

# N.M. R. Child. Ct. 10-316

Rule 10-316 - Appointment or change of educational decision maker

**A. Definition.** An educational decision maker is an individual appointed by the children's court to attend school meetings and to make decisions about the child's education that a parent could make under law, including decisions about the child's educational setting, and the development and implementation of an individual education plan for the child.

**B. Appointment of educational decision maker; separate order required.** The children's court shall appoint an educational decision maker in every case. The appointment shall be made by a separate order substantially in the form approved by the Supreme Court.

**C. Timing of appointment.**

**(1) Initial appointment.** The children's court shall appoint an educational decision maker at the custody hearing, provided that the court may change the appointment of an educational decision maker upon motion of a party at any stage of the proceedings.

**(2) Review of appointment.** The children's court shall review at each subsequent stage of the proceedings whether to continue or change the appointment of an educational decision maker for the child. Any change shall be made by a separate order substantially in the form approved by the Supreme Court.

**D. Identity of educational decision maker; qualifications.**

**(1) Respondent.** The children's court shall appoint a respondent as the child's educational decision maker, unless the court determines that doing so would be contrary to the best interests of the child.

**(2) Other qualified individual.** If the court determines that no respondent should be appointed as the child's educational decision maker, the court shall appoint another qualified individual, taking into account the following:

- (a)** whether the individual knows the child and is willing to accept responsibility for making educational decisions;
- (b)** whether the individual has any personal or professional interests that conflict with the interests of the child; and
- (c)** whether the individual is permitted to make all necessary educational decisions for the child, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act.

*N.M. R. Child. Ct. 10-316*

Adopted by Supreme Court Order No. 15-8300-011, effective in all cases filed or pending on or after 12/31/2015.

*Committee commentary.* - This rule is intended to ensure that the court clearly identifies for each child in an abuse and neglect proceeding a person who is authorized to make all decisions about the child's educational rights under state and federal law, including decisions related to early intervention and special education. The rule makes clear

*that in most cases, the person appointed as educational decision maker should be a respondent-parent of the child. However, certain laws authorize a court to appoint a person other than a parent to protect and to make decisions related to the child's educational rights. See, e.g., 20 U.S.C. §§ 1415(b)(2)(A)(i), 1439(5) (authorizing a judge overseeing the care of a ward of the state to appoint a surrogate to protect the rights of the child under the Individuals with Disabilities Education Act (IDEA)); 34 C.F.R. § 300.30 (providing that a person appointed by judicial decree or order to make educational decisions on behalf of a child shall be considered a "parent" under the IDEA). Because certain educational rights may attach at an early age, including the right to identification, evaluation, and educational placement in special education or early intervention services under the IDEA, the rule requires the appointment of an educational decision maker for every child, including for infants and toddlers. See 20 U.S.C. § 1412(a)(1)(A) (providing that a child with a disability is entitled to a free appropriate public education from the ages of three (3) to twenty-one (21)); 20 U.S.C. § 1432(1), (5) (providing that an infant or toddler under the age of three (3) is entitled to identification and evaluation services to determine eligibility for early intervention services).*

*Under Paragraph B, the Court must appoint an educational decision maker in every case, even when the educational decision maker is a respondent. When consistent with the best interests of the child, the court may appoint more than one respondent as educational decision maker; however, if the court determines that no respondent should be appointed under Subparagraph (D)(1), the court should appoint only one person as the child's educational decision maker.*

*Under Subparagraph (D)(2)(c), federal regulations preclude a guardian ad litem or a CYFD social worker from being appointed as a surrogate parent for a ward of the state. See, e.g., 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state); see also 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).*

*[Adopted by Supreme Court Order No. 15-8300-011, effective December 31, 2015.]*

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