

THE COURTS

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES [210 PA. CODE CH. 67]

Rescission of Commonwealth Court Internal Operating Procedure

The Commonwealth Court has rescinded Internal Operating Procedure 224 Preargument matters; original record (210 Pa. Code § 67.17), effective April 5, 2011.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 67. COMMONWEALTH COURT

Subchapter A. INTERNAL OPERATING PROCEDURES OF THE COMMONWEALTH COURT

APPELLATE JURISDICTION

§ 67.17. (Reserved).

[Pa.B. Doc. No. 11-790. Filed for public inspection May 13, 2011, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 2, 4—6, 11, 12, 14—16 AND 18]

Order Amending Rules 120, 242, 406, 500, 512, 513, 515, 600, 610, 1120, 1154, 1240, 1242, 1406, 1501, 1512, 1514, 1515, 1601, 1609, and 1800 and Adoption of New Rules 136, 147, 1136, and 1147 of the Rules of Juvenile Court Procedure; No. 528 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 29th day of April, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 39 Pa.B. 6019 (Oct. 17, 2009) and 40 Pa.B. 2245 (May 1, 2010), in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 978, No. 3, October 9, 2009 and Vol. 992, No. 1, May 21, 2010), 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 modifications to Rules 120, 242, 406, 500, 512, 513, 515, 600, 610, 1120, 1154, 1240, 1242, 1406, 1501, 1512, 1514, 1515, 1601, 1609, and 1800 and adoption of new Rules 136, 147, 1136, and 1147 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2011.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

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EDUCATIONAL DECISION MAKER is a responsible adult appointed by the court to make decisions regarding a juvenile’s education when the juvenile has no guardian or the court has limited the guardian’s right to make such decisions for the juvenile. The educational decision maker acts as the juvenile’s representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

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HEALTH CARE is care related to any medical need including physical, mental, and dental health. This term is used in the broadest sense to include any type of health need.

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SOCIAL STUDY is a pre-dispositional report, which summarizes important information concerning the juvenile to aid the court in determining the disposition.

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Comment

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The term “disposition” includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case “with prejudice” prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

An “educational decision maker” is to be appointed by court order. The scope of the appointment is limited to decisions regarding the juvenile’s education. The educational decision maker acts as the juvenile’s spokesperson on all matters regarding education unless the court specifically limits the authority of the educational decision maker. The educational decision maker holds educational and privacy rights as the juvenile’s guardian for purposes of 20 U.S.C. § 1232g and 34 C.F.R. § 99.3. See also Rule 147(C) for the duties and responsibilities of an educational decision maker.

“Health care” includes, but is not limited to, routine physical check-ups and examinations; emergency health care; surgeries; exploratory testing; psychological exams, counseling, therapy and treat-

ment programs; drug and alcohol treatment; support groups; routine eye examinations and procedures; teeth cleanings, fluoride treatments, fillings, preventative dental treatments, root canals, and other dental surgeries; and any other examination or treatment relating to any physical, mental, and dental needs of the juvenile.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation’s reports and files unless they are made a part of the official record by being filed with the clerk of courts.

A “pre-dispositional report” or “social study” includes, but is not limited to, the compilation of the juvenile’s family history and demographics; school record and educational issues; job history; talents and extra-curricular activities; prior delinquency or dependency involvement with the court; health care issues; psychological or psychiatric history, examinations, and reports; drug and alcohol examinations, treatments, and reports; needs regarding disability; and any other relevant information concerning the juvenile to help the court understand any issues relating to the juvenile.

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Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 120 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

(*Editor’s Note:* Rules 136 and 147 are new and printed in regular type to enhance readability.)

Rule 136. Ex Parte Communication.

A) Unless otherwise authorized by law, no person shall communicate with the court in any way regarding matters pending before the court unless all parties:

- 1) are present or have been copied if the communication is written or in electronic form; or
- 2) have waived their presence or right to receive the communication.

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

Comment

No *ex parte* communications with the court are to occur. Communications should include all parties, such as the filing of a motion, or conducting a conference or a hearing.

Attorneys are bound by the Rules of Professional Conduct. See Rules of Professional Conduct Rule 3.5(b). Judges are bound by the Code of Judicial Conduct. See Code of Judicial Conduct Canon 3(A)(4).

Attorneys and judges understand the impropriety of *ex parte* communications regarding matters pending before the court but many participants, such as probation officers and service providers, 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.

Administrative matters are not considered *ex parte* communications.

Official Note: Rule 136 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 136 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

PART B(1). EDUCATION AND HEALTH OF JUVENILE

Rule 147. Educational Decision Maker.

A. *Generally.* At any proceeding or upon motion, the court shall appoint an educational decision maker for the juvenile if it determines that:

- 1) the juvenile has no guardian; or
- 2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the juvenile’s best interest to limit the guardian’s right to make decisions regarding the juvenile’s education.

B. *Notice of hearings.* The educational decision maker shall receive notice of all proceedings.

C. *Duties and responsibilities.* The educational decision maker shall:

- 1) make appropriate inquiries and take appropriate actions to ensure that:
 - a) issues concerning school discipline matters are addressed;
 - b) the juvenile is receiving appropriate education that will allow the juvenile to meet state standards, including any necessary services concerning special education in the least restrictive environment, or remedial services;
 - c) the juvenile, who is receiving services concerning special education, is engaged in transition planning with the school entity beginning no later than the school year in which the juvenile turns fourteen;
 - d) the juvenile approaching discharge from a delinquency placement will be promptly enrolled in an appropriate program of instruction that addresses the juvenile’s educational needs; and
 - e) any other educational matters, as appropriate in the juvenile’s best interest, are addressed.
- 2) address the juvenile’s educational needs by:
 - a) meeting with the juvenile at least once and as often as necessary to make decisions regarding education that are in the juvenile’s best interests;
 - b) participating in special education and other meetings, and making decisions regarding all matters affecting the juvenile’s educational needs in a manner consistent with the juvenile’s best interests;
 - c) making any specific recommendations to the court relating to:
 - i) the timeliness and appropriateness of the juvenile’s educational placement; and

ii) services necessary to address the juvenile's educational needs;

d) appearing and testifying at court hearings when necessary; and

e) having knowledge and skills that ensure adequate representation of the juvenile.

Comment

A juvenile is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for juveniles who are adjudicated delinquent, may be returning from delinquency placements, and may not have a parent available and able to perform this function. An educational decision maker's responsibilities may include, but are not limited to: ensuring that the juvenile is promptly enrolled in an appropriate educational program while in placement and upon discharge; see 42 Pa.C.S. § 6301(b)(2) and 55 Pa. Code § 3130.87; ensuring educational stability as applicable pursuant to 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; facilitating access to a full range of school programs; advocating for the juvenile in school discipline matters; ensuring meaningful transition planning as required by 42 Pa.C.S. § 6351 and 42 U.S.C. § 675(5)(H); and for a juvenile eligible for special education, ensuring access to appropriate services including transition planning beginning no later than age fourteen. See 24 P. S. §§ 13-1371, 13-1372 and 20 U.S.C. § 1400 *et seq.* See paragraphs (A) and (C).

An educational decision maker appointed pursuant to this rule who represents a juvenile who is also adjudicated dependent is to review Rule 1147 for additional information concerning educational laws and entitlements applicable to children in dependent care.

A court is not to appoint an educational decision maker if there is a parent, guardian, or other authorized person (e.g., foster parent, relative with whom the juvenile lives or surrogate parent appointed under the IDEA) who is competent, willing, and available to make decisions regarding the juvenile's education and who is acting in the juvenile's best interest regarding all educational matters. See Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* (2004). A court should limit the authority of a parent to make decisions regarding the juvenile's education only to the extent necessary to protect the juvenile's interest and can reinstate the parent or change the educational decision maker at any time.

Unless limited by the court in its appointment order, an educational decision maker: 1) is responsible for making all decisions concerning education, including special education, for the juvenile; and 2) can consent to or prohibit the release of information from the juvenile's school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974). The educational decision maker may be a family member, a family friend, a mentor, a foster parent, a former foster parent, a Court Appointed Special Advocate, or, if an educational decision maker for special education is not needed, a child welfare professional. Except as otherwise provided by the IDEA, it is within the discretion of the court to appoint an educational decision maker and whom to appoint. In all cases, however, an educational decision maker appointed by the court should be familiar with a juvenile's educational rights or is to agree to be trained regarding these issues.

If the juvenile is or may be eligible for special education, an educational decision maker is to be appointed in

accordance with the standards and procedures set forth in federal and state laws concerning special education. See IDEA, 20 U.S.C. §§ 1400, 1401(23), and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519. The IDEA recognizes a court's authority to appoint persons to make decisions concerning special education for a juvenile. However, such decision makers cannot be the State or employees of any agency that is involved in the education or care of the juvenile. 34 C.F.R. § 300.519(c), (d)(2)(i).

The authority of the court to appoint an educational decision maker is derived from the broad powers of the court to issue orders that "provide for the care, protection, safety, and wholesome mental and physical development of children." 42 Pa.C.S. § 6301 (b)(1.1). The IDEA also requires that each juvenile who is eligible for special education has an active parent or other identified person who can participate in the process concerning special education. See IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519.

Official Note: Rule 147 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 147 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

PART B(2). COUNSEL

150. Attorneys—Appearances and Withdrawals.
151. Assignment 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.

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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 special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is 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, the juvenile probation officer, or detention staff is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. Special needs may include needs for special education, remedial services, health care, and disability. If the court determines a juvenile 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 needs concerning health care and disability, the court’s order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); 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 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. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 242 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing.

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B. Recording. The adjudicatory 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.]

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Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 406 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 5. DISPOSITIONAL HEARING

PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

Rule 500. Summons and Notice of the Dispositional Hearing.

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B. Notice. The court shall give notice of the dispositional hearing to:

- 1) the attorney for the Commonwealth;
2) the juvenile’s attorney; [and]
3) the juvenile probation office; and
4) the educational decision maker, if applicable.

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Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 500 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

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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. 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.

D. Court's findings. The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 515. On the record in open court, the court shall state:

- 1) its disposition;
- 2) the reasons for its disposition;
- 3) the terms, conditions, and limitations of the disposition; and
- 4) if the juvenile is removed from the home:
 - a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile, and
 - b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. §§ 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare;
- 5) whether any evaluations, tests, counseling, or treatments are necessary;
- 6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and
- 7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed.

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.

Pursuant to paragraph (C), the court is to advise the juvenile of his or her appellate rights orally in the courtroom on the record. The court is to explain the right to appointed counsel for an appeal if a juvenile is without counsel, and without the financial resources or otherwise unable to employ counsel. See 42 Pa.C.S. § 6337; see also Rule 150(B) for duration of counsel and Rule 151 for assignment of counsel.

Pursuant to paragraph (D), when the court has determined the juvenile is in need of treatment, supervision, and rehabilitation, the court is to place its findings and conclusions of law on the record by announcing them orally in the courtroom, followed by written order. The court is to consider the following factors: a) the protection of the community; b) the treatment needs of the juvenile; c) the supervision needs of the juvenile; d) the development of competencies to enable the juvenile

to become a responsible and productive member of the community; e) accountability for the offense(s) committed; and f) any other factors that the court deems appropriate.

Nothing in this rule is intended to preclude the court from further explaining its findings in the dispositional order pursuant to Rule 515.

Pursuant to paragraph (D)(4), when out-of-home placement is necessary, the court is to explain why the placement is the least restrictive type of placement that is consistent with the protection of the public and the rehabilitation needs of the child. See 42 Pa.C.S. § 6352.

Pursuant to paragraph (D)(6), the court should address the juvenile's educational needs. The court's order should address the right to: 1) an educational decision maker pursuant to Rule 147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; and 2) an appropriate education, including any necessary special education or remedial services, 24 P. S. §§ 13-1371, 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*

The court should also address the juvenile's needs concerning health care and disability. The court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); 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 Rule 127 for recording and transcribing of proceedings.

See Rule 136 for *ex parte* communications.

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

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.

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Official Note: Rule 513 adopted April 1, 2005, effective October 1, 2005. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 513 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

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**] **the court's findings pursuant to Rule 512(D);**

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

3)] a designation whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1)(i) for limited public information;

[4] 3) a directive that the juvenile shall submit to fingerprinting and photographing by, or arranged by, the law enforcement agency that submitted the written allegation in all cases in which the juvenile has not previously been fingerprinted or photographed;

[5] 4) the date of the order; and

[6] 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 shall be paid; and

3) a payment schedule, if so determined by the court.

C. *Guardian participation.* The [**court**] **dispositional order** shall include any [**obligation in its dispositional order**] **conditions, limitations, restrictions, and obligations** imposed upon the guardian.

D. *Disposition reporting.* The court shall forward the case disposition to the Juvenile Court Judges' Commission, as required by the Commission.

Comment

Pursuant to paragraph [(A)(3)] (A)(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.

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. §§ 6308, 6309 and 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.jjc.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. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 515 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS AND NOTICE

Rule 600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

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B. *Notice.* The court shall give notice of the hearing to:

1) the attorney for the Commonwealth;

2) the juvenile's attorney;

3) the juvenile probation office; [**and**]

4) the placement facility staff, if the juvenile is in placement; **and**

5) **the educational decision maker, if applicable.**

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Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 600 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 610. Dispositional and Commitment Review.

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Comment

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.

Under paragraph (A), the court is to conduct dispositional review hearings as frequently as necessary to ensure that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met. *See* Rule 800.

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Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended April 21, 2011, effective July 1, 2011. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

**Subpart B. DEPENDENCY MATTERS
CHAPTER 11. GENERAL PROVISIONS
PART A. BUSINESS OF COURTS**

Rule 1120. Definitions.

* * * * *

EDUCATIONAL DECISION MAKER is a responsible adult appointed by the court to make decisions regarding a child's education when the child has no guardian or the court has limited the guardian's right to make such decisions for the child. The educational decision maker acts as the child's representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

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HEALTH CARE is care related to any medical need including physical, mental, and dental health. This term is used in the broadest sense to include any type of health need.

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Comment

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Under the term "court," to determine if masters are permitted to hear cases, see Rule 1187.

An "educational decision maker" is to be appointed by court order. The scope of the appointment is limited to decisions regarding the child's education. The educational decision maker acts as the child's spokesperson on all matters regarding education unless the court specifically limits the authority of the educational decision maker. The educational decision maker holds educational and privacy rights as the child's guardian for purposes of 20 U.S.C. § 1232g and 34 C.F.R. § 99.3. *See also* Rule 1147(C) for the duties and responsibilities of an educational decision maker.

For the family service plan, see 55 Pa. Code § 3130.61.

"Health care" includes, but is not limited to, routine physical check-ups and examinations; emergency health care; surgeries; exploratory testing; psychological exams, counseling, therapy and treatment programs; drug and alcohol treatment; support groups; routine eye examinations and procedures; teeth cleanings, fluoride treatments, fillings, preventative dental treatments, root canals, and other dental surgeries; and any other examination or treatment relating to any physical, mental, and dental needs of the child.

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Official Note: Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009,

effective immediately. Amended April 21, 2011, effective July 1, 2011. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1120 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

(*Editor's Note:* Rules 1136 and 1147 are new and printed in regular type to enhance readability.)

Rule 1136. Ex Parte Communication.

A) Unless otherwise authorized by law, no person shall communicate with the court in any way regarding matters pending before the court unless all parties:

- 1) are present or have been copied if the communication is written or in electronic form; or
- 2) have waived their presence or right to receive the communication.

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

Comment

No *ex parte* communications with the court are to occur. Communications should include all parties, such as the filing of a motion, or conducting a conference or a hearing.

Attorneys are bound by the Rules of Professional Conduct. *See* Rules of Professional Conduct Rule 3.5(b). Judges are bound by the Code of Judicial Conduct. *See* Code of Judicial Conduct Canon 3(A)(4).

Attorneys and judges understand the impropriety of *ex parte* communications regarding matters pending before the court 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.

Administrative matters are not considered *ex parte* communications.

Official Note: Rule 1136 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1136 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

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

Rule 1147. Educational Decision Maker.

A. *Generally.* At any proceeding or upon motion, the court shall appoint an educational decision maker for the child if it determines that:

- 1) the child has no guardian; or
- 2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

B. *Notice of hearings.* The educational decision maker shall receive notice of all proceedings.

C. *Duties and responsibilities.* The educational decision maker shall:

1) make appropriate inquiries and take appropriate actions to ensure that:

a) issues concerning the child's educational stability are addressed;

b) school discipline matters are addressed;

c) the child is receiving appropriate education that will allow the child to meet state standards, including any necessary services concerning special education in the least restrictive environment, or remedial services;

d) the child, who is sixteen years of age or older, is receiving the necessary educational services to transition to independent living;

e) the child, who is receiving services concerning special education, is engaged in transition planning with the school entity beginning no later than the school year in which the child turns fourteen; and

f) the child, who is aging out of care within ninety days, has a transition plan that addresses the child's educational needs, and if applicable, the plan is coordinated with the child's transition planning concerning special education under the Individuals with Disabilities Education Act.

2) address the child's educational needs by:

a) meeting with the child at least once and as often as necessary to make decisions regarding education that are in the best interests of the child;

b) participating in special education and other meetings, and making decisions regarding all matters affecting the child's educational needs in a manner consistent with the child's best interests;

c) making any specific recommendations to the court relating to:

i) the timeliness and appropriateness of the child's educational placement;

ii) the timeliness and appropriateness of the child's transitional planning; and

iii) services necessary to address the child's educational needs;

d) appearing and testifying at court hearings when necessary; and

e) having knowledge and skills that ensure adequate representation of the child.

Comment

A child in dependent care is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for highly mobile children whose caregivers may change and whose guardian may be unavailable. An educational decision maker's responsibilities may include, but are not limited to: ensuring educational stability as mandated by 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; ensuring prompt enrollment in a new school as required pursuant to 22 Pa. Code § 11.11(b); facilitating access to a full range of school programs; advocating for the child in school discipline matters; ensuring meaningful transition planning as required by 42 Pa.C.S. § 6351 and 42 U.S.C. § 675(5)(H); and for a child eligible for special education, ensuring access to appropriate services including transition planning beginning no later than age fourteen. *See* 24 P.S. §§ 13-1371, 13-1372, 20 U.S.C. § 1400 *et seq.* *See* paragraph (A) and (C).

An educational decision maker appointed pursuant to this rule who represents a child who is also adjudicated delinquent is to review Rule 147.

A court is not to appoint an educational decision maker if there is a parent, guardian, or other authorized person (*e.g.*, foster parent, relative with whom the child lives or surrogate parent appointed under the IDEA) who is competent, willing, and available to make decisions regarding the child's education and who is acting in the child's best interest regarding all educational matters. *See* Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* (2004). A court should limit the authority of a parent to make decisions regarding education only to the extent necessary to protect the child's interest and can reinstate the parent or change the educational decision maker at any time.

Unless limited by the court in its appointment order, an educational decision maker: 1) is responsible for making all decisions concerning education, including special education, for the child; and 2) can consent to or prohibit the release of information from the child's school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974). The educational decision maker may be a family member, a family friend, a mentor, a foster parent, a former foster parent, a Court Appointed Special Advocate, or, if an educational decision maker for special education is not needed, a child welfare professional. Except as otherwise provided by the IDEA, it is within the discretion of the court to appoint an educational decision maker and whom to appoint. In all cases, however, an educational decision maker appointed by the court should be familiar with a child's educational rights or is to agree to be trained regarding these issues.

If the child is or may be eligible for special education, an educational decision maker is to be appointed in accordance with the standards and procedures set forth in federal and state laws concerning special education. *See* IDEA, 20 U.S.C. §§ 1400, 1401(23), and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519. The IDEA recognizes a court's authority to appoint persons to make decisions concerning special education for a child. However, such decision makers cannot be the State or employees of any agency that is involved in the education or care of the child. 34 C.F.R. § 300.519(c), (d)(2)(i).

The educational decision maker should refer to the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 *et seq.* (1989) for guidance in educational stability. Specifically, the educational decision maker is to: a) ensure the right to remain in the same school regardless of a change in placement when it is in the child's best interest; b) facilitate immediate enrollment in a new school when a school change is in the child's best interest; and c) ensure that school proximity is considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*

The educational decision maker is to also ensure: a) that the child receives an appropriate education, including, as applicable, any necessary special education, early intervention, or remedial services; *see* 24 P.S. §§ 13-1371, 13-1372, 55 Pa. Code § 3130.87, 20 U.S.C. § 1400 *et seq.*; b) that the child receives 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 c) that the educational decision maker participates in the development of 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 ninety days.

The authority of the court to appoint an educational decision maker is derived from the broad powers of the court to issue orders that “provide for the care, protection, safety, and wholesome mental and physical development of children.” 42 Pa.C.S. § 6301(b)(1.1). The IDEA also requires that each child who is eligible for special education has an active parent or other identified person who can participate in the process concerning special education. See IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519.

Official Note: Rule 1147 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1147 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

PART B(2). COUNSEL

Rule 1154. Duties of Guardian [*ad litem*] Ad Litem.

A guardian *ad litem* shall:

* * * * *

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;**

* * * * *

Comment

If there is a conflict of interest between the duties of the guardian *ad litem* pursuant to paragraphs (7) [&] and (9), the guardian *ad litem* for the child may move the court for appointment [of a separate guardian *ad litem* or legal counsel] 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. 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.

“Legal interests” denotes that an attorney is to express the child’s wishes to the court regardless of whether the attorney agrees with the child’s recommendation. “Best interests” denotes that a guardian *ad litem* is to express what the guardian *ad litem* believes is best for the child’s care, protection, safety, and wholesome physical and mental development regardless of whether the child agrees.

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) 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) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services, 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, 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 in the next ninety 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 (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 meeting the child’s needs concerning health care and disability. Inquiries into the child’s health should include the right of: 1) the child to receive timely and medically appropriate screenings and health care services, 55 Pa. Code §§ 3700.51 and 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.*

The guardian *ad litem* may be appointed as the educational decision maker. If the guardian *ad litem* is not the educational decision maker, the guardian *ad litem* is to coordinate efforts and consult with the educational decision maker. See Rule 1147 for duties of the educational decision maker.

Official Note: Rule 1154 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 1154 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

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 or in writing. [Within] If oral, within twenty-four hours of exercising protective custody pursuant to Rule 1210, the county agency shall [reduce to writing and] file a written shelter care application [with the Juvenile Court].

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

* * * * *

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;

* * * * *

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 educational, health care, and disability needs; and 4) any need for emergency actions.

Official Note: Rule 1240 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1240 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

Rule 1242. Shelter Care Hearing.

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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[;] after consideration of the following factors:
 - [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, supported by 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] if] 3) 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; and

4) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in shelter care.

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] setting forth:

- 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 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;
- 5) any findings or orders necessary to identify, monitor, and address the child’s needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and
- 6) any orders of visitation.

Comment

Pursuant to paragraph (B)(4), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

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 whether the custody of the child is warranted by requiring a 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, the lack of efforts by the county agency was reasonable. Additionally, the court is to state the reasons why there are no less restrictive alternatives available.

[Under] Pursuant to paragraph [(C)(4)] (C)(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 child is in

shelter care. The child’s attorney or the county agency is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. These needs may include a child’s educational stability, needs concerning early intervention, remedial services, health care, and disability. 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.

The court’s order should 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) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa. C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P. S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 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 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

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 health care services, 55 Pa. Code § 3800.32 and 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.*

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. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1242 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 14. ADJUDICATORY HEARING

Rule 1406. Adjudicatory Hearing.

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

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

C. *Evidence.* Each party shall be given the opportunity to:

- 1) introduce evidence;
- 2) present testimony; and
- 3) to cross-examine any witness.

[**D. *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.]

Comment

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Under paragraph (B), notes of testimony should be provided to counsel for a party upon good cause shown. The court may place conditions of release on the notes of testimony. [**Under paragraph (B)(2), when]** When an appeal is taken, the record is to be transcribed pursuant to Pa.R.A.P. 1922. See Pa.R.A.P. 1911 for request of transcript.

* * * * *

[**Under paragraph (D), no *ex parte* communications regarding the facts and merits of the case 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, communications with court personnel, are not considered *ex parte* communications. See Pa.R.P.C. Rules 3.5.3.3(d), and 8.3(a) and the Code of Judicial Conduct, Canons 1, 2, and 3.]**

See Rule 1136 for *ex parte* communications.

Official Note: Rule 1406 adopted August, 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1406 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 15. DISPOSITIONAL HEARING
PART A. SUMMONS AND NOTICE OF THE
DISPOSITIONAL HEARING

Rule 1501. Dispositional Notice.

The court or its designee shall give notice of the dispositional hearing to:

- 1) all parties;
- 2) the attorney for the county agency;
- 3) the child's attorney
- 4) the guardian's attorney;
- 5) the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- 6) the court appointed special advocate, if assigned;
- [and]**
- 7) **the educational decision maker, if applicable; and**
- 8) any other persons as directed by the court.

Official Note: Rule 1501 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1501 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 1512. Dispositional Hearing.

* * * * *

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.]**

C. *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.

D. *Court's findings.* The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1515.

1) **On the record in open court, the court shall state:**

- a) its disposition;
- b) the reasons for its disposition;
- c) the terms, conditions, and limitations of the disposition;

d) the name of any person or the name, type, category, or class of agency, licensed organization, or institution that shall provide care, shelter, and supervision of the child;

e) whether any evaluations, tests, counseling, or treatments are necessary;

f) **the permanency plan for the child;**

g) **the services necessary to achieve the permanency plan;**

h) **any findings 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;**

i) **any findings necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and**

j) **a visitation schedule, including any limitations.**

2) **The court shall state on the record in open court or enter into the record through the dispositional order, a finding, if the child is placed, 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, supported by 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, that such lack of services was reasonable under the circumstances.**

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.

Pursuant to paragraph (A)(3), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

[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, communications with court personnel, are not considered *ex parte* communications.]

Pursuant to paragraph (C), the court is to advise the parties of their appellate rights orally in the courtroom on the record. The court is to explain the right to appointed counsel for an appeal if a party is without counsel, and without the financial

resources or otherwise unable to employ counsel. See 42 Pa.C.S. § 6337; see also Rule 1150(B) for duration of counsel and Rule 1151 for assignment of counsel.

All the findings made in open court are to be placed in writing through the court's dispositional order pursuant to Rule 1515. Nothing in this rule is intended to preclude the court from further explaining its findings in its dispositional order. In addition to the findings pursuant to paragraph (D), see Rule 1514 for dispositional findings before removal from the home.

Pursuant to paragraph (D)(1)(f), the court is to determine the permanency plan for the child. A permanency plan should include two plans or goals: the primary plan and the secondary or concurrent plan.

The primary plan is the comprehensive plan developed to achieve the permanency goal. The secondary or concurrent plan is developed and initiated so that if the primary plan is not fulfilled, timely permanency for the child may still be achieved. These two plans are to be simultaneously addressed by the county agency.

Rule 1608 mandates permanency hearings at least every six months. It is best practice to have three-month hearings to ensure permanency is achieved in a timely fashion and the court is informed of the progress of the case. See Comment to Rule 1608.

Pursuant to paragraph (D)(1)(h), the court is to address the child's educational stability, including the right to an educational decision maker, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519. The court's findings 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) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 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 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

Pursuant to paragraph (D)(1)(i), the court is to address the child's needs concerning health care and disability. The court's findings should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services pursuant to 55 Pa. Code §§ 3700.51 and 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 accommoda-

tions 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).

Pursuant to paragraph (D)(1)(j), the court is to include siblings in its visitation schedule. See 42 U.S.C. § 671(a)(31), which requires reasonable efforts be made to place siblings together unless it is contrary to the safety or well-being of either sibling and that frequent visitation be assured if joint placement cannot be made.

See Rule 1127 for recording and transcribing of proceedings.

See Rule 1136 for *ex parte* communications.

Official Note: Rule 1512 adopted August, 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1512 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

Rule 1514. Dispositional Finding Before Removal from Home.

A. Required findings. Prior to entering a dispositional order removing a child from the home, the court shall [enter into] state on the record in open court the following specific findings:

1) Continuation of the child in the home would be contrary to the welfare, safety, or health of the child; [and]

2) The child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there is no less restrictive alternative available; and

3) One of the following:

a) Reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; or

b) If preventive services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or

c) If the court previously determined that reasonable efforts were not made to prevent the initial removal of

the child from the home, whether reasonable efforts are under way to make it possible for the child to return home.

B. *Aggravated circumstances.* If the court has previously found aggravated circumstances to exist and that reasonable efforts to remove the child from the home or to preserve and reunify the family are not required, a finding under paragraphs [(A)(2)(a)] (A)(3)(a) through (c) is not necessary.

Comment

See 42 Pa.C.S. § 6351(b).

Official Note: Rule 1514 adopted August 21, 2006, effective February 1, 2007. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1514 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

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] any findings pursuant to Rules 1512(D) and 1514;
- 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 1514 if a child is being removed from the home;
- 4) any ordered evaluations, tests, counseling, or treatments;
- 5) any ordered family service plan or permanency plan if not already prepared;
- 6) any visitations, including any limitations;
- 7)] the date of the order; and
- [8] 3) 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, including the type of custody granted; and
- 3) any visitation rights.

C. [*Orders concerning guardian*] *Guardian.* The [court] dispositional order 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 (1990)), for issues addressing a child’s mental and moral welfare.

45 [C.F.R.] 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).

Official Note: Rule 1515 adopted August 21, 2006, effective February 1, 2007. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1515 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS, NOTICE, AND REPORTS

Rule 1601. Permanency Hearing Notice.

At least fifteen days prior to the hearing, the court or its designee shall give notice of the permanency hearing to:

- 1) all parties;
- 2) the attorney for the county agency;
- 3) the child’s attorney
- 4) the guardian’s attorney;
- 5) the parents, child’s foster parent, preadoptive parent, or relative providing care for the child;
- 6) the court appointed special advocate, if assigned; [and]
- 7) the educational decision maker, if applicable; and
- 8) any other persons as directed by the court.

Official Note: Rule 1601 adopted August 21, 2006, effective February 1, 2007. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1601 published with the Court’s Order at 41 Pa.B. 2428 (May 14, 2011).

PART B. PERMANENCY HEARING

Rule 1609. [Court Order of] Permanency Hearing [Determinations] Orders.

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(D).

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, including the type of custody granted; and
- 3) any temporary visitation rights of parents.

D. *Orders concerning [guardian] 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 care and disability*.

- 1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and
- 2) The court's orders shall authorize evaluations and treatment if parental consent cannot be obtained.

F. *Guardians*. The [court] permanency 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 (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) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 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 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

Pursuant to paragraph (E), the court's order is to address the child's needs concerning health care and disability. The order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services pursuant to 55 Pa. Code §§ 3700.51 and 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 ninety 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).

Official Note: Rule 1609 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1609 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

CHAPTER 18. SUSPENSIONS

Rule 1800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

* * * * *

3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provides that there is not a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with [**Rule**] **Rules 1151 and 1154**, which allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child's legal interest and best interest.

* * * * *

Official Note: Rule 1800 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009; [**amended**] **Amended** September 16, 2009, effective immediately. **Amended April 29, 2011, effective July 1, 2011.**

dCommittee Explanatory Reports:

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Final Report explaining the amendments to Rule 1800 published with the Court's Order at 41 Pa.B. 2428 (May 14, 2011).

EXPLANATORY REPORT

April 2011

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 120, 242, 406, 500, 512, 513, 515, 600, 610, 1120, 1154, 1240, 1242, 1406, 1501, 1512, 1514, 1515, 1601, 1609, 1800 and New Rules 136, 147, 1136, and 1147 with this Recommendation. The changes are effective July 1, 2011

Educational, Health Care, and Disability Amendments

The majority of the rule amendments address the educational, health, and disability needs of a juvenile or child. The Committee spent extensive time discussing what types of issues the court should address at its hearings and in its orders.

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

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

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

As set forth in the amendments, each of these educational, health care, and disability needs must 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 and shelter care hearing, pursuant to 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, pursuant to Rules 512, 515, 610, 1512, 1515, and 1609, the court must ensure that the identified needs are addressed during the hearing and in its order.

Rules 513 and 1154 require that the juvenile probation officer or the guardian *ad litem* make specific recommendations concerning these needs. Rule 1154 was added to Rule 1800 (3), which suspends § 6311(B)(9) of the Juvenile Act when there is a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services.

Other Amendments: Ex parte, Least Restrictive/Reasonable Efforts, Stating Disposition

The other proposed amendments to these rules relate to *ex parte* communications, the least restrictive placement, reasonable efforts made to prevent placement, and the requirement of the court to state its disposition on the record. In addition, Rules 512, 515, 1512, and 1515 were slightly restructured to place all the findings provisions in the hearing Rules 512 and 1512, rather than in the orders Rules 515 and 1515.

Ex parte Communications

When the Committee published its proposal on *ex parte* communications, it proposed adding *ex parte* provisions to particular Rules. The Committee received several requests for one general rule that covers all proceedings instead of prohibiting *ex parte* communication in specific rules, such as Rule 512 and 1512. These modifications provide one rule for each set of proceedings, delinquency and dependency, that govern *ex parte* communication for all proceedings.

Least Restrictive/Reasonable efforts

The Juvenile Act requires that the court order the least restrictive disposition that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare. See 42 Pa.C.S. § 6352. The amendment reflecting this provision of the Juvenile Act can be found in Rule 512.

The Committee also noted that courts, when placing a juvenile or child, are not explaining why there are no less restrictive alternatives available in their orders. The amended Rule requires that courts must state specific reasons for placing a juvenile or child, rather than merely a statement that there are no less restrictive alternatives available. These amendments can be found in Rules 1240, 1242, and 1512.

These amendments are also consistent with the Recommendations of the Interbranch Commission on Juvenile Justice.

Stating Its Disposition on the Record

The Committee received a recommendation from the Pennsylvania Children's Roundtable Dependency Benchmark Committee concerning the court orally stating its dispositions on the record. The Committee debated what needed to be stated orally in open court and what could be placed in the dispositional order.

While the Committee was considering this matter, the Interbranch Commission was formed and began conducting its hearings. The same issue of stating the disposition on the record began to emerge. In the Commission's Report, it is recommended that the Comment to Rule 512 be modified to include the factors of the Juvenile Act, which the court should address when it states its reasons for the disposition.

These factors are included in the Comment. In addition, the Rule provides that at the dispositional hearing, the court shall state on the record its findings and conclusions of law that formed the basis of its decision. If the juvenile is placed out-of-home, the court shall impose the least restrictive placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare.

These amendments are consistent with the Findings and Recommendations of the Interbranch Commission.

[Pa.B. Doc. No. 11-791. Filed for public inspection May 13, 2011, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CH. 1]

Adoption of New Rule 139 of the Rules of Juvenile Court Procedure; No. 527 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 26th day of April, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 7029 (December 11, 2010), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 7, No. 2, December 24, 2010), 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 139 of the Rules of Juvenile Court Procedure is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective June 1, 2011.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 139. Use of Restraints on the Juvenile.

Restraints shall be removed prior to the commencement of a proceeding unless the court determines on the record, after providing the juvenile an opportunity to be heard, that they are necessary to prevent:

- 1) physical harm to the juvenile or another person;
- 2) disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
- 3) the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

Comment

The use of any restraints, such as handcuffs, chains, shackles, irons, or straitjackets, is highly discouraged. The routine use of restraints on juveniles is a practice contrary to the philosophy of balanced and restorative justice and undermines the goals of providing treatment, supervision, and rehabilitation to juveniles. Therefore, restraints should not be used in most instances. However, there are some circumstances when juveniles need to be restrained to protect themselves and others and to maintain security in the courtroom. See 42 Pa.C.S. § 6301 for purposes of the Juvenile Act.

Official Note: Rule 139 adopted April 26, 2011, effective June 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 139 published with the Court's Order at 41 Pa.B. 2429 (May 14, 2011).

EXPLANATORY REPORT

April 2011

The Supreme Court of Pennsylvania has adopted new Rule 139 with this Recommendation. This new rule is effective June 1, 2011.

The purpose of this rule is to eliminate shackling during a court proceeding in almost every case. Only in the few extreme cases should such restraints be utilized.

The Committee considered this issue in light of the Report from the Interbranch Commission on Juvenile Justice (ICJJ). In the ICJJ Report, the Commission asked the Juvenile Justice Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency to perform a study to reduce and if possible eliminate shackling in Pennsylvania's juvenile courtrooms.¹

The Committee believes it is appropriate to address the use of restraints in the courtroom and to limit the use of such restraints by Rule of Court, especially in those cases where the juvenile does not pose a risk. The Committee wants to ensure that the routine use of excessive restraints is discouraged because it is contrary to philosophy of balanced and restorative justice and undermines the goals of providing treatment, supervision, and rehabilitation to juveniles. However, there are some circum-

¹ Interbranch Commission on Juvenile Justice, *Report*, May 2010, at page 54.

stances when juveniles should be restrained to protect themselves and others and to maintain security in the courtroom.

Pursuant to paragraphs (1) through (3), restraints may be used if it is determined that they are necessary to prevent: 1) physical harm to the juvenile or another person; 2) disruptive courtroom behavior; or 3) the juvenile from fleeing. In all three circumstances, there should be evidence that the juvenile has a history of such behavior or there are other factors present that make the juvenile very likely to pose a risk.

The Committee believes that the juvenile should be given an opportunity to comment prior to the use of restraints and that the court should make its findings on the record if restraints are utilized.

It is also important to note that this rule only affects the use of restraints in court proceedings. Sheriffs, probation officers, and other persons providing transportation of juveniles to and from detention facilities, placement facilities, and other locations may be governed by internal procedures and policies, including insurance policies, to use restraints during the transportation of juveniles. The use of restraints in those situations is governed by local policies of operation.

[Pa.B. Doc. No. 11-792. Filed for public inspection May 13, 2011, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 11 AND 16]

Order Amending Rules 1151, 1608, and 1613 and Adoption of New Rule 1606 of the Rules of Juvenile Court Procedure; No. 529 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 29th day of April, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 2245 (May 1, 2010), in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 992, No. 1, May 21, 2010), 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 modifications to Rules 1151, 1608, and 1613, and adoption of new Rule 1606 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2011.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 1151. Assignment of Guardian [*ad litem*] *Ad Litem* and Counsel.

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Comment

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Pursuant to paragraph (E), the court is to inform all parties of the right to counsel if they appear at a hearing without counsel. If a party is without financial resources or otherwise unable to employ counsel, the court is to appoint counsel prior to the proceeding. Because of the nature of the proceedings, it is extremely important that every "guardian" has an attorney. Therefore, the court is to encourage the child's guardian to obtain counsel. Pursuant to Rule 1120, a guardian is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding. See Pa.R.J.C.P. 1120.

Official Note: Rule 1151 adopted August 21, 2006, effective February 1, 2007. Amended February 20, 2007, effective immediately. Amended May 12, 2008, effective immediately. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1151 published with the Court's Order at 41 Pa.B. 2434 (May 14, 2011).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B(1). MODIFICATIONS

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 1606. Modification of Dependent Child's Placement.

A. County agency's duties.

1) *Emergencies.*

a) Only in an emergency when a judge cannot be reached, a child may be placed temporarily in a shelter care facility or other appropriate care.

b) The county agency immediately shall notify the court and all parties of any change made due to the emergency.

c) The county agency shall file a motion or stipulation for modification of the dispositional order by the next business day of the child's placement in a shelter care facility or other appropriate care.

2) Non-emergent cases. In all other cases, the county agency shall seek approval of the court for a change in the child's placement prior to the removal of the child from the placement by the filing of a motion or a stipulation for modification of the dispositional order.

B. Contents of the motion. The motion for modification of the dispositional order shall include:

1) the specific reasons for the necessity of change to the order;

2) the proposed placement;

3) the current location of the child;

4) the manner in which any educational, health care, and disability needs of the child will be addressed;

5) an averment as to whether each party concurs or objects to the proposal, including the child's wishes if ascertainable; and

6) the signatures of all the parties.

C. *Objections.* If a party objects to proposed modification of the dispositional order, the objections shall be filed no later than three days after the filing of the motion for modification of the child's placement.

D. *Court's duties.* Once the county agency has requested approval from the court to modify a child's placement or after an emergency change in placement has already taken place, the court may:

- 1) schedule a prompt hearing to determine whether there will be a modification of the child's placement;
- 2) enter an appropriate order to modify the child's placement; or
- 3) enter an order denying the motion.

Comment

This rule is intended to address changes in the child's placement. Brief temporary removals for hospitalization, respite situations, visitations, or other matters when a child will be returned to the same placement are not covered under this rule.

Pursuant to paragraph (A)(1), if there must be a change in the placement of the child due to an emergent situation, the county agency may temporarily place a child in a shelter-care facility or other appropriate care pending the filing of a motion for modification of the dispositional order. The county agency immediately is to notify the court and all parties of the change made and file a motion or stipulation by the next business day.

Pursuant to paragraph (A)(2), in all other cases, the court is to make a decision prior to the child being removed from the placement. Stability for the child is critical. Multiple placements can add to a child's trauma. A child should not be shuffled from home to home out of convenience for a foster parent, relative, or other person caring for the child.

Official Note: Rule 1606 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1606 published with the Court's Order at 41 Pa.B. 2434 (May 14, 2011).

PART B(2). PERMANENCY HEARING

Rule 1608. Permanency Hearing.

A. *Purpose and timing of hearing.* For every case, the court shall conduct a permanency hearing **at least every six months** for purposes of determining or reviewing:

- 1) the permanency plan of the child;
- 2) the date by which the goal of permanency for the child might be achieved; and
- 3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. [*Court's findings.* At the permanency hearing, the court shall making findings consistent with 42 Pa.C.S. § 6351(f).

C.] *Recording.* The permanency hearing shall be recorded. [**The recording shall be transcribed:**

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

D)] C. *Evidence.*

1) Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.

2) If a report was submitted pursuant to Rule 1604, the court shall review and consider the report as it would consider all other evidence.

D. *Court's findings.*

1) **Findings at all six-month hearings.** At the permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1609. On the record in open court, the court shall state:

- a) the appropriateness of the placement;
- b) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child;
- c) the appropriateness and feasibility of the current placement goal for the child;
- d) the likely date by which the placement goal for the child might be achieved;
- e) whether reasonable efforts were made to finalize the permanency plan in effect;
- f) whether the county agency has made services available to the guardian, and if not, why those services have not been made available;
- g) the continued appropriateness of the permanency plan and the concurrent plan;
- h) whether the child is safe;
- i) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child;
- j) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living, including:
 - i) the specific independent living services or instructions that are currently being provided by the county agency or private provider;
 - ii) the areas of need in independent living instruction that have been identified by the independent living assessment completed pursuant to the Chafee Act, 42 U.S.C. § 671 *et seq.*;
 - iii) the independent living services that the child will receive prior to the next permanency review hearing;
 - iv) whether the child is in the least restrictive, most family-like setting that will enable him to develop independent living skills;
 - v) the efforts that have been made to develop and maintain connections with supportive adults regardless of placement type;
 - vi) whether the child is making adequate educational progress to graduate from high school or whether the child is enrolled in another specified educational program that will assist the child in achieving self-sufficiency;
 - vii) the job readiness services that have been provided to the child and the employment/career goals that have been established;

viii) whether the child has physical health or behavioral health needs that will require continued services into adulthood; and

ix) the steps being taken to ensure that the youth will have stable housing or living arrangements when discharged from care; and

k) any educational, health care, and disability needs of the child and the plan to ensure those needs are met.

2) *Additional findings for fifteen of last twenty-two months.* If the child has been in placement for fifteen of the last twenty-two months, the court may direct the county agency to file a petition to terminate parental rights.

E. *Advanced communication technology.* Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

F. *Family Service Plan or Permanency Plan.* The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall [**provide all parties**] follow the filing and service requirements pursuant to Rule 1345. The parties and when requested, the court, shall be provided with the modified plan at least fifteen days prior to the permanency hearing.

Comment

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 449 Pa.Super. 507, 674 A.2d 702 (1996) quoting *In re Quick*, 384 Pa.Super. 412, 559 A.2d 42 (1989).

To the extent practicable, the judge or master [**that**] who presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

[Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve

and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a motion to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for determining that filing a motion to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.]

Pursuant to paragraph (A), courts are to conduct a permanency hearing every six months. Courts are strongly encouraged to conduct more frequent permanency hearings, such as every three months, when possible.

The court may schedule a three-month hearing or conference. At the three-month hearing, the court should ensure that: 1) services ordered at the dispositional hearing pursuant to Rule 1512 are put into place by the county agency; 2) the guardian who is the subject of the petition is given access to the services ordered; 3) the guardian is cooperating with the court-ordered services; and 4) a concurrent plan is developed if the primary plan may not be achieved.

A three-month hearing or conference is considered best practice for dependency cases and is highly recommended. The court should not wait until six months has elapsed to determine if the case is progressing. Time to achieve permanency is critical in dependency cases. In order to seek reimbursement under Title IV-E of the Social Security Act, 42 U.S.C. § 601 *et seq.*, a full permanency hearing is to be conducted every six months.

Every child should have a concurrent plan, which is a secondary plan to be pursued if the primary permanency plan for the child cannot be achieved. See *Comment* to Rule 1512. For example, the primary plan may be reunification with the guardian. If the guardian does not substantially comply with the requirements of the court-ordered services, subsidized legal guardianship may be utilized as the concurrent plan. Because of time requirements, the concurrent plan is to be in place so that permanency may be achieved in a timely manner.

Pursuant to paragraph (D)(2), a "petition to terminate parental rights" is a term of art used pursuant to 23 Pa.C.S. § 2511 and Pa.R.O.C. Rule 15.4 to describe the motion terminating parental rights. This does not refer to the "petition" as defined in Pa.R.J.C.P. 1120.

The court is to move expeditiously towards permanency. A goal change motion may be filed at any time.

In addition to the permanency hearing contemplated by this rule, courts may also conduct additional and/or more frequent intermittent review hearings or status conferences, which address specific issues based on the circumstances of the case, and which assist the court in ensuring timely permanency.

A President Judge may allow Common Pleas Judges to “wear multiple hats” during a proceeding by conducting a combined hearing on dependency and Orphans’ Court matters. See 42 Pa.C.S. § 6351(i); see also *In re Adoption of S.E.G.*, 587 Pa. 568, 901 A.2d 1017 (2006), where involuntary termination occurred prior to a goal change by the county agency.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

See 42 U.S.C. § 675 (5)(A)—(H) for development of a transition plan pursuant to paragraph (D)(1)(j).

See Rule 1136 regarding *ex parte* communications.

Official Note: Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1608 published with the Court’s Order at 41 Pa.B. 2434 (May 14, 2011).

PART (C). TERMINATION AND POST-DISPOSITIONAL PROCEDURES

Rule 1613. Termination of Court Supervision.

A. *Concluding Supervision.* Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

* * * * *

6) the child has been placed in the **physical and legal** custody of a fit and willing relative and services from the county agency are no longer needed;

7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed **and a hearing has been held pursuant to paragraph (E) for a child who is age eighteen or older;**

8) the child has been adjudicated delinquent and services from the county agency are no longer needed **because all dependency issues have been resolved;**

9) the child has been emancipated by the court;

10) the child is eighteen years [**old and refusing further services from the county agency**] of age or older and a hearing has been held pursuant to paragraph (E);

* * * * *

E. Children eighteen years of age or older.

1) **Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held at least ninety days prior to termination.**

2) **Prior to the hearing, the child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. The transition plan shall, at a minimum, include:**

- a) the specific plans for housing;
- b) a description of the child’s source of income;

c) the specific plans for pursuing educational or vocational training goals;

d) the child’s employment goals and whether the child is employed;

e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;

f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;

g) verification that all vital identification documents and records have been provided to the child; and

h) a description of any other needed support services.

3) **At the hearing, the court shall review the transition plan for the child. If the court is not satisfied that the requirements of paragraph (E)(2) have been met, a subsequent hearing shall be scheduled.**

4) **The court shall not terminate its supervision of the child without approving an appropriate transition plan, unless the child, after an appropriate transition plan has been offered, is unwilling to consent to the supervision and the court determines termination is warranted.**

F. *Cessation of services.* When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

Comment

* * * * *

Pursuant to paragraph (A)(8), if a child has been adjudicated delinquent, the court may terminate court supervision unless dependency is necessary for placement. *In re Deanna S.*, 422 Pa.Super. 439, 619 A.2d 758 (1993). The court may also decide to retain dependency jurisdiction regardless of the delinquency adjudication because the child still needs dependency services.

If dependency issues have not been resolved, the case should be kept open and services ordered. The court should ensure that services are not discontinued solely because the child was adjudicated delinquent. The county agency and the juvenile probation are to collaborate on the case and resolve all outstanding issues. If a child is in a delinquency placement, the court is to ensure that the county agency and the juvenile probation office have collaborated to ensure appropriate services are in place.

* * * * *

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. 42 Pa.C.S. § 6351(a)(2.1). See also *Justin S.*, 375 Pa.Super. 88, 543 A.2d 1192 (1988).

Pursuant to paragraph (E)(2), the county agency is to assist the child and provide all the support necessary in developing a transition plan. See 42 U.S.C. § 675 (5)(A)—(H).

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

Official Note: Rule 1613 adopted August, 21, 2006, effective February 1, 2007. Amended July 29, 2009, effective immediately. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1613 published with the Court's Order at 41 Pa.B. 2434 (May 14, 2011).

EXPLANATORY REPORT

April 2011

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 1151, 1608, 1613 and adoption of new Rule 1606 with this Recommendation. The changes are effective July 1, 2011.

These rule changes stem from a request from the Pennsylvania Children's Roundtable Dependency Benchbook Committee. The Benchbook Committee asked for guidance and clarification of specific issues that are addressed in these rule changes.

Rule 1151—Assignment of Guardian Ad Litem & Counsel

It was brought to the Committee's attention that in some judicial districts, "guardians" were appearing at hearings without an attorney. Rule 1120 defines guardian as any parent, custodian, or other person designated by the court to be a temporary guardian for purposes of a proceeding. The modified Comment enforces that the court must inform all parties of the right to counsel.

Rule 1606—Motion for Modification of Dependent Child's Placement

This new rule was added because judges are not being notified about a change in a dependent child's placement until weeks, even months after a move of the child's placement. Many times, the judge is notified of a change at the permanency hearing. Although the child is placed in the custody of the county agency, the judge authorizes placement of a child by court order.

Rule 1606 outlines the procedure for seeking approval of a change in a child's placement. As a general rule, the court must be notified prior to the child being moved by motion or stipulation. However, in an emergency when a judge cannot be reached, the county agency may temporarily place a child in a shelter care facility or other appropriate care. In this situation, the county agency immediately must notify the judge of the change made during the emergency. This can be accomplished by leaving a message for the judge. In addition, the county agency must file a motion for a modification of the court order by the next business day.

The motion is to include an averment stating whether each party concurs or objects to the proposed modification. This will allow the judge to decide whether a hearing is necessary. Because there is a twenty-four hour requirement, if a party does not respond to the request for a concurrence or objection, the averment should state the party was unable to be reached.

If a party objects to the proposed modification, objections shall be filed within three days of the filing of the motion for modification of the child's placement.

Rule 1608—Permanency Hearing

The additions to this rule require a permanency hearing at least every six months pursuant to the federal

Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89) and as implemented through Title IV-E funding of the Social Security Act. The Comment to this rule stresses that a three-month hearing is best practice. This ensures that services are in place and that the guardian has had time to comply prior to the required six-month hearing.

Additionally, the rule provides a checklist for the court's findings in paragraph (D). Paragraph (D)(1)(j) sets forth the required findings for transitioning a child into independent living.

The Comment discusses concurrent planning and combining hearings. Several judicial districts have judges address a goal change motion and a petition for involuntary termination of parental rights in one matter. The Juvenile Act allows a dependency court judge to be assigned to Orphans' Court to hear matters involving dependent children. See Pa.C.S. § 6351(i).

Rule 1613—Termination of Court Supervision

The proposed changes in paragraph (A)(6)—(10) provide further clarification of the rule's intent.

Under the new additions in paragraph (E), specific issues must be addressed in the transition plan before the court can terminate court supervision for a child eighteen years of age or older. These are federal law requirements. See 42 U.S.C. § 675(5)(A)—(H).

The Comment adds that the court should not discontinue services for a dependent child because the court has found the child delinquent. The county agency and the juvenile probation office should work together to provide solutions for the child. In addition, services are to be ready when a dependent child is released from a delinquency placement to ensure that there is a smooth transition.

[Pa.B. Doc. No. 11-793. Filed for public inspection May 13, 2011, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 16 AND 18]

Order Amending Rules 1604 and 1800 of the Rules of Juvenile Court Procedure; No. 530 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 29th day of April, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3); 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 modifications to Rules 1604 and 1800 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2011.

Annex A
TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS, NOTICE, AND REPORTS

Rule 1604. Submission of Reports.

* * * * *

B. *Designation by President Judge.* The President Judge of each judicial district shall appoint a designee, other than [**the county agency**] a **judge or party**, to receive these reports.

* * * * *

E. *Examination of Report.* Pursuant to Rule [**1608(D)**] **1608(C)**, the court shall examine this report and consider its contents as it would consider any other evidence in the case.

Comment

The county agency is to provide the form designed by the Department of Public Welfare to the foster parent, preadoptive parent, or relative providing care for the child. *See* 42 Pa.C.S. § 6336.1(b).

See also 42 Pa.C.S. § 6341(d).

Pursuant to paragraph (E), the court is to examine this report and consider its contents as it would consider any other evidence. Evidence is to be properly entered into the record before the court will consider it. Evidence submitted directly to the court is considered an *ex parte* communication and is strictly prohibited. See Rule 1136 on *ex parte* communications.

Official Note: Rule 1604 adopted December 18, 2009, effective immediately. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the provisions of Rule 1604 published with the Court’s Order at 41 Pa.B. 2435 (May 14, 2011).

CHAPTER 18. SUSPENSIONS

Rule 1800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

* * * * *

11) **The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336.1(b)(2), which provides that the foster parent or parents, preadoptive parent or relative providing care for the child has a right to submit a report to the court, is suspended only insofar as the Act is inconsistent with Rule 1604, which requires the report to be submitted to a court designee who files the report and submits it to the judge, attorneys, parties, and if appointed, a court appointed special advocate.**

12) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6351(e)(3)(i)(B), which provides for permanency hearings within six months of each previous permanency hearing until the child is returned home or removed from the jurisdiction of the court, is suspended only insofar as the Act is inconsistent with Rule 1607, which requires permanency hearings in all cases until the child is removed from the jurisdiction of the court.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 1102.

Official Note: Rule 1800 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009; amended September 16, 2009, effective immediately. **Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1800 published with the Court’s Order at 41 Pa.B. 2435 (May 14, 2011).

EXPLANATORY REPORT

April 2011

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 1604 and 1800 with this Recommendation. The changes are effective July 1, 2011.

As the Committee was reviewing a proposed local rule, the Committee decided it should clarify the intent of Rule 1604.

When drafting Rule 1604, the Committee was concerned with the court receiving *ex parte* communications. The Committee expected that the judge would not be receiving this report itself because it is *ex parte*.

The Juvenile Act was amended in 2008, adding the right for a foster parent, preadoptive parent, or relative providing care for the child to submit a report to the court. *See* 42 Pa.C.S. § 6336.1.

The Committee clarified the procedure on how the report was to be submitted by proposing the addition of a new Rule 1604. The Court adopted this rule in December of 2009.

In Rule 1604(D), the Committee used the term “court designee,” rather than the term “court.” The intent was that someone other than the judge would file this report with the clerk of courts and distribute copies to the judge, attorneys, parties, and if applicable, the court-appointed special advocate. The judge would not be the person filing the report or distributing copies.

Additionally, Rule 1604(E) provides that the court shall examine this report and consider its contents as it would consider any other evidence in the case. Generally evidence must be properly entered into the record by a party prior to the court reviewing the evidence. Then, the court would also reject, as *ex parte* communication, any other report sent directly to the judge.

The modified rule explicitly states in 1604(B), that the President Judge of each judicial district shall appoint a designee, other than a judge or a party, to receive these reports.

Rule 1800 suspends 42 Pa.C.S. § 6336.1 only to the extent that it conflicts with Rule 1604, in that a report may not be sent directly to the judge as an *ex parte* communication. It must follow the normal procedures and be submitted as evidence. The report would be considered by the court as it considers all other evidence.

[Pa.B. Doc. No. 11-794. Filed for public inspection May 13, 2011, 9:00 a.m.]

COMMONWEALTH COURT

**Regular Sessions of Commonwealth Court for the
Year 2012; No. 126 M.D. No. 3**

Order

And Now, this 15th day of April, 2011, *It Is Hereby Ordered* that the argument sessions of the Commonwealth Court of Pennsylvania shall be held in the year 2012 as follows:

<i>Dates</i>	<i>Situs</i>
February 13—17	Philadelphia
March 12—16	Harrisburg
April 16—20	Pittsburgh
May 14—18	Philadelphia
June 4—8	Harrisburg
September 10—14	Harrisburg
October 15—19	Philadelphia
November 13—16	Pittsburgh
December 10—14	Harrisburg

BONNIE BRIGANCE LEADBETTER,
President Judge

[Pa.B. Doc. No. 11-795. Filed for public inspection May 13, 2011, 9:00 a.m.]
