with exceptional needs in matters relating to identification and assessment of those needs, instructional planning and development, educational placement, reviewing and revising the IEP, and other aspects of the provision of a free appropriate public education.
4. To attend the child's IEP and other education meetings, to consult with persons involved in the child's education, and to sign any consents to education related services and plans.
5. Notwithstanding any other provisional law, to consent to the child's IEP, nonemergency medical services, mental health treatment services, and occupational or physical therapy services.<sup>64</sup>

The educational representative must make educational decisions for the child until:

1. The court restores the right of the parent or guardian to make educational decisions for the child.
2. The child reaches 18 years of age, unless the child chooses not to make his or her own educational decisions or is deemed incompetent by the court.
3. The court appoints another educational representative for the child under juvenile court rules.

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<sup>63</sup> California Rules of Court, Rule 5.650(f)(2).

<sup>64</sup> California Rules of Court, Rule 5.650(f)(3).

4. The court appoints a successor guardian or conservator.
5. The court finds that the foster parent, relative caregiver, or nonrelative extended family member may make educational decisions for the child because the child is placed in a planned permanent living arrangement, the court has limited the parent's or guardian's educational rights and the foster parent, relative caregiver, or nonrelative extended family member is not otherwise excluded from making educational decisions by the court.<sup>65</sup>

If the educational representative resigns from an appointment, he or she must provide notice to the court and the child's attorney and may use Educational Representative or Surrogate Parent Information (Form JV-537) to provide this notice. Once notice is received, the child's attorney may request a hearing for appointment of a new educational representative by filing Form JV-539. The child's attorney must provide notice of the hearing to the parents or guardians unless otherwise indicated on the most recent form JV-535, the social worker, the probation officer, the Court Appointed Special Advocate (CASA) volunteer, and all other persons required to be given notice.<sup>66</sup>

The educational representative must receive notice of all juvenile court hearings regarding or affecting the child's education. The educational representative may use Form JV-537 to explain the child's educational needs. The court may allow the educational representative to be present for the purpose of participating in the portions of the juvenile court hearing that concern the child's education, including school placement, and of responding to questions or issues raised by the form.<sup>67</sup>

#### **XIV. ORANGE COUNTY JUVENILE COURT ORDERS**

On December 21, 2001, the juvenile court issued Miscellaneous Order – 520.4 (copy attached). The order authorizes the exchange of information concerning court wards and dependents amongst all private or public agencies providing case planning, eligibility, and/or service delivery to the Orange County Probation Department and the Orange County Social Services Agency. The authorization includes the Orange County Department of Education and school districts in Orange County. The authorization is contingent upon the need for information as it pertains to the conduct of official activity.

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<sup>65</sup> California Rules of Court, Rule 5.650(g)(1).

<sup>66</sup> California Rules of Court, Rule 5.650(g)(2).

<sup>67</sup> California Rules of Court, Rule 5.650(j).