

## Educational Rights for Foster Youth

(Revised 01/28/22)

### Forms

#### Court Report Requirements

#### Educational/Developmental Rights Holder

#### Subsequent Review/Status Hearings

#### Nonminor Dependents (NMDs)

#### JV-535 and JV- 535 (A)

#### Dissemination of Educational Rights Forms

#### Education Rights Holder Program (ERHP)

#### How to Request a Volunteer ERH

#### Sharing Education Rights

#### Foster Youth Education Rights

#### Alignment with SET

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### Forms

The following forms are referenced in this file:

- [JV-535](#) Order Designating Education Rights Holder
- [JV-535\(A\)](#) Attachment to Order Designating Educational Rights Holder
- [JV-536](#) Local Educational Agency Response to JV-535—Appointment of Surrogate Parent
- [JV-537](#) Educational Rights Holder Statement
- Educational Stability for Foster Children brochure

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### Court Report Requirements

Whenever a child is placed in out-of-home care, or experiences a change of placement (COP), the SW must document in the Educational section of the court report whether the child will remain in the school of origin (SOO). If not, the SW must include a reason.

SWs must include in the Educational section of every Jurisdiction/Disposition hearing report and in the Educational section of every subsequent Status Review hearing report, a factual statement as to whether or not the parent's right to make educational decisions for the child should continue or be limited.

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### Educational/ Developmental Rights Holder

If the parent's educational or developmental rights need to be limited/terminated, the Juvenile Court is required to appoint a responsible adult to make educational decisions for the child until:

- the child reaches the age of 18, or beyond if determined incompetent,
- another responsible adult is appointed,
- parental educational rights are fully restored,
- a successor guardian or conservator is appointed, or
- the child is placed in Another Planned Permanent Living Arrangement (APPLA), at which time the caregiver represents a child's special education needs (except short term therapeutic program (STRTP) or licensed group home (LGH) staff).

**NOTE:** The parent's education rights must be limited by the Court before the caregiver has this right.

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**Educational/  
Developmental  
Rights Holder  
(cont.)**

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When determining an educational representative, the SW will develop the recommendation based on the following priority:

1. Child's caregiver (except LGH/ STRTP staff)
2. An appropriate relative or other adult such as a mentor or a non-related extended family member with whom the child is not placed
3. A Court Appointed Special Advocate (Court-Appointed Special Advocates - CASAs (Voices for Children) ), or
4. Request the school to appoint a surrogate parent (appropriate only for children who may be eligible for **special education** services or who already have an IEP and no other appropriate adult exists)

Who cannot be appointed:

- An individual who would have a conflict of interest may not be appointed to make educational decisions (e.g. a person who is paid to represent the child such as the child's SW, attorney, therapist or psychiatrist).  
**NOTE:** Caregivers, except for LGH, are not considered as paid to represent the child since payments to caregivers are for the child's needs.
- Some LGH/STRTP staff may have a conflict of interest, especially if the LGH/STRTP also operates a school facility. Thus, LGH/STRTP staff shall not be appointed education rights.

SW staff should share the 04-93 brochure with parents and caregivers to remind them the importance of the educational stability. This brochure should also be shared with a potential educational or developmental rights holder, should they have questions about being an educational rights holder.

Often times, a child's current caregiver will be appointed as the educational/developmental rights holder. If a child changes placement, SW will ask the previously appointed rights holder/caregiver to continue to hold rights for the child.

If someone other than a caregiver is appointed to hold these rights, it is imperative that both the educational rights holder and caregiver collaborate/communicate regarding the child's education progress and needs. However, according to section §49069.3 (c) of the Education Code.

(1) If direct communication between a caregiver and an educational rights holder is appropriate, a caregiver who is not the pupil's educational rights holder shall notify the pupil's educational rights holder of any educational needs of the pupil that require the educational rights holder's consent or participation, including, but not limited to, school placement decisions, decisions on whether to invoke or school of original rights, consent for special education assessments and individualized education programs, meetings or hearings regarding attendance or discipline, and decisions regarding graduation. In instances involving significant discipline or discipline that potentially impacts a pupil's continued enrollment and progress in school, the caregiver shall also provide the same information to the pupil's social worker as is provided to the educational rights holder.

(2) If direct communication between a caregiver and an educational rights holder is inappropriate, the pupil's social worker shall direct the caregiver to communicate the information specified in paragraph (1) with the pupil's social worker or attorney instead of the educational rights holder.

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**Subsequent  
Review/Status  
Hearings**

Following the dispositional hearing and each statutory review hearing, SWs must complete JV535, JV 535-A and any required attachments to request a modification, limitation, or restoration of educational or developmental-services decision making rights. SWs do not have to wait until the next subsequent reviewing hearing for the court to appoint a new educational rights holder or return to the parent/guardian. SWs may submit the JV 535 and JV 535A via ex-parte.

If there has been no request for modification, limitation, or restoration of educational or developmental-services decision making rights, or there are no required updates to contact or other information, there is no need to file a new form JV-535. If a new form JV-535 is filed, the most recent *Attachment to Order Designating Educational Rights Holder* (form JV-535 (A)) must be attached.

If the SW is recommending a new educational representative be appointed at a subsequent review hearing, the SW must:

Step	Action
1	Include the reason and supporting facts, in the body of the court report under the Education Section.
2	Identify whether there is a responsible adult available to make educational decisions for the child.
3	<ul style="list-style-type: none"><li>• Complete a new JV-535, JV-535 (A) (and JV-536, if appropriate) and attach it directly behind the recommendation set of the court report.<ul style="list-style-type: none"><li>○ Any confidential information must be identified as “CONFIDENTIAL” on page 3 of the JV 535A. However, non-confidential information, such as phone number and email address must be included, as appropriate.</li></ul></li></ul>

If the SW is recommending educational or developmental rights be returned to the parent/guardian at a subsequent review hearing, the SW must:

Step	Action
1	Include the reason and supporting facts, in the body of the court report under the Education Section.
2	Complete a new JV-535 and JV-535 (A) and attach it directly behind the recommendation set of the court report.

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**Nonminor Dependents (NMDs)**

Nonminor dependents (NMDs) are able to hold their own rights to make educational and developmental-services decisions, unless rule 5.650(b) of the California Rules of Court applies. This rule states the court may appoint or continue the appointment of an educational rights holder to make educational or developmental services decisions for a NMD if:

1. The youth has chosen not to make educational or developmental services decisions for or is deemed by the court to be incompetent; and
2. With respect to developmental -services decisions, the court also finds that the appointment or continuance of a rights holder would be in the best interests of the youth.

The following individuals may be considered as a potential educational or developmental rights holder for NMDs:

- Caregiver
- Relatives/NREFM
- Conservator or
- CASA

**NOTE:** CASAs may hold rights for NMDs, only if the NMDs agree to continue with a CASA. As with other dependents, SWs, attorneys and group home providers are **not** to hold educational or developmental rights of these NMDs.

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**JV-535 and JV-535 (A)**

The JV-535 and JV-535 (A) must be completed whenever recommending to limit a parent’s education rights for out-of-home children.

When appointing an educational representative, or changing an educational representative the SW must:

Step	Action
1	<p>Complete all sections of the JV-535 and JV-535 (A).</p> <p>The most current versions of JV forms are available online from the <a href="#">California Judicial Website</a>.</p> <p><b>NOTE:</b></p> <ol style="list-style-type: none"><li>1. If a caregiver with a confidential address is being recommended, please include the name of the caregiver only and write “confidential” where the address would go. Also check on the NOTICE section on the bottom of page 1.</li></ol>

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**JV-535 and JV-535 (A) (cont.)**

The JV-535 and JV-535 (A) must be completed whenever recommending to limit a parent’s education rights for out-of-home children.

When appointing an educational representative, or changing an educational representative the SW must:

Step	Action
1	<p>2. When appointing a volunteer educational rights holder (ERH,) list the following address on item #1 of the JV 535:</p> <p style="text-align: center;">Children’s Advocacy Institute USD School of Law 5998 Alcalá Park San Diego, CA 92110</p> <p>3. When changing an education rights holder from a previous order, be sure to check #5 on page 1 of the JV 535 to ensure that any previous educational rights holder or developmental service decision maker is terminated.</p>
2	Attach two copies of the JV-535 and JV-535 (A) to the judge’s copy of the court report.
3	<ul style="list-style-type: none"> <li>• Complete and attach a JV-536 to the court report, along with the JV-535 and JV-535 (A), if there is no responsible adult available and the SW is recommending the Court request the LEA appoint a surrogate parent for the child with special education needs (see Court-Appointed Special Advocates - CASAs (Voices for Children).</li> <li>• The LEA will complete the JV-536 to notify the Court and SW when a surrogate parent has been appointed.</li> </ul>

**Dissemination of Educational Rights Forms**

This table describes how to process and disseminate the JV-535, JV-535 (A), JV-536, and JV-537 forms:

Step	Who	Action
1	Court	Sign the JV-535 and JV-535 (A) or receive the JV-536 from the LEA.

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**Dissemination of Educational Rights Forms (cont.)**

This table describes how to process and disseminate the JV-535, JV-535 (A), JV-536, and JV-537 forms:

Step	Who	Action
2	Court Clerk	<ul style="list-style-type: none"><li>• Email the authorized forms to the following:<ul style="list-style-type: none"><li>○ Child Welfare Services Policy and Program Support Education PA</li><li>○ Foster Youth Services Coordinating Program (FYSCP) manager and Office Assistant</li></ul></li></ul>
3	FYSCP	Forward JV-535 and JV-535 (A) to the appropriate regional School Success Educational Liaisons.
4	Regional HEP OA	<ul style="list-style-type: none"><li>• On the Enrollment Information page of the child's CWS/CMS Education Notebook:<ul style="list-style-type: none"><li>○ check the corresponding box if the parents' rights to make education decisions were limited by the court</li><li>○ add the date of the court order (the date the court signed the JV-535 and JV-535 (A)).</li></ul></li></ul>

Although the JV-537 is an optional form, educational representatives and surrogate parents use this form to communicate information to the court about the child and if the educational representative/surrogate parent is resigning from their position. JV-537 may be forwarded to the HEP OA to update the education notebook.

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**Education Rights Holder Program (ERHP)**

The education rights holders under this MOA are student volunteers from the USD School of Law who will serve as Education Rights Holders (ERH) on a **short-term, temporary** basis until a **permanent** ERH can be appointed. In order to serve as an ERH through the ERHP, an individual must meet the following requirements:

- Be at least 18 years old
- High school diploma or equivalent
- Completed application
- Completed background check
- Pre-service training
- Court appointment.

In appropriate cases and considered on a case-by-case basis, a volunteer from ERHP can serve as a **temporary** ERH until education rights are transferred to another individual who can serve as a permanent ERH or education rights are transferred back to the parent(s) of the student in foster care.

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**Education Rights  
Holder Program  
(ERHP) (cont.)**

SWs are reminded of the priority of education rights holders:

- Parent(s)
- Relative
- NREFM/Significant Adult
- Caregiver
- CASA
- District Surrogate, if IEP
- Court.

As the ERH, these volunteers will:

- Be invited to all school related activities for the child
- Receive school related records
- Be able to attend court hearings, if it relates to school/education needs.

As the ERH, the volunteer acts as and holds the rights of the parent or guardian with respect to all decisions regarding the child's education and developmental services, and has the authority and responsibility to make decisions that ensure:

- The stability of the student's school placement;
- Placement in the least restrictive educational program appropriate to the student's individual needs;
- The student's access to academic resources, services, and extracurricular and enrichment activities;
- The student's access to any educational and developmental services and supports needed to meet state standards for academic achievement and functional performance or, with respect to developmental services, to promote community integration, an independent, productive, and normal life, and a stable and healthy environment;
- The prompt and appropriate resolution of school disciplinary matters;
- The provision of any other elements of a free, appropriate public education; and
- The provision of any appropriate early intervention or developmental services required by law, including the California Early Intervention Services Act or the Lanterman Developmental Disabilities Services Act.

Individuals who develop a relationship with dependents will be limited within their scope of responsibility as the ERH. These individuals may:

- Maintain contacts with the students as an ERH
- Contact Foster Youth Mentor Program, if they're interested in becoming a mentor, after they end their role as the student's ERH.

The volunteer ERH will immediately notify the student's assigned SW and attorney if the individual can no longer hold education rights.

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**How to Request a Volunteer ERH**

As soon as it is determined that a child’s educational rights holder cannot be identified, the child’s assigned SW will contact the San Diego County Superintendent of Schools, Foster Youth Services Coordinating Program (FYSCP ) at (858) 298-2060 to request a volunteer ERH.

SWs will continue to look for a **permanent** ERH. SWs will also submit completed JV 535 and JV 535A, within 14 days when:

- a volunteer ERH is identified
- an ERH changes
- a permanent education rights holder is identified.

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**Sharing Education Rights**

On a case-by-case basis, the volunteer ERH can share education rights with the child’s parents or other responsible adults. SWs must assess the appropriateness of sharing of the education rights hold responsibilities with responsible adults.

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**Foster Youth Education Rights**

The California Foster Youth Education Task Force has created a summary of all the education rights outlined in the California Education Code sections pertaining to foster youth. Schools inform all students of their rights at the beginning of each school year and have posters on site to inform students. SWs can review them on the state [website](#).

Foster youth have the right to file a complaint if they believe their educational rights have been violated. For information about how to file a complaint, please visit the [CDE Uniform Complaint Procedures](#), or call the California Department of Education Coordinated School Health and Safety Office at 916-319-0914.

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**Alignment with SET**

This file aligns with SET [Value 3](#) “Helping Children And Youth Achieve Their Full Potential And Develop Lifelong Relationships” and the guiding principle to continually focus on children’s well-being while they are in care.

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