

**PART B(1)**  
**EDUCATION AND HEALTH OF CHILD**

**147. Educational decision maker.**

**RULE 147. EDUCATIONAL DECISION MAKER.**

**A. Generally. At any proceeding or upon motion, if the court determines a juvenile is in need of an educational decision maker, the court shall appoint an educational decision maker for the juvenile.**

**B. Duties. The educational decision maker shall ensure:**

- 1) the juvenile's educational stability;**
- 2) the juvenile is receiving appropriate education, including any necessary special education, early intervention, or remedial services;**
- 3) juveniles, who are sixteen years of age or older, are receiving the necessary educational services to transition the juvenile to independent living, if and when appropriate; and**
- 4) juveniles, who are aging out of care within 90 days, are receiving a transition plan that addresses the juvenile's educational needs if appropriate.**

**COMMENT**

**The educational decision maker should refer to the Fostering Connections Act (P.L. 110-351) and the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 *et seq.*) for guidance in educational stability. The educational decision maker should ensure the right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. § 675(1)(G), 42 U.S.C. § 11431 *et seq.*; 2) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 55 Pa. Code § 3130.87, 24 P.S. §13-1371, 1372, 20 U.S.C. §1400 *et seq.*; 3) educational services necessary to support the child's transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older; and 4) a transition plan that addresses the child's educational needs pursuant to 42 USC § 675(5)(H) if the child will age out of care within 90 days.**

**PART B(2)**  
**COUNSEL**

## **RULE 242. DETENTION HEARING**

A. **Informing juvenile of rights.** Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. **Manner of hearing.**

- 1) **Conduct.** The hearing shall be conducted in an informal but orderly manner.
- 2) **Recording.** If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.
- 3) **Testimony and evidence.** All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.
- 4) **Juvenile's rights.** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:
  - a) cross-examine witnesses offered against the juvenile; and
  - b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. **Findings.** The court shall determine whether:

- 1) there is probable cause that a delinquent act was committed by the juvenile;  
**[and]**
- 2) detention of the juvenile is warranted; **and**
- 3) **there are any conditions that the court deems necessary to address the special needs of the juvenile while in detention.**

D. **Filing of petition.** If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

**E. Court's order. At the conclusion of the detention hearing, the court shall enter a written order setting forth its findings pursuant to paragraph (C).**

#### COMMENT

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

**An additional determination is required in paragraph (C)(3) although this is not a third stage of the detention hearing. It is important that the court address any special needs of the juvenile while the juvenile is in detention. The juvenile's attorney or the juvenile probation officer is to present any special needs to the court if known at the time of the hearing. Special needs may include special education needs, early intervention, remedial services, and health care and disability needs. If the court determines a child is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.**

**When addressing the juvenile's health care and disability needs, the court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and healthcare services, 42 USC § 1396d(r), 55 Pa. Code § 3800.32; and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 et seq.**

**Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).**

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. **See Rule 330 for petition requirements, Rule 331 for service of the petition, and [See] Rule 363 for time of service. [See Rule 331 for service of the petition. See Rule 330 for petition requirements.]**

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

**Official Note:** Rule 242 adopted April 1, 2005, effective October 1, 2005.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

## **RULE 512. DISPOSITIONAL HEARING**

A. **Manner of hearing.** The court shall conduct the dispositional hearing in an informal but orderly manner.

- 1) **Evidence.** The court shall receive any oral or written evidence that is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
- 2) **Opportunity to be heard.** Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

B. **Recording.** The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

C. **Ex parte Communication.**

**1) Except as provided by these rules, no person shall communicate with the court in any way.**

**2) If the court receives any ex parte communication, the court shall inform all parties of the communication and its content.**

[C]D. **Duties of the court.** The court shall determine on the record that the juvenile has been advised of the following:

- 1) the right to file a post-dispositional motion;
- 2) the right to file an appeal;
- 3) the time limits for a post-dispositional motion and appeal;
- 4) the right to counsel to prepare the motion and appeal;
- 5) the time limits within which the post-dispositional motion shall be decided; and
- 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

**E. Court's findings. The court shall enter its findings on the record and enter an order pursuant to Rule 515. The court shall state:**

**1) its findings and conclusions that formed the basis of its decision, including the following factors that shall be considered by the court:**

**a) the protection of the community;**

**b) the treatment needs of the juvenile;**

**c) the educational, health care, and disability needs of the juvenile;**

**d) the supervision needs of the juvenile;**

**e) the development of competencies to enable the juvenile to become a responsible and productive member of the community;**

**f) accountability for the offense(s) committed; and**

**g) any other factors that the court deems appropriate;**

**2) the terms and conditions of the disposition;**

**3) if the juvenile is placed:**

**a) the name of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile; and**

**b) why the agency or institution is the least restrictive alternative for the juvenile.**

#### **COMMENT**

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

**Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, and communications with court personnel, are not considered *ex parte* communications.**

**Pursuant to paragraph (E), when the court has determined the juvenile is in need of treatment, supervision, and rehabilitation, the court is to consider all the factors in paragraph (E)(1) and state its findings and conclusions on the record.**

**Pursuant to paragraph (E)(1)(c), the court should address the juvenile's educational needs. The court's order should address the right to: 1) an educational decision maker, 20 U.S.C. §1439(a)(5), 34 C.F.R. § 300.519; and 2) an appropriate education, including any necessary special**

education, early intervention, or remedial services, 20 U.S.C. § 1400 et seq., 55 Pa. Code § 3130.87, 24 P.S. § 13-1371, 1372. See also Rule 147 for appointment of an educational decision maker.

The court should also address the juvenile's health care and disability needs. The court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and healthcare services, 42 USC § 1396d(r), 55 Pa. Code § 3800.32; and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 et seq.

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

Pursuant to paragraph (E)(4), the court is to state the specific reasons why the agency or institution is the least restrictive placement for the juvenile, rather than a statement that it is the least restrictive alternative available.

**Official Note:** Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2509 (June 2, 2007).

## **RULE 513. AIDS IN DISPOSITION**

### **A. Social Study.**

**1)** The court may order the preparation of a social study in any case to aid in the decision for disposition.

**2) If a social study is ordered, the study shall address any educational, health care, and disability needs of the juvenile.**

**B. Examinations.** The court may order the juvenile to undergo health, psychological, psychiatric, drug and alcohol, or any other examination, as it deems appropriate to aid in the decision for disposition.

**C. Victim-Impact Statement.** The victim may submit a victim-impact statement to the court. If the victim has submitted a victim-impact statement, the court shall accept and consider the victim-impact statement in determining disposition.

#### **COMMENT**

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposition or need of treatment, supervision, or rehabilitation. *In re McDonough*, 430 A.2d 308 (Pa. Super. Ct. 1981).

Paragraph (C) addresses a statement submitted by the victim to the court. For the victim's opportunity to be heard, see Rule 512(A)(2). See also Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

**Official Note:** Rule 513 adopted April 1, 2005, effective October 1, 2005.

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 513 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

## **RULE 515. DISPOSITIONAL ORDER**

A. **Generally.** When the court enters a disposition, the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

- 1) **the court's findings pursuant to Rule 512(E) [the terms and conditions of the disposition];**
- 2) **the name of any agency or institution that is to provide care, treatment, supervision, or rehabilitation of the juvenile];**
- [3]2) a designation whether the case is eligible pursuant to 42 Pa.C.S. § 6307 (b)(1)(i) for limited public information;
- 3) **any directive relating to the educational, health care, or disability needs of the juvenile;**
- 4) the date of the order; and
- 5) the signature and printed name of the judge entering the order.

B. **Restitution.** If restitution is ordered in a case, the dispositional order shall include:

- 1) a specific amount of restitution to be paid by the juvenile;
- 2) to whom the restitution is to be paid; and
- 3) a payment schedule, if so determined by the court.

C. **Guardian participation.** The court shall include any obligation in its dispositional order imposed upon the guardian.

### **COMMENT**

Pursuant to paragraph (A)([3]2), the court is to determine if the case is eligible for limited public information under the requirements of 42 Pa.C.S. § 6307 (b)(1)(i). See 42 Pa.C.S. § 6307 (b)(2). When the case is designated, the clerk of courts is to mark the file clearly. For information that is available to the public in those eligible cases, see Rule 160.

**Pursuant to paragraph (A)(3), the court should address the juvenile's educational needs. The court's order should address the right to: 1) an educational decision maker, 20 U.S.C. §1439(a)(5), 34 C.F.R. § 300.519; and 2) an appropriate education, including any necessary special education, early intervention, or remedial services, 20 U.S.C. § 1400 et seq., 55 Pa. Code § 3130.87, 24 P.S. § 13-1371, 1372. See also Rule 147 for appointment of an educational decision maker.**

**The court should also address the juvenile's health care and disability needs. The court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and healthcare services, 42 USC § 1396d(r), 55 Pa. Code § 3800.32; and 2) a juvenile**

with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 et seq.

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. § 6310.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

**Official Note:** Rule 515 adopted April 1, 2005, effective October 1, 2005. Amended August 20, 2007, effective December 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 515 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007).

## **RULE 610. DISPOSITIONAL AND COMMITMENT REVIEW**

### **A. Dispositional Review Hearing.**

- 1) **[A] The** court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

### **B. Change in dispositional order.** Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, the court shall give the parties notice of the request and an opportunity to be heard.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

### **C. Advanced Communication Technology.** If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

#### **COMMENT**

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months. See Rule 800.

**At any hearing, if it is determined that the juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.**

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

**Official Note:** Rule 610 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

**PART B(1)**  
**[EXAMINATION AND TREATMENT] EDUCATION AND HEALTH**  
**OF CHILD**

1145. Application or Motion for Examination and Treatment of a Child

**1147. Educational decision maker.**

**RULE 1147. EDUCATIONAL DECISION MAKER.**

**A. Generally. At any proceeding or upon motion, if the court determines a child is in need of an educational decision maker, the court shall appoint an educational decision maker for the child.**

**B. Duties. The educational decision maker shall ensure:**

- 1) the child's educational stability;**
- 2) the child is receiving appropriate education, including any necessary special education, early intervention, or remedial services;**
- 3) children, who are sixteen years of age or older, are receiving the necessary educational services to transition the child to independent living, if and when appropriate; and**
- 4) children, who are aging out of care within 90 days, are receiving a transition plan that addresses the child's educational needs if appropriate.**

**COMMENT**

**The court may appoint the guardian *ad litem* to be the child's educational decision maker if the guardian *ad litem* is familiar with a child's educational rights. See Rule 1154 (7) for duties of the guardian *ad litem*.**

**The educational decision maker should refer to the Fostering Connections Act (P.L. 110-351) and the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 *et seq.*) for guidance in educational stability. The educational decision maker should ensure the right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. § 675(1)(G), 42 U.S.C. § 11431 *et seq.*; 2) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 55 Pa. Code § 3130.87, 24 P.S. §13-1371, 1372, 20 U.S.C. §1400 *et seq.*; 3) educational services necessary to support the child's transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older; and 4) a transition plan that addresses the child's educational needs pursuant to 42 USC § 675(5)(H) if the child will age out of care within 90 days.**

## **RULE 1154. DUTIES OF GUARDIAN AD LITEM**

A guardian *ad litem* shall:

- 1) Meet with the child as soon as possible following assignment pursuant to Rule 1151 and on a regular basis thereafter in a manner appropriate to the child's age and maturity;
- 2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;
- 3) Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child;
- 4) Conduct such further investigation necessary to ascertain the facts;
- 5) Interview potential witnesses, including the child's guardians, caretakers, and foster parents, examine and cross-examine witnesses, and present witnesses and evidence necessary to protect the best interests of the child;
- 6) At the earliest possible date, be advised by the county agency having legal custody of the child of:
  - a) any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the relocation or change in custody or visitation; and
  - b) any proceeding, investigation, or hearing under the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.* or the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, directly affecting the child;
- 7) Make any specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, **including the child's educational, health care, and disability needs**;
- 8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition, and emotional condition; and
- 9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court.

## COMMENT

If there is a conflict of interest between the duties of the guardian *ad litem* pursuant to paragraphs (7) & (9), the guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. [the guardian *ad litem* may move the court for appointment of a separate guardian *ad litem* or legal counsel.] If there is not a conflict of interest, the guardian *ad litem* represents the legal interests and best interests of the child at every stage of the proceedings. 42 Pa.C.S. § 6311(b). To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. See Rules 1151 and 1800. See also Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraph (7), the guardian *ad litem* is to make specific recommendations to the court regarding the appropriateness of the child's placement, giving consideration to the proximity and appropriateness of the child's school. See 42 Pa.C.S. § 6311(b)(7) & 42 U.S.C. § 675(1)(G). Inquiries into the child's education should include the right to: 1) educational stability, including the right to remain in the same school regardless of a change in placement when in the child's best interest and the right to immediate enrollment when a school change is in the child's best interest, 42 U.S.C. § 675(1)(G), 42 U.S.C. § 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 20 U.S.C. § 1439(a)(5), 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services, 55 Pa. Code § 3130.87, 24 P.S. §§ 13-1371, 1372, and 20 U.S.C. § 1400 *et seq.*; 4) the educational services necessary to support the child's transition to independent living, 42 Pa.C.S. § 6351 if a child is sixteen or older; and 5) a transition plan that addresses the child's educational needs, 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days.

See *In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750, 753-54 (1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph (7), the guardian *ad litem* is to make specific recommendations to the court regarding the appropriateness of the child's placement, giving consideration to protecting the child's health care and disability needs. Inquiries into the child's health should include the right of: 1) the child to receive timely and medically appropriate screenings and healthcare services, 55 Pa. Code § 3700.51, 55 Pa. Code § 3800.32, 42 U.S.C. § 1396d(r); and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

**Official Note:** Rule 1154 adopted August[,], 21, 2006, effective February 1, 2007.

**PART C  
SHELTER CARE**

- 1240. Shelter Care Application
- 1241. Notification of Shelter Care Hearing
- 1242. General Conduct of Shelter Care Proceeding
- 1243. Shelter Care Rehearing

**RULE 1240. SHELTER CARE APPLICATION**

A. **Filings.** A shelter care application may be oral. Within twenty-four hours of exercising protective custody pursuant to Rule 1210, the county agency shall reduce to writing and file a shelter care application with the Juvenile Court.

B. **Application contents.** Every shelter care application shall set forth plainly:

- 1) the name of the applicant;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) the date that the child was taken into custody;
- 5) a concise statement of facts in support of the allegation of dependency;
- 6) **[if a child is in shelter care,]** a statement **detailing:**
  - a) **the [that]** reasonable efforts **made** to prevent placement; **[were made]**  
and
  - b) **why** there are no less restrictive alternatives available;
- 7) a verification by the applicant that the facts set forth in the petition are true and correct to the applicant's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 8) the signature of the applicant and the date of the execution of the application;  
and
- 9) the whereabouts of the child unless the county agency has determined it would pose a risk to the safety of the child or the guardian, or disclosure is prohibited by the court.

### COMMENT

In lieu of a shelter care application, the county agency may file a petition as set forth in Rule 1330.

The primary focus of the shelter care application is to assert that protective custody is needed and the child should remain in the custody of the county agency. A shelter care hearing is to be held within seventy-two hours of taking the child into protective custody. See Rule 1242(D).

**Pursuant to paragraph (B)(6), the application is to contain a statement detailing the reasonable efforts made to prevent placement and the specific reasons why there are no less restrictive alternatives available. This statement may include information such as: 1) the circumstances of the case; 2) contact with family members or other kin; 3) the child's special needs, including educational stability and health care needs; and 4) any need for emergency actions.**

**Official Note:** Rule 1240 adopted August[, ] 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1240 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

## **RULE 1242. GENERAL CONDUCT OF SHELTER CARE HEARING.**

A. **Informing of rights.** Upon commencement of the hearing, the court shall ensure that:

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. **Manner of hearing.**

- 1) **Conduct.** The hearing shall be conducted in an informal but orderly manner.
- 2) **Recording.** If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.
- 3) **Testimony and evidence.** All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

C. **Findings.** The court shall determine whether:

- 1) there are sufficient facts in support of the shelter care application;
- 2) custody of the child is warranted **by finding that**:
  - [3]** a) remaining in the home would be contrary to the welfare and best interests of the child;
  - b) reasonable efforts were made by the county agency to prevent the child's placement;
  - c) the child's placement is the least restrictive placement that meets the needs of the child, stating the reasons why there are no less restrictive alternatives available; and [or]**
  - [c]d) the lack of efforts was reasonable** in the case of an emergency placement where services were not offered, **[whether the lack of efforts were reasonable]**; and
- [4]3) a person, other than the county agency, submitting [if]** a shelter care application, **[is submitted by a person other than the county agency, the**

**court shall make a determination if the person]** is a party to the proceedings.

D. **Prompt hearing.** The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. **Court order.** At the conclusion of the shelter care hearing, the court shall enter a written order as to the following:

- 1) its findings pursuant to paragraph (C);
- 2) any conditions placed upon any party;
- 3) any orders for placement or temporary care of the child; **[and]**
- 4) **any findings or orders that address the stability and appropriateness of the child's education;**
- 5) **any findings or orders that identify, monitor, and address the health care and disability needs of the child; and**
- 6) any orders of visitation.

#### COMMENT

**Pursuant to paragraph (C), the court is to make a determination that the evidence presented with the shelter care application under Rule 1240 is supported by sufficient facts. After this determination, the court is to determine that the custody of the child is warranted by finding that: 1) remaining in the home would be contrary to the health and welfare of the child; 2) reasonable efforts were made by the county agency to prevent the placement of the child; 3) the child was placed in the least restrictive placement available; and 4) if the child was taken into emergency placement without services being offered, there is to be evidence that the lack of efforts was reasonable. Additionally, the court is to state the reasons why there are no less restrictive alternatives available.**

**Pursuant to [Under] paragraph (C)([4]3), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.**

**Under paragraph (D), the court is to ensure a timely hearing.**

**[Under paragraph (E), the court is to include in its order specific findings that: 1) there are sufficient facts in support of the dependency petition; 2) custody of the child is warranted; and 3) remaining in the home would be contrary to the welfare and best interests of the child, or reasonable efforts were made by the county agency to prevent the child's placement, or in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable.]**

**See 42 Pa.C.S. § 6332.**

**Pursuant to paragraph (E), the court is to enter a written order. It is important that the court address any special needs of the child while the juvenile is in shelter care. The child's attorney or the county agency is to present any special needs to the court if known at the time of the hearing. Special needs may include special education needs, early intervention, remedial services, and health and disability needs. If the court determines a child is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 1147.**

**When addressing the child's health and disability needs, the court's order should address the right of: 1) a child to receive timely and medically appropriate screenings and healthcare services, 42 USC § 1396d(r), 55 Pa. Code § 3800.32; and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 et seq.**

**Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).**

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to insure a timely adjudicatory hearing is held.

See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

See Rule 1330(A) for filing of a petition.

**Official Note:** Rule 1242 adopted August[, ] 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1242 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

## **RULE 1512. DISPOSITIONAL HEARING**

A. **Manner of hearing.** The court shall conduct the dispositional hearing in an informal but orderly manner.

- 1) **Evidence.** The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
- 2) **Opportunity to be heard.** Before deciding disposition, the court shall give the parent, child's foster parent, preadoptive parent, relative providing care for the child and court appointed special advocate, if assigned, an opportunity to make a statement.

B. **Recording.** The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. **Ex parte Communication.**

- 1) Except as provided by these rules, no person shall communicate with the court in any way.
- 2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

**D. Duties of the court. The court shall determine on the record that the parties have been advised of the following:**

- 1) the right to file an appeal;**
- 2) the time limits for an appeal; and**
- 3) the right to counsel to prepare the appeal.**

**E. Court's findings. On the record, the court shall state:**

- 1) its findings and conclusions that formed the basis of its decision consistent with 42 Pa.C.S. § 6351;**
- 2) the terms and conditions of the disposition;**
- 3) if placed, a finding that:**

- a) remaining in the home would be contrary to the welfare, safety, or health of the child;
  - b) reasonable efforts were made by the county agency to prevent the child's placement;
  - c) the child's placement is the least restrictive placement that meets the needs of the child, stating the reasons why there are no less restrictive alternatives available; and
  - d) if preventive services were not offered due to the necessity of an emergency placement, whether such lack of services was reasonable under the circumstances; and
- 4) any educational, health care, and disability needs of the child.

#### COMMENT

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a child should preside over the dispositional hearing for the same child.

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition to those specified individuals. See Rule 1123 for subpoenaing a witness.

For transcription of the record under paragraph (B), see also Rule 1127.

Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, and communications with court personnel, are not considered *ex parte* communications.

Pursuant to paragraph (E)(4), the court should address the child's educational needs. The court's order should address the right to: 1) an educational decision maker, 20 U.S.C. §1439(a)(5), 34 C.F.R. § 300.519; and 2) an appropriate education, including any necessary special education, early intervention, or remedial services, 20 U.S.C. § 1400 et seq., 55 Pa. Code § 3130.87, 24 P.S. § 13-1371, 1372. See also Rule 147 for appointment of an educational decision maker.

The court should also address the child's health and disability needs. The court's order should address the right of: 1) a child to receive timely and medically appropriate screenings and healthcare services, 42 USC § 1396d(r), 55 Pa. Code § 3800.32; and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 et seq.

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

**Official Note:** Rule 1512 adopted August[, ] 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

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## **RULE 1515. DISPOSITIONAL ORDER**

A. **Generally.** When the court enters a disposition, the court shall issue a written order, which provides that the disposition is best suited to the safety, protection, and physical, mental, and moral welfare of the child. The order shall include:

- 1) the terms, conditions, and limitations of the disposition;
- 2) the name of any person or the name, type, category, or class of agency, licensed organization, or institution that is to provide care, shelter, and supervision of the child;
- 3) **any findings pursuant to Rule 1512;**
- 4) **any findings pursuant to Rule 1514 if a child is being removed from the home;**
- [4]5) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;**
- 6) any findings or orders necessary to identify, monitor, and address the health care and disability needs, if any, of the child and if parental consent cannot be obtained, authorize evaluations and treatment needed;**
- 7) any ordered evaluations, tests, counseling, accommodations, [or] treatments, and services;**
- [5]8) any ordered family service plan or permanency plan if not already prepared;**
- [6]9) any visitations, including any limitations;**
- [7]10) the date of the order; and**
- [8]11) the signature and printed name of the judge entering the order.**

B. **Transfer of legal custody.** If the court decides to transfer legal custody of the child to a person or agency found to be qualified to provide care, shelter, and supervision of the child, the dispositional order shall include:

- 1) the name and address of such person or agency, unless the court determines disclosure is inappropriate;
- 2) the limitations of the order; and

3) any visitation rights.

C. **Orders concerning guardian.** The court shall include any conditions, limitations, restrictions, and obligations in its dispositional order imposed upon the guardian.

#### COMMENT

See 42 Pa.C.S. §§ 6310, 6351.

**When issuing a dispositional order, the court should issue an order that is “best suited to the safety, protection, and physical, mental and moral welfare of the child.” 42 Pa.C.S. § 6351(a). See *In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750, 753-54 (1990)), for issues addressing a child’s mental and moral welfare.**

**Pursuant to paragraph (D), the court’s order is to address the child’s educational stability, including the right to an educational decision maker. The order should address the child’s right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child’s best interest; b) immediate enrollment when a school change is in the child’s best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. § 675(1)(G), 42 U.S.C. § 11431 et seq.; 2) an educational decision maker pursuant to Rule 1147, 20 U.S.C. §1439(a)(5), 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 55 Pa. Code § 3130.87, 24 P.S. §13-1371, 1372, 20 U.S.C. §1400 et seq.; 4) the educational services necessary to support the child’s transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older ; and 5) a transition plan that addresses the child’s educational needs pursuant to 42 USC § 675(5)(H) if the child will age out of care within 90 days.**

**Pursuant to paragraph (E), the court’s order is to address the child’s health care and disability needs. The order should address the right of: 1) a child to receive timely and medically appropriate screenings and healthcare services pursuant to 55 Pa. Code § 3700.51, 55 Pa. Code § 3800.32, and 42 U.S.C. § 1396d(r); 2) a child to a transition plan that addresses the child’s health care needs, and includes specific options for how the child can obtain health insurance after leaving care pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days; and 3) a child with disabilities to receive necessary accommodations pursuant to 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, and implementing regulations at 45 C.F.R. §84.1 et seq. In addition, the court is to ensure progress and compliance with the child’s case plan for the ongoing oversight and coordination of health care services under 42 U.S.C. § 622(b)(15).**

**Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).**

45 CFR § 1356.21 provides a specific foster care provider may not be placed in a court order to be **in** compliance with and receive funding through the Federal Financial Participation.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges’ Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges’ Commission, Room 401, Finance Building, Harrisburg, PA 17120.

See *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990).

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*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1515 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

## **RULE 1609. COURT ORDER OF PERMANENCY HEARING DETERMINATIONS**

- A. **[Findings]Court order.** After every permanency hearing, the court shall issue a written order, which provides whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.
- B. **Determination made.** The court's order shall reflect a determination made [consistent with 42 Pa.C.S. § 6351(f.1)]**pursuant to Rule 1608 (B).**
- C. **Transfer of legal custody.** If the court decides to transfer permanent legal custody of the child to a person found to be qualified to provide care, shelter, and supervision of the child, the permanency order shall include:
- 1) the name and address of such person unless disclosure is prohibited by court order;
  - 2) the limitations of the order; and
  - 3) any temporary visitation rights of parents.
- D. **Orders concerning education.**
- 1) **The court's order shall address the stability and appropriateness of the child's education; and**
  - 2) **When appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147.**
- E. **Orders concerning health and disability.**
- 1) **The court's order shall identify, monitor, and address the health care and disability needs of the child;**
  - 2) **The court's orders shall authorize evaluations and treatment if parental consent cannot be obtained.**
- F. **Orders concerning guardians.** The court's **order** shall include any conditions, limitations, restrictions, and obligations [**in its permanency order**] imposed upon the guardian.

### **COMMENT**

Under paragraph (B), the court's order is to reflect whether: 1) If the court finds that return of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall specify: a) the conditions of the return of the child; and b) the projected date of the return of the child; or 2) If the court finds that the return of the child is not best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall determine if and when the child will be placed: a) for adoption and the county agency will file for termination of parental rights pursuant to Pa.O.C.R., Rule 15.4; b) with a legal custodian; c) with a fit and willing relative; or d) in another living

arrangement intended to be permanent in nature which is approved by the court and where the county agency has documented a compelling reason explaining why options under (a) through (c) are not feasible.

**When issuing a permanency order, the court should issue an order that is “best suited to the safety, protection, and physical, mental and moral welfare of the child.” 42 Pa.C.S. § 6351(a). See *In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750, 753-54 (1990)), for issues addressing a child’s mental and moral welfare.**

**Pursuant to paragraph (D), the court’s order is to address the child’s educational stability, including the right to an educational decision maker. The order should address the child’s right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child’s best interest; b) immediate enrollment when a school change is in the child’s best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. § 675(1)(G), 42 U.S.C. § 11431 et seq.; 2) an educational decision maker pursuant to Rule 1147, 20 U.S.C. §1439(a)(5), 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 55 Pa. Code § 3130.87, 24 P.S. §13-1371, 1372, 20 U.S.C. §1400 et seq.; 4) the educational services necessary to support the child’s transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older ; and 5) a transition plan that addresses the child’s educational needs pursuant to 42 USC § 675(5)(H) if the child will age out of care within 90 days.**

**Pursuant to paragraph (E), the court’s order is to address the child’s health care and disability needs. The order should address the right of: 1) a child to receive timely and medically appropriate screenings and healthcare services pursuant to 55 Pa. Code § 3700.51, 55 Pa. Code § 3800.32, and 42 U.S.C. § 1396d(r); 2) a child to a transition plan that addresses the child’s health care needs, and includes specific options for how the child can obtain health insurance after leaving care pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days; and 3) a child with disabilities to receive necessary accommodations pursuant to 42 U.S.C. § 12132; 28 C.F.R. 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, and implementing regulations at 45 C.F.R. §84.1 et seq. In addition, the court is to ensure progress and compliance with the child’s case plan for the ongoing oversight and coordination of health care services under 42 U.S.C. § 622(b)(15).**

**Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).**

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