

INTRODUCTION

The Juvenile Court Procedural Rules Committee is eliciting public comment on proposed modifications to Rules 1120, 1150, 1151, and 1200 and new proposed Rules 1610, 1611, 1631, 1634, and 1635. These proposed modifications address the recent "Resumption of Jurisdiction" legislation.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

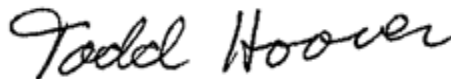
Only for those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

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Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Friday, February 1, 2013.

11/19/2012

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:



Honorable Todd A. Hoover, Chair



Christine Riscili
Counsel

REQUEST FOR PUBLIC COMMENT

The Juvenile Court Procedural Rules Committee (Committee) is seeking public comment on amendments to Rules 1120, 1150, 1151, and 1200 and new proposed Rules 1610, 1611, 1631, 1634, and 1635.

With the adoption of Act 91 of 2012 (P.L. 880, No. 91, Cl. 18), a child may request the court to resume juvenile court jurisdiction if specific requirements are met.

Rule 1120

The definition of a child now includes those children who are under twenty-one years of age and were adjudicated dependent prior to turning eighteen years of age and are requesting the court to resume juvenile court jurisdiction after jurisdiction had been previously terminated. In addition, these children must be: 1) completing secondary education or an equivalent credential; 2) enrolled in an institution which provides postsecondary or vocational education; 3) participating in a program actively designed to promote or prevent barriers to employment; 4) employed for at least eighty hours per month; or 5) incapable of doing any of the activities as prescribed above due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child. See 42 Pa.C.S. § 6302.

Rules 1150 and 1151

Courts should easily be accessible to children requesting the court to resume jurisdiction of their cases. If the child contacts the previously assigned guardian *ad litem* or counsel, the attorney should assist the child in filing a motion for resumption of jurisdiction. If extenuating circumstances exist and the attorney cannot represent the child, the attorney should still file the motion for the child but explain the circumstances to the court and ask not to be reappointed.

The court is to appoint legal counsel for the child in the new resumption of jurisdiction case. The *Comment* to Rule 1151 provides that it is best practice for the court to assign the previous attorney as legal counsel for the child if they are available.

Rule 1200

Dependency proceedings commence when a motion for resumption of jurisdiction pursuant to Rule 1634 has been filed.

If the court grants the motion for resumption of jurisdiction, dependency

proceedings would continue and regular permanency hearings would occur for children over eighteen pursuant to Rule 1611. If the court denies the motion for resumption of jurisdiction, the court is to order termination of juvenile court proceedings pursuant to Rule 1635(F).

Rules 1608 & 1609

References to the new rules for permanency hearings and permanency hearing orders for children over eighteen have been placed in the *Comments*.

Rule 1610

A new separate rule has been proposed for permanency hearing for children over eighteen.

Paragraph (A) provides the purpose and the timing of the hearing. The court must conduct hearings every six months. The child must appear in person at the six-month hearing. See Rules 1128 and 1129.

Paragraph (B) provides that the hearing must be recorded and paragraph (C) sets forth the evidentiary standard for the hearing.

Paragraph (D) provides the findings and conclusions of law that the court must enter into the record in open court.

Rule 1611

This new proposed rule governs the permanency hearing orders for children over eighteen.

Rule 1631

The *Comment* to the Rule explains that a new transition plan is to be developed for the child if the court resumes jurisdiction. Before those cases can be terminated, the requirements of paragraph (E) must be met.

All dependency cases must be terminated when the child turns twenty-one. See Rules 1120 and 42 Pa.C.S. § 6302 for definition of “child” and *Comments* to Rules 1631 and 1635.

Rule 1634

This new proposed rule governs venue, the contents of the motion for resumption of jurisdiction, and service of the motion.

If the child meets the definition of “child,” a motion for resumption of jurisdiction must be filed with the court that terminated court supervision. There would be no record of the case in any other court. The *Comment* to Rule 1634 provides that if the juvenile has moved to another county, the court may transfer the case pursuant to Rule 1302 at any time after the filing of the motion, including prior to the hearing on the motion. See paragraph (A).

Paragraph (B) governs the contents of the motion, including whether the child wants his or her parent, guardian, or other interested adult involved in the court proceedings. There may be instances in which the court would want to order parental involvement even when the child does not desire to have the parents present or involved in the case. See 42 Pa.C.S. § 6310 for parental participation.

Paragraph (C) provides for service of the motion. If the child is filing the motion, the President Judge is to designate a person to serve the other parties. See *Comment*.

The *Comment* to the rule provides that the child, county agency, or attorney for the child may file the motion for resumption of jurisdiction. The clerk of courts must accept all resumption motions. See *Comment* to Rule 1200. Children should have access to the court and all parties approached by the child should assist the child in the filing of the motion. Counties may have form motions available for the child to fill out at the clerk of courts’ and county agency’s offices.

Rule 1635

This new proposed rule provides for the hearing on the resumption of jurisdiction. Within thirty days of receiving a motion to resume juvenile court jurisdiction, the court must conduct a hearing on the motion. See paragraph (A).

Pursuant to paragraph (B), notice of the date, time, place, and purpose of the hearing must be given to the county agency, the attorney for the county agency, the child, the child’s attorney, and any other persons as directed by the court.

After the court has determined whether jurisdiction can be resumed and

has made findings and conclusions of law on the record in open court pursuant to paragraph (C), the court must enter an order pursuant to paragraph (D).

Paragraphs (E) and (F) govern termination of court supervision in resumption cases. If the court denies the motion of resumption of jurisdiction, the court must enter an order terminating juvenile court jurisdiction. Because a resumption of jurisdiction case is commenced upon the filing of a motion, an order terminating supervision must be entered to close the case.

Advanced communication technology may be utilized pursuant to paragraph (G); however, the court must see the child in person every six months. See Rules 1128 and 1129.

RULE 1120. DEFINITIONS

* * *

CHILD is a person who:

1) _____ is under the age of eighteen [who]and is the subject of the dependency petition[,or who]

2) _____ was adjudicated dependent before reaching the age of eighteen years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years; or

3) has requested the court to resume jurisdiction; and

a) is under twenty-one years of age;

b) was adjudicated dependent prior to turning eighteen years of age;
and

c) is, one of the following:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or prevent barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed above in (3)(c)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child.

* * *

COMMENT

In 201-, the definition of “child” was expanded to include those children who have requested the court to resume jurisdiction after juvenile court jurisdiction had been previously terminated. This rule change followed the changes to the definition of “child” in the Juvenile Act pursuant to Act of July 5, 2012 (P.L. 880, No. 91). See 42 Pa.C.S. § 6302.

The county agency is a party to the proceeding and should not function as the “Clerk of Courts.”

The definition of “[c]Clerk of [c]Courts” should not necessarily be interpreted to mean the office of clerk of courts as set forth in 42 Pa.C.S. § 102, but instead refers to that official who maintains the official court record and docket regardless of the person’s official title in each judicial district. It is to be determined locally which official is to maintain these records and the associated docket.

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RULE 1150. ATTORNEYS – APPEARANCES AND WITHDRAWALS

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COMMENT

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See the *Comment* to Rule 1634 for assisting children in filing resumption of jurisdiction motions. It is best practice for the court to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel in the re-opened case. If there extenuating circumstances preventing the attorney from representing the child, the attorney should make this known at the time of the filing of the motion for resumption of jurisdiction so the court can assign a new attorney.

RULE 1151. ASSIGNMENT OF GUARDIAN AD LITEM & COUNSEL

* * *

B. Counsel for child. The court shall appoint legal counsel for a child:

- 1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

* * *

f) has filed a motion for resumption of jurisdiction pursuant to Rule 1634.

* * *

COMMENT

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

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. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. *See* Rule 1800. *See also* Pa.R.P.C. 1.7 and 1.8. Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.

Pursuant to paragraph (B)(1)(f), the court is to appoint legal counsel when a motion for resumption of jurisdiction has been filed. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel.

* * *

RULE 1200. COMMENCING PROCEEDINGS

Dependency proceedings within a judicial district shall be commenced by:

- 1) the filing of a dependency petition;
- 2) the submission of an emergency custody application;
- 3) the taking of the child into protective custody pursuant to a court order or statutory authority;
- 4) the court accepting jurisdiction of a resident child from another state; **[or]**
- 5) the court accepting supervision of child pursuant to another state's order; **or**
- 6) the filing of a motion for resumption of jurisdiction pursuant to Rule 1634.**

COMMENT

* * *

For proceedings that have already been commenced in another judicial district, see Rule 1302 for inter-county transfer of the case.

For resumption of jurisdiction, see Rules 1634 and 1635 & 42 Pa.C.S. §§ 6302 and 6351(J).

The clerk of courts should have form motions available for children who want to file for resumption of juvenile court jurisdiction. These forms are available at <http://www.pacourts.us/Forms/dependency.htm>.

The clerk of court is to accept all filings for resumption of juvenile court jurisdiction whether the motions meet the standard for legal filings or there are objections by other parties. This is to ensure these children have access to the court. See also Rule 1126.

**CHAPTER 16
POST-DISPOSITIONAL PROCEDURES**

* * *

**PART (B)(2)
PERMANENCY HEARING**

- 1607. Regular Scheduling of Permanency Hearing
- 1608. Permanency Hearing
- 1609. Permanency Hearing Orders
- 1610. Permanency Hearing for Children Over Eighteen**
- 1611. Permanency Hearing Orders for Children Over Eighteen**

**PART (C)
[TERMINATION &]POST-DISPOSITIONAL PROCEDURES**

- 1613. Renumbered[Termination of Court Supervision]**
- 1616. [Post-Dispositional Procedures; Appeals] (RESERVED)

**PART (D)
CESSATION AND RESUMPTION OF COURT SUPERVISION OR
JURISDICTION**

- 1631. Termination of Court Supervision.**
- 1634. Motion of Resumption of Jurisdiction.**
- 1635. Hearing on Motion for Resumption of Jurisdiction.**

RULE 1608. PERMANENCY HEARING

* * *

COMMENT

* * *

See Rule 1610 for permanency hearing for children over the age of eighteen.

RULE 1609. PERMANENCY HEARING ORDERS

* * *

COMMENT

* * *

See Rule 1611 for permanency hearing orders for children over the age of eighteen.

RULE 1610. PERMANENCY HEARING FOR CHILDREN OVER EIGHTEEN

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

- 1) the transition 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. Recording. The permanency hearing shall be recorded.

C. Evidence. 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.

D. Court's findings. At the permanency hearing, the court shall:

- 1) enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1611; and**
- 2) on the record in open court, the court shall state:**
 - a) the appropriateness of the placement, if applicable;**
 - b) the appropriateness, feasibility, and extent of compliance with the transition plan developed for the child;**
 - c) the appropriateness and feasibility of the transition goal for the child;**
 - d) the likely date by which the transition goal for the child might be achieved;**
 - e) whether reasonable efforts were made to finalize the transition plan in effect;**
 - f) whether the county agency has made services available, and if not, why those services have not been made available;**
 - g) the continued appropriateness of the transition plan and the concurrent plan, if applicable;**

- 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 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.

COMMENT

See 42 Pa.C.S. §§ 6341, 6351.

To the extent practicable, the judge or master who presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearings for the same child. In resumption of jurisdiction cases, to the extent practicable, the judge or master who presided over the original case should preside over the re-opened case.

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.

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 transition plan 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.

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 transition.

See 42 U.S.C. § 675 (5)(A)-(H) for development of a transition plan pursuant to paragraph (D)(2)(j).

See Rule 1136 regarding *ex parte* communications.

When the court has resumed jurisdiction pursuant to Rule 1635, the court is to schedule regular permanency hearings. The county agency is to develop a new transition plan for the child.

RULE 1611. PERMANENCY HEARING ORDERS FOR CHILDREN OVER EIGHTEEN

- A. Court order. After every permanency hearing for children over the age of eighteen, the court shall issue a written order, which provides whether the transition 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 pursuant to Rule 1610(D).**
- C. Orders concerning education. The court's order shall address the stability and appropriateness of the child's education, if applicable.**
- D. 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 may authorize evaluations and treatment.**
- E. Guardians. The permanency order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.**

COMMENT

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 (C), the court's order is to address the child's educational stability, including the right to an educational decision maker. See *Comment to Rule 1609(D)*.

Pursuant to paragraph (D), the court's order is to address the child's needs concerning health care and disability. See *Comment to Rule 1609(E)*.

PART (D)
CESSATION AND RESUMPTION OF COURT
SUPERVISION OR JURISDICTION

- 1631. Termination of Court Supervision.**
1634. Motion of Resumption of Jurisdiction.
1635. Hearing on Motion for Resumption of Jurisdiction.

RULE [1613]1631. TERMINATION OF COURT SUPERVISION

* * *

COMMENT

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A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). See paragraph (B). **Paragraph (B) does not apply to resumption of jurisdiction cases.**

* * *

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.

If the court has resumed jurisdiction pursuant to Rule 1635, a new transition plan is to be developed for the child. Before the court can terminate supervision, the requirements of paragraph (E) are to be followed. In no case is a juvenile over twenty-one to remain under juvenile court supervision. See Rule 1635(E). See also Rule 1635(F) for termination of juvenile court jurisdiction if the court denies the motion for resumption of jurisdiction.

RULE 1634. MOTION OF RESUMPTION OF JURISDICTION.

A. Venue. A motion to resume jurisdiction shall be filed with the court that terminated court supervision of the child pursuant to Rule 1631.

B. Contents. The motion for resumption of jurisdiction shall aver:

- 1) dependency jurisdiction was previously terminated:**
 - a) within ninety days prior to the child's eighteenth birthday; or**
 - b) on or after the child's eighteenth birthday but before the child turns twenty-one years of age; and**
- 2) the child continues to meet the definition of child pursuant to 42 Pa.C.S. § 6302 because the child:**
 - a) is under twenty-one years of age;**
 - b) was adjudicated dependent prior to turning eighteen years of age;**
 - c) has requested the court to resume jurisdiction; and**
 - d) is, one of the following:**
 - i) completing secondary education or an equivalent credential;**
 - ii) enrolled in an institution which provides postsecondary or vocational education;**
 - iii) participating in a program actively designed to promote or prevent barriers to employment;**
 - iv) employed for at least eighty hours per month; or**
 - v) incapable of doing any of the activities as prescribed in paragraphs (B)(2)(c)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;**
- 3) whether the child would like his or her parent, guardian, or other interested adult involved in the court proceedings; and**
- 4) a verification by the child that the above requirements have been met.**

C. Service. A copy of the motion shall be served upon:

- 1) the county agency;**
- 2) the attorney for the county agency;**
- 3) the child; and**
- 4) the child's attorney.**

COMMENT

A motion to resume jurisdiction can be filed by the child, county agency, or attorney for the child. At the request of the child, if the county agency or previous attorney is approached by the child concerning the court reopening the child's case, the county agency or attorney is to assist the child in the filing of the motion.

Pursuant to paragraph (A), the motion is to be filed in the county that terminated juvenile court jurisdiction. If the juvenile has moved to another county, the juvenile may request the court to transfer jurisdiction pursuant to Rule 1302 at any time after the filing of the motion to resume jurisdiction, including prior to the hearing on the motion. See Rules 1302 and 1635.

If the child does not have attorney at the time of the filing of the motion, the court is to assign legal counsel pursuant to Rule 1151(a) and immediately order service of the motion to resume jurisdiction on the child's attorney. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel. See Rule 1151.

If the child is the party filing the motion, the President Judge of each judicial district is to designate a person to serve the other parties for the child. If the county agency or attorney is filing the motion, they should serve the other parties.

See 42 Pa.C.S. §§ 6302 & 6351(J).

See also Rule 1300 for change of venue and Rule 1302 for inter-county transfer of the case.

RULE 1635. HEARING ON MOTION FOR RESUMPTION OF JURISDICTION.

A. Time for hearing. Within thirty days of receiving a motion for resumption of jurisdiction, the court shall conduct a hearing to determine whether it will resume juvenile court jurisdiction.

B. Notice. Notice of the date, time, place, and purpose of the hearing shall be given to:

- 1) the county agency;**
- 2) the attorney for the county agency;**
- 3) the child;**
- 4) the child's attorney;**
- 5) any other persons as directed by the court.**

C. Hearing. At the hearing, the court shall state its findings and conclusions of law on the record in open court as to whether:

- 1) dependency jurisdiction was previously terminated:**
 - a) within ninety days prior to the child's eighteenth birthday; or**
 - b) on or after the child's eighteenth birthday but before the child turns twenty-one years of age; and**
- 2) the child continues to meet the definition of child pursuant to 42 Pa.C.S. § 6302 because the child:**
 - a) is under twenty-one years of age;**
 - b) was adjudicated dependent prior to turning eighteen years of age;**
 - c) has requested the court to resume jurisdiction; and**
 - d) is, one of the following:**
 - i) completing secondary education or an equivalent credential;**
 - ii) enrolled in an institution which provides postsecondary or vocational education;**

iii) participating in a program actively designed to promote or prevent barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed in paragraphs (C)(2)(d)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;

3) reasonable efforts were made by the county agency to prevent the return of the child to juvenile court jurisdiction unless due to the necessity of emergency placement, such lack of services was reasonable;

4) it will exercise jurisdiction pursuant to 42 Pa.C.S. § 6351(J) because it is best suited to the protection and physical, mental, and moral welfare of the child;

5) a parent, guardian, or other interested adult should be involved in the child's case;

6) there are any health or educational needs of the child; and

7) the county agency has developed an appropriate transition plan.

D. Orders.

1) After a hearing, the court shall enter an order granting or denying the motion to resume juvenile court jurisdiction.

2) If the court resumes jurisdiction, the court shall order:

a) that resumption of jurisdiction is best suited to the protection and physical, mental, and moral welfare of the child;

b) any findings as to the transition plan for the child;

c) regular scheduling of permanency hearings pursuant to Rule 1608;

d) any designations of custody and/or placement of the child; and

e) any evaluations, tests, or treatments for the health and educational needs of the child.

E. Termination of court supervision in resumption cases.

1) Once a child has completed the transition plan for children over the age of eighteen; or the child has refused to cooperate with the plan, a party may move for termination of court supervision pursuant to Rule 1631.

2) In no event shall a child remain on juvenile court supervision once the child has turned twenty-one years of age.

F. Termination of court supervision when motion denied. If the court denies the motion for resumption of jurisdiction, the court shall enter an order terminating juvenile court jurisdiction.

G. Advanced Communication Technology. The provisions of Rule 1129 shall apply to this proceeding.

COMMENT

The court is to decide whether a parent, guardian, or other interested adult will participate in the child's case. The court is to consider the preferences of the child when making an order for participation. See Rule 1634(B)(3) for notation of child's preference and 42 Pa.C.S. § 6310 for guardian involvement.

See 42 Pa.C.S. §§ 6302 & 6351(J).

A master may conduct these hearings. See Rule 1187.