

RULES OF JUVENILE COURT PROCEDURE

DEPENDENCY MATTERS

CHAPTER 11 GENERAL PROVISIONS

* * *

PART A BUSINESS OF COURTS

* * *

1136. Ex Parte Communication

* * *

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

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

1147. Educational decision maker.

* * *

RULE 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.

* * *

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.

* * *

COMMENT

* * *

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.

* * *

"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.

* * *

Official Note:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1120 published with the Court's Order at 41 Pa.B. - (-).

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.(-)
).

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

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

1147. Educational decision maker.

RULE 1147. EDUCATIONAL DECISION MAKER.

A. Generally. At any proceeding or upon motion, 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.(-(-

RULE 1154. DUTIES OF GUARDIAN *AD LITEM*

* * *

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

“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:

* * *

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.-(-).

**PART C
SHELTER CARE**

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

RULE 1240. SHELTER CARE APPLICATION

A. **Filings.** A shelter care application may be oral or in writing. If oral, w[W]ithin 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 detailing:

a) the [that] reasonable efforts made to prevent placement; **[were made]**
and

b) why there are no less restrictive alternatives available;

* * *

COMMENT

* * *

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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1240 published with the Court's Order at 41 Pa.B. - (-).

RULE 1242. SHELTER CARE HEARING.

* * *

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]3) a person, other than the county agency, submitting [if]** a shelter care application, **[is submitted by a person other than the county agency, the court shall make a determination if the person]** is a party to the proceedings; **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.**

* * *

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 (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.

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

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

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

See 42 Pa.C.S. § 6332.

Pursuant to paragraph (E), the court is to enter a written order. It is important that the court address any special needs of the child while the 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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1242 published with the Court's Order at 41 Pa.B. - (-).

RULE 1406. ADJUDICATORY HEARING

* * *

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

* * *

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), w]W**hen 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:

* * *

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

Committee Explanatory Reports:

* * *

**Final Report explaining the amendments to Rule 1406 published with the Court's Order at 41 Pa.B.
- (-).**

RULE 1501. DISPOSITIONAL NOTICE

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

* * *

- 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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1501 published with the Court's Order at 41 Pa.B. - (-).

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

* * *

[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 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).

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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1512 published with the Court's Order at 41 Pa.B. - (-).

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 state[enter into] 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:

* * *

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~~3)(a) through (c) is not necessary.

* * *

Official Note:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1514 published with the Court's Order at 41 Pa.B. (-).

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) **any findings pursuant to Rules 1512(D) and 1514; [the terms, conditions, and limitations of the disposition;**
- 2) **the name of any person or the name, type, category, or class of agency, licensed organization, or institution that is to provide care, shelter, and supervision of the child;**
- 3) **any findings pursuant to Rule 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) **2** 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 g]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 § 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.

* * *

Official Note:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1515 published with the Court's Order at 41 Pa.B. (-).

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:

* * *

- 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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1601 published with the Court's Order at 41 Pa.B. (-).

**RULE 1609. [COURT ORDER OF] PERMANENCY HEARING ORDERS
[DETERMINATIONS]**

- A. **[Findings]Court order.** After every permanency hearing, the court shall issue a written order, which provides whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.
- B. **Determination made.** The court's order shall reflect a determination made **[consistent with 42 Pa.C.S. § 6351(f.1)]pursuant to Rule 1608(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 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. **[Orders concerning g]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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1609 published with the Court’s Order at 41 Pa.B. (-).

1800. SUSPENSIONS OF ACTS OF ASSEMBLY

- 3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provide 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 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:

* * *

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

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1800 published with the Court's Order at 41 Pa.B. (-).