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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the matter of:

PETITION TO AMEND RULES 44.1(c)  
45(c), 78(g) AND 91.3, ARIZONA RULES OF  
FAMILY LAW PROCEDURE

Supreme Court No. R-23-0007

**COMMENT OF EDUCATION LAW  
PRACTITIONERS IN SUPPORT OF  
THE PETITION**

Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, a group of education law practitioners identified below submits the following comment in support of the proposed amendments to Rules 44.1(c), 45(c), 78(g) and 91.3 of the Arizona Rules of Family Law Procedure.

Each of the lawyers who has signed on to this comment represents Arizona public K-12 schools – either school districts, charter schools, or both. In the course of our work for those clients, we routinely encounter situations in which parents seek to involve the school administrators and staff in disputes about their legal decision-making rights and/or parenting time. Often times, the court order that addresses those issues does not address the specific issue about which the parents wish to involve the school. As the Petition aptly notes, schools thus find themselves cast into the middle of parental disputes, with each parent asserting that the court order should be interpreted by the school in their favor. And, as the Petition notes, parents often also threaten the school with legal action

if it does not “comply with” the parenting order issued by the court and the parent’s interpretation of the terms of that order. These disputes have become increasingly common, with many schools now spending significant time navigating the issues – and spending money on legal counsel related to them.

For these reasons, many of us and our clients consulted with Judge Bruce R. Cohen, Family Department Presiding Judge for the Maricopa County Superior Court, about a potential resolution of these issues before they become disputes that are presented to schools to attempt to navigate and resolve. The proposed “education order” would address many of the issues that schools face. In addition, the use of an education order would require parents to begin to consider the issues addressed in the order and how they would like them to be resolved *before* they become areas of parental disagreement and contention. In short, we strongly support the Petition and a form education order that could be customized by the parents and the court.

In addition to our general support of the Petition, we would recommend the following revisions to the proposed education order. All of these proposed changes apply to both forms of the order – the Joint Legal Decision-Making Education Order and the Sole Legal Decision-Making Education Order.

**1. General Revision.**

It would be helpful for the order to specifically note which order prevails when other orders have been entered by the court and provisions of those previous orders conflict with the provisions of the education order. Currently the preamble to the education order indicates only that the order “serves to supplement, but not modify or

replace, the provisions set forth in the court-ordered parenting plan.” It is very likely that based solely on that language, parents will not understand which order controls in the event of a conflict and that such confusion will result in school involvement in a dispute.

## **2. Revision to Section 1, Binding Upon Parties.**

- Delete “Unless otherwise provided,” from the beginning of the second sentence. Because a school is not a party to the parents’ lawsuit, it cannot be bound by an order in the lawsuit. As indicated, the order may serve as guidance for a school, and schools will generally attempt to assist parents to comply with their obligations, but the order cannot bind a school unless the school is also a party to the matter and has an opportunity to be heard before the order is entered.

## **3. Revisions to Section 10, Special Services.**

- Delete the reference to “a Multi-Disciplinary Evaluation Team (MET)” in the first paragraph. The remaining language is sufficient, as the MET determines eligibility for an IEP.

- Add the following language to the second paragraph following the first sentence: “The non-decision-making parent cannot revoke the decision-making parent’s consent to an evaluation.” Under the IDEA, at any time, one parent can revoke consent, and that can cause delays in determining whether students are eligible for special services and generally disrupt the IDEA processes and timelines.

- Revise the current second sentence of the second paragraph to read as follows: “Upon completion of any evaluations or assessments and a MET determination of eligibility, one parent may provide informed consent for the initial provision of special

education and related special services, absent any decision-making authority assigned to one parent. The non-decision-making parent cannot revoke the decision-making parent's consent to the provision of special education and related special services." Under the IDEA, students are not "enrolled in special services," but instead a parent must provide informed consent for such service to be provided to their child. This proposed language more accurately reflects the federal law, and it also reflects the same concerns regarding the revocation of consent that were expressed above.

#### **4. Revisions to Paragraph Numbering.**

We note that both forms of order include two paragraphs numbered 10. The second paragraph 10 ("School Selection") should be renumbered as paragraph 11, and the following paragraphs should also be renumbered.

#### **5. Revision to Section 10, School Selection.**

· Add the following language to the end of the first paragraph: "Parents shall not enroll their child(ren) in two different schools as presumptive full-time students, with each parent taking the child(ren) to a different school during that parent's parenting time." This scenario is a reality, with some parents enrolling a child in two schools, each of which is closest to one parent's house. Thus, a child can attend one school one week, another school the next week, the first school the following week, etc. This is not only disruptive to the school, but also to the student's education and emotional well-being.

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Again, we wish to reiterate our enthusiastic support for the Petition, and we believe that the rule changes and the adoption of form education orders will not only

decrease the parental disputes into which schools are unwillingly drawn, but also reduce disruption to children's education that results from parental disputes about education-related issues.

We understand that one member of the Family Court Improvement Committee dissented from supporting the Petition because "one size does not fit all court processes." We agree that not all of the provisions of the education order may be necessary for any specific matter, but in our experience, each of the issues addressed by the form order comes up with regularity. A court can always revise the form as necessary and appropriate for any matter. But we believe that having a form order that addresses the common areas of disputes among parents will assist all parties in considering and attempting to reach agreement regarding those issues in advance of disputes. That advance consideration of the details of educational legal decision-making does not appear to be occurring with regularity now. This Petition could help change that for the better for schools, parents, and their children.

April 7, 2023.

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