

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

EXPLANATORY REPORT APRIL 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 Benchbook 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.