

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 2, 5, 6, 11, 12, 15 AND 16]

Order Amending Rules 242, 512, 513, 515, 610, 1154, 1240, 1242, 1512, 1515 and 1609, and adding New Rules 147 and 1147 of the Rules of Juvenile Court Procedures

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modifications of Rules 242, 512, 513, 515, 610, 1154, 1240, 1242, 1512, 1515, and 1609 and new Rules 147 and 1147 be adopted and prescribed. Most of the proposed amendments concern the educational, health and disability needs of a juvenile or child, therefore, these issues are very important for the court to address. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the intent of the rules. Note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.
Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
P. O. Box 62635
Harrisburg, PA 17106-2635

no later than Monday, Nov 9, 2009.

*By the Juvenile Court
Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELIQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(1). EDUCATION AND HEALTH OF CHILD

(Editor's Note: The following Rule 147 is new and has been printed in regular print to enhance readability.)

Rule
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 16 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 under 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 under 42 Pa.C.S. § 6351 if the child is 16 years of age or older; and 4) a transition plan that addresses the child's educational needs under 42 USC § 675(5)(H) if the child will age out of care within 90 days.

PART B(2). COUNSEL

Rule
150. Attorneys—Appearances and Withdrawals.
151. Assignments of Counsel.
152. Waiver of Counsel.

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

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 under 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 U.S.C. § 1396d(r), 55 Pa. Code § 3800.32; and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 84.1 *et seq.*

Under 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 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).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

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 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 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.**

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.

Under 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.

Under 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 CFR

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 U.S.C. § 1396d(r), 55 Pa. Code § 3800.32; and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 84.1 *et seq.*

Under 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).

Under 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 after an adjudication of delinquency pursuant to Rule 409(A)(2), 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 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] the court's findings pursuant to Rule 512(E);
- [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] Under 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.

Under 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 CFR 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 U.S.C. § 1396d(r), 55 Pa. Code § 3800.32; and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132; 28 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 84.1 *et seq.*

Under 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] 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. 4868 (September 8, 2007).

Final Report explaining the amendments to Rule 515 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

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. 187 (January 14, 2006).

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

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

(Editor's Note: The following Rule 1147 is new and has been printed in regular print to enhance readability.)

Rule 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 16 years of age or older; and 4) a transition plan that addresses the child's educational needs under 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days.

PART B(2). COUNSEL

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.

Under 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) and 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 under Rule 1147, 20 U.S.C. § 1439(a)(5), 34 CFR 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.

Under paragraph (7), the guardian ad litem is to make specific recommendations to the court re-

garding 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 CFR 35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and implementing regulations at 45 CFR 84.1 et seq.

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

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART C. SHELTER CARE

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 **[that]** detailing:
 - a) **the 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).

Under 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; **[or]**

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) **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) [if] a person, other than the county agency, submitting 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.

[Under] Pursuant to 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 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 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).

CHAPTER 15. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

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.

Under 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 CFR 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 U.S.C. § 1396d(r), 55 Pa. Code § 3800.32; and 2) a child with disabilities to receive necessary

accommodations, 42 U.S.C. § 12132; 28 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 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:

Final Report explaining the provisions of Rule 1512 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

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;

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;**

[4] 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.

Under 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 CFR 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 under 42 Pa.C.S. § 6351 if the child is 16 years of age or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days.

Under 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 under 42 U.S.C. § 12132; 28 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 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).

Under 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**] **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).

Official Note: Rule 1515 adopted August 21, 2006, effective February 1, 2007.

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).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B. PERMANENCY HEARING

Rule 1609. Court Orders 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 [guardian] guardians.* The [**court**] **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.

Under 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 CFR 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 under 42 Pa.C.S. § 6351 if the child is 16 or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 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 under 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 under 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 under 42 U.S.C. § 12132; 28 CFR 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and implementing regulations at 45 CFR 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).

Under 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 1609 adopted August 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1609 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

Explanatory Report

Educational, Health Care and Disability Amendments

The majority of the proposed rule amendments address the educational, health and disability needs of a juvenile or child. The Committee spent a considerable amount of time discussing what types of issues the court should be looking at during its hearings and in its order.

Under the Juvenile Act, the court shall provide for the welfare, health and safety of children under its supervision. (42 Pa.C.S. § 6301). To achieve this purpose, the court must address the basic needs of juveniles or children, which include educational, health and disability needs.

Educational, health care and disability needs of juveniles or children in the system must be met to ensure their welfare. The court's role in addressing these needs is not merely a matter of best practice, but rather an essential component when addressing the fundamental needs of juveniles or children under its supervision.

With the proposed amendments relating to education, the rules effectively address the educational needs by focusing on three key issues at every stage of the court proceedings: 1) minimizing school changes; 2) ensuring that a juvenile or child is attending school, receiving educational services, and making progress toward graduation; and 3) ensuring that each juvenile or child has a legally authorized educational decision maker.

With the proposed amendments relating to health care and disability, the court must ensure that juveniles' or children's health care and disability needs are identified, monitored and addressed; including that children with disabilities are receiving necessary accommodations.

As set forth in the proposed amendments, each of these educational, health care and disability needs would be addressed at each stage of the proceedings and in the court's orders.

New Rules 147 and 1147 provide for the appointment and duties of an educational decision maker. If, at any time, the court determines a juvenile or a child is in need of an educational decision maker, the court shall appoint an appropriate person to fulfill this role.

As early as the detention or shelter care hearing, under Rules 242 and 1242, the court must inquire about any special needs of the juvenile or child. Then, as the case progresses to the dispositional, dispositional review, commitment review and permanency hearings, under Rules 512, 515, 610, 1512, 1515 and 1609, the court must

ensure that the identified needs are addressed at the hearing and in its order following the hearing.

Rules 513 and 1154 require the juvenile probation officer or the guardian *ad litem* to make specific recommendations concerning these needs.

Other Amendments

The other proposed amendments to these rules relate to the reasonable efforts made to prevent placement and *ex parte* communications.

The Committee has noticed that courts, when placing a juvenile or child, are not explaining why there are no less restrictive alternatives available in their orders. The Committee is proposing that courts must be required to state specific reasons, rather than merely a statement that there are no less restrictive alternative available. These amendments can be found in Rules 512, 1240, 1242 and 1512.

In Rule 512, the Committee is proposing language concerning *ex parte* communications. The Committee has been including this language when updating its rules. See Rules 1406 and 1512.

[Pa.B. Doc. No. 09-1921. Filed for public inspection October 16, 2009, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 1 AND 3]

Order Adopting New Rule 141 and Amending Rules 140 and 311 of the Rules of Juvenile Court Procedure; No. 482; Supreme Court Rules

Order

Per Curiam

And Now, this 30th day of September, 2009, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 38 Pa.B. 6262 (November 15, 2008), in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 957, No. 2, November 14, 2008), and on the Supreme Court's web-page, and an *Explanatory Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the adoption of new Rule 141 and the modifications to Rules 140 and 311 are approved as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2010.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

Rule 140. Bench Warrants for Failure to Appear at Hearings.*A. Issuance of warrant.*

1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

*C. Juvenile.*1) *Where to take the juvenile.*

a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the juvenile is not brought before a judge, the juvenile shall be released unless:

i) the warrant specifically orders detention of the juvenile; or

ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

2) *Prompt hearing.*

a) If a juvenile is detained pursuant to a specific order in the bench warrant, the juvenile shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph ([B]C)(4) within seventy-two hours.

b) If the juvenile is not brought before a judge within this time, the juvenile shall be released.

3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the juvenile shall be made immediately.

c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge of the county where the juvenile is found.

d) The judge will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.

5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

[C]D. Witnesses.1) *Where to take the witness.*

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

1) *Minor.* If a detained witness is a minor, the witness shall be detained in a detention facility.

2) *Adult.* If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

a) If a witness is detained pursuant to paragraph ([C]D)(1)(c) or brought back to the county of issuance pursuant to paragraph ([C]D)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) *Notification of guardian.* If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor.* If the witness is a minor, the witness may be detained in an out-of-county detention facility.

ii) *Adult.* If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

[D]E. Return and execution of the warrant for juveniles and witnesses.

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

Comment

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Pursuant to paragraph ([B]C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. See paragraph ([B]C) for alleged delinquents and paragraph ([C]D) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph ([B]C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph ([B]C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, the juvenile may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph ([B]C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See paragraph ([B]C)(2)(b).

Under paragraphs ([B]C)(2) and ([B]C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. See Rule 240(C).

Pursuant to paragraph ([B]C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph ([B]C)(5), the time requirements of all other rules are to apply to juveniles who are detained. See, e.g., Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph ([C]D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph ([C]D)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph ([C]D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph ([C]D)(2) is to be held by the next business day or the witness is to be released. See paragraph ([C]D)(2)(b).

Pursuant to paragraph ([C]D)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. See paragraph ([C]D)(4)(f).

Pursuant to paragraph ([D]E)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph ([D]E)(3).

Pursuant to paragraph ([D]E)(4), the bench warrant is to be vacated after the return of the warrant is executed [**so the juvenile or witness is not taken into custody on the same warrant if the juvenile or witness is released**]. “Vacated” is to [**mean**] denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (E)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008; **amended September 30, 2009, effective January 1, 2010.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 140 published with the Court’s Order at 38 Pa.B. 1145 (March 8, 2008).

Final Report explaining the amendments to Rule 140 with the Court’s Order at 39 Pa.B. 6033 (October 17, 2009).

(Editor’s Note: The following Rule 141 is new and has been printed in regular print to enhance readability.)

Rule 141. Bench Warrants for Absconders.

A. Issuance of warrant. The juvenile probation officer shall immediately notify the court upon notification or

recognition that a juvenile has absconded from the supervision of the court. The court may issue a bench warrant for the juvenile.

B. *Entry of warrant information.* Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. *Where to take the juvenile.* The juvenile shall be detained in a detention facility or other facility designated in the bench warrant pending a hearing pursuant to paragraph (D).

D. *Prompt hearing.* The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.

E. *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

F. *Notification of guardian.* When the juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

G. *Return and execution of the warrant.*

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

5) Once the warrant is vacated, the court shall order the probation officer or other court designee to remove or request that a law enforcement officer remove the warrant from all appropriate registries.

Comment

Pursuant to paragraph (A), when a juvenile: 1) escapes from a placement facility, detention facility, shelter care facility, foster-care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court, the court may issue a warrant for the juvenile.

Pursuant to paragraph (B), the court is to notify the juvenile probation officer or another court designee to enter or request that a law enforcement officer enter the bench warrant in all appropriate registries, such as JNET, CLEAN, PCIC, and NCIC.

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant. If a juvenile is taken into custody pursuant to the bench warrant in a county other than the county of issuance, the juvenile is to be transported back to the county of issuance prior to the seventy-two-hour detention hearing mandated pursuant to paragraph (D).

Pursuant to paragraphs (D) and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. See, e.g., Rules 240, 391, 404, 510, and 605.

The arresting officer is to notify the juvenile's guardian of the arrest, the reasons for the arrest, and the juvenile's whereabouts under paragraph (F).

Pursuant to paragraph (G)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (G)(3).

Pursuant to paragraph (G)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (G)(5), once the warrant is vacated, the juvenile probation officer or other court designee is to remove the warrant or request that a law enforcement officer remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

Official Note: Rule 141 adopted September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 141 published with the Court's Order at 39 Pa.B. 6033 (October 17, 2009).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART B. INTAKE AND INFORMAL ADJUSTMENT

Rule 311. Intake Conference.

A. **Generally.** The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. **Juvenile probation officer's duties.** Before proceeding with an intake conference, the juvenile probation officer shall:

1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and

2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and

3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.

C. **Rescheduling.** If a juvenile fails to appear for an intake conference, the juvenile probation officer may attempt to reschedule the conference.

D. Bench Warrants.

1) **If the juvenile fails to appear for an intake conference, the juvenile probation officer may notify the court that the juvenile has failed to appear for the conference.**

2) **If a judge finds that sufficient notice of the intake conference was given, the judge may issue a bench warrant. The judge may not find notice solely based on first-class mail service.**

3) **If a bench warrant is issued, the case shall proceed pursuant to Rules 140 and 240.**

E. Notice, motion, and hearing.

1) The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference.

2) Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action.

3) The court shall conduct a hearing on the motion.

Comment

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. *See* 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

For the statutory protections concerning statements made by the juvenile, *see* 42 Pa.C.S. § 6323(e).

Pursuant to paragraphs (C) and (D), if a juvenile fails to appear for an intake conference, juvenile probation officers should use their discretion in determining whether to reschedule the intake conference or ask the court to issue a bench warrant.

Pursuant to paragraph (D)(2), in determining sufficient notice, the judge may not find notice solely based on first-class mail service. *See also* Rule 140(A)(2) and its Comment.

Under paragraph ([C]E), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend an intake conference.

Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005; amended September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 311 with the Court's Order at 39 Pa.B. 6033 (October 17, 2009).

Introduction

The Supreme Court of Pennsylvania has adopted new Rule 141 and the proposed changes to Rules 140 and 311. The changes are effective January 1, 2010.

EXPLANATORY REPORT

SEPTEMBER 2009

Rule 140—Bench Warrants for Failure to Appear at Hearings.

“At hearings” was added to the title of this rule to clarify that this rule applies to bench warrants for failure to appear at hearings. The new Rule 141 applies to bench warrants for absconders.

Also, a new paragraph (B) has been added. A bench warrant shall be entered in all appropriate registries,

such as JNET, CLEAN, PCIC, and NCIC, by the juvenile probation officer, other court designee, or a law enforcement officer once a warrant has been issued by the judge. This ensures that law enforcement is aware of the bench warrant so it may be executed.

Rule 141—Bench Warrants for Absconders.

This new rule provides for the procedures governing when a juvenile absconds from the supervision of the court. This covers all incidences when the court no longer has contact with the juvenile. This would include, but is not limited to, a juvenile who: 1) has escaped from a placement facility, detention facility, shelter care facility, foster care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court.

Paragraph (B) ensures that the bench warrant is entered in all appropriate registries by the juvenile probation officer, other court designee, or a law enforcement officer once a warrant has been issued by the judge. This also ensures that law enforcement is aware of the bench warrant so it may be executed.

Paragraph (C) requires that the juvenile shall be detained in a detention facility or any other facility deemed appropriate by the court until a prompt hearing pursuant to paragraph (D) is held.

The guardian of the juvenile shall be notified immediately when a juvenile is taken into custody pursuant to a bench warrant. The arresting officer shall explain the reasons the warrant was issued and where the juvenile is being detained. *See* paragraph (F).

Paragraph (G) provides for the procedures regarding returning and executing the warrant.

Rule 311—Intake Conference.

With the changes in the title to Rule 140, a new paragraph (D) has been added in Rule 311 to address bench warrants when a juvenile fails to appear for an intake conference. Instead of issuing a warrant, the juvenile probation officer may choose to reschedule the conference under new paragraph (C).

[Pa.B. Doc. No. 09-1922. Filed for public inspection October 16, 2009, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY
Amended Civil Rules of Procedure

Order

And Now, this 30th day of September, 2009 at 10:30 a.m., Schuylkill County Civil Rule of Procedure No. 1303(e) is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1. File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts;

2. Forward two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version;

3. Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania;

4. Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5. Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By The Court

WILLIAM E. BALDWIN,
President Judge

**Schuylkill County Local Rule of Procedure
Rule 1303(e)**

Hearing, Notice and Continuances

(e) Arbitrators may not grant continuances. Applications for continuances of any scheduled arbitration hearing shall be on the Application for Continuance Form available from the Prothonotary or Court Administrator's Office. The Application for Continuance must be filed with the Prothonotary and the Continuance Fee must be paid upon filing. Continuance requests should be submitted to the Prothonotary at least 20 days before such hearing and after reasonable notice of such application has been provided to the opposing counsel. The application shall indicate the number of continuances previously requested, and whether or not the continuance is opposed.

The Prothonotary shall promptly serve the Continuance Form upon the Court Administrator.

[Pa.B. Doc. No. 09-1923. Filed for public inspection October 16, 2009, 9:00 a.m.]