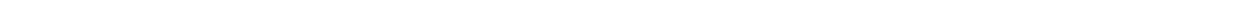

WELL-BEING

EDUCATION

CHILD AND YOUTH VOICE



EDUCATION

Please see the Checklist Section for the Foster Care & Education Judicial Checklist.

A. Education Data

National studies show that youth in foster care have poor educational outcomes when compared to their peers in the general population. Youth in foster care are more likely to be suspended or expelled, score lower on statewide standardized tests, repeat a grade, drop out of school, and are less likely to graduate. For more information on these studies, please see National Working Group on Foster Care and Education (2018, April), *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care*.¹⁶⁸

According to the Texas Education Agency (TEA) 2018-2019 Federal Report Card for Texas Public Schools, students in foster care had a graduation rate of 63.4%, compared to 90.0% of all students in Texas and performed at lower levels on statewide assessments.¹⁶⁹

Although many children experience educational challenges, students in foster care face additional hurdles, including multiple residential and school changes, missed school days for visits with parents and siblings, court appearances, or therapeutic or other case-related appointments that are only available during school hours, as well as an often chaotic educational, social, emotional, and family history prior to entering foster care.

Children and youth who are of school-age and in foster care may also find themselves lost between child welfare and education – two systems with overlap, but often inadequate ongoing and effective communication. If Texas judicial, child welfare, and education stakeholders coordinate efforts, especially during school transitions, students in foster care are less likely to experience a damaging loss of records, credits, services, and support systems, each of which can hinder academic success.

B. School Stability

Special Issue: *School is often a source of stability as well as a place for academic and social development of children and youth in foster care. If a child must be removed from their home or change placements, consider the potential impact on the child's education and what efforts can be made to keep the child in the same school, if possible.*

1. Fostering Connections

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) includes important provisions regarding the educational stability of youth in foster care, calling on child welfare agencies to keep the child in the same school any time the child's placement changes, unless it is not in the child's best interest.¹⁷⁰ [42 U.S.C. § 675](#). If the child cannot remain in the same school, the child must be promptly enrolled in a new school. The legislation also increases the amount of federal funding that may be used to cover education-related transportation costs and requires child welfare agencies to work with Local Education Agencies (LEAs)¹⁷¹ to ensure

educational stability. Provisions in the Fostering Connections Act highlight the importance of improving educational outcomes of children and youth in foster care across the nation.

a. Education Stability Provisions of the Fostering Connections Act

- *Proximity to school* – Each placement decision for a child in foster care must take into account the appropriateness of the child’s current educational setting and the proximity to the school in which the child is enrolled. [42 U.S.C. § 675\(1\)\(G\)\(i\)](#).
- *Coordinate with local education agencies* – The child welfare agency must coordinate with LEAs to ensure that the child can remain in the school where the child is enrolled at the time of each placement. [42 U.S.C. § 675\(1\)\(G\)\(ii\)\(I\)](#). For further detail, please see U.S. Departments of Education and Health & Human Serv., Admin. for Children & Families (2014).¹⁷²
- *Immediate enrollment and timely transfer of records* – Alternatively, if remaining in that school is not in the child’s best interests, the agencies must ensure that the child is immediately enrolled in the new school and that all educational records are provided to the new school. [42 U.S.C. § 675\(1\)\(G\)\(ii\)\(II\)](#).
- *Transportation* – Foster care maintenance payments may cover reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. [42 U.S.C. § 675\(4\)\(A\)](#).

2. Educational Stability Plan

To meet the requirements of the Fostering Connections Act regarding education stability, DFPS must develop, in accordance with [42 U.S.C. § 675](#), a plan to ensure the educational stability for children in foster care. [Tex. Fam. Code § 264.1072](#).

In recognition of the need for agency coordination, DFPS must collaborate with TEA to develop policies and procedures to ensure that the needs of foster children are met in every school district. [Tex. Fam. Code § 266.008\(d\)](#).

3. Every Student Succeeds Act

In December 2015, the most recent reauthorization of the Elementary and Secondary Education Act, known as the Every Student Succeeds Act (ESSA), became law.¹⁷³ [20 U.S.C. § 6301 et seq.](#) ESSA made substantial changes to the education system, including giving more flexibility to states to determine student performance measures. ESSA also mirrors in the education law many of the provisions affecting students in foster care included in the Fostering Connections Act.

a. Education Stability Provisions of the Every Student Succeeds Act

- *Best interest determination* – A child in foster care is entitled to enroll or remain in their school of origin unless a determination is made that it is not in the child’s best interest to attend the school of origin. The decision must be based on all factors relating to the child’s best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(i\)](#). The school of origin is the school in which a child

is enrolled at the time of placement in foster care. If a child's foster care placement changes, the school of origin is then considered the school in which the child is enrolled at the time of the placement change. For further detail, please see ESSA Foster Care Preliminary Implementation Q&A (2017).¹⁷⁴

- *Streamlined transitions* – When a determination is made that it is not in the child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(ii\)](#). The enrolling school must immediately contact the school last attended by the child to obtain relevant academic and other records. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(iii\)](#).
- *Liaisons at the state and local education agencies* – ESSA requires designation of a state point of contact to coordinate with child welfare agencies. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(iv\)](#). LEAs must also designate a point of contact upon written request. [20 U.S.C. § 6312\(c\)\(5\)\(A\)](#).
- *Transportation* – LEAs must ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with [42 U.S.C. 675\(4\)\(A\)](#). LEAs must also ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if:
 - the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;
 - the LEA agrees to pay for the cost of such transportation; or
 - the LEA and the local child welfare agency agree to share the cost of such transportation. [20 U.S.C. § 6312\(c\)\(5\)\(B\)](#).

4. School Placement – Texas Law

A student is entitled to remain in the school in which they were enrolled at the time when they entered the conservatorship of DFPS or at the time of any subsequent placement change, when placed at a residence outside the attendance area of the school. A student is entitled to attend school without payment of tuition until they complete the highest grade offered at the school at the time of their enrollment, even if the student leaves DFPS conservatorship. [Tex. Educ. Code § 25.001\(g\) and \(g-1\)](#).

Special Issue: Although [Tex. Educ. Code § 25.001\(g\) and \(g-1\)](#) allow a child to remain in their school at the time of placement into foster care, it does not address related transportation issues, including costs of transportation and the person responsible for providing it. Transportation plans required under ESSA may create opportunities for some school districts to work with the caregiver to find a solution to the transportation challenge.

5. McKinney-Vento Homeless Assistance Act

Previously, a child who is “awaiting foster care placement” met the federal McKinney-Vento Homeless Assistance Act (“McKinney-Vento”) definition of homeless and the child was entitled to attend the

school that the child attended when permanently housed or the school in which the child was last enrolled, with transportation and other services provided by the district. [42 U.S.C. § 11431 et seq.](#)¹⁷⁵ ESSA amended McKinney-Vento and effective December 10, 2016, the “awaiting foster care placement” was removed from the definition of homelessness but continues to include children and youth in certain situations. [Pub. L. No. 114–95](#). For more information on this change, please see guidance from the Department of Education, Education for Homeless Children and Youths Program Non-Regulatory Guidance.¹⁷⁶ Children without placement, sometimes referred to as children in “child watch” or “CWOP”¹⁷⁷ are in a living situation that may temporarily meet the McKinney-Vento definition of homelessness. In these scenarios, students in foster care may be staying in offices, churches, dorms, or hotels/motels under the supervision of DFPS on a temporary basis while DFPS is in the process of identifying an appropriate setting where the child can live. Additionally, there are scenarios when a student in DFPS managing conservatorship returns to live with their biological family in a living situation that may be McKinney-Vento eligible.

C. Roles and Responsibilities Related to Education

1. Designation of Education Decision-Maker

[Tex. Fam. Code § 263.004](#) requires DFPS to provide notice to the court and others of the person holding education decision-making authority for a child or youth in DFPS conservatorship. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a non-parent managing conservator pursuant to [Tex. Fam. Code § 153.371](#), which includes the right to make decisions regarding the child’s education. [Tex. Fam. Code § 153.371\(10\)](#).

Unless the court order limits the rights and duties of DFPS under [Tex. Fam. Code § 153.371\(10\)](#) to make decisions regarding the child’s education, DFPS must file with the court the name and contact information for each person who has been:

- Designated by DFPS to make educational decisions on behalf of the child; and
- Assigned to serve as the child’s surrogate parent in accordance with [20 U.S.C. § 1415\(b\)](#) and [Tex. Educ. Code § 29.001\(10\)](#), for purposes of decision-making regarding special education services, if applicable. [Tex. Fam. Code § 263.004\(a\)](#).

Not later than the fifth day after the date of an adversary hearing held under [Tex. Fam. Code § 262.201](#) is concluded, DFPS must file the information required by [Tex. Fam. Code § 263.004\(a\)](#) with the court and provide a copy to the school the child attends. [Tex. Fam. Code § 263.004\(b\)](#).

If a person other than a person identified under [Tex. Fam. Code § 263.004\(a\)](#) is designated to make educational decisions or assigned to serve as a surrogate parent, DFPS must include the updated information in a permanency progress report filed under [Tex. Fam. Code § 263.303](#) or [Tex. Fam. Code § 263.502](#). The updated information must be provided to the school which the child attends not later than the fifth day after the date of the designation or assignment. [Tex. Fam. Code § 263.004\(c\)](#).

In order to comply with this mandate, DFPS created Form 2085-E Designation of Education Decision-Maker,¹⁷⁸ to be filled out by the caseworker and provided to the school by the child’s caregiver.

Special Issue: Every student in DFPS conservatorship will have an education decision-maker. Only certain students in foster care who are eligible to receive special education services will also have a surrogate parent appointed as outlined below.

2. Court Hearings

During each permanency hearing before and after final order, the Court must review the permanency progress report to determine whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and if there have been major changes in the child's school performance or whether there have been serious disciplinary issues. [Tex. Fam. Code § 263.306\(a-1\)\(5\)\(G\)](#); [§ 263.5031\(4\)\(J\)](#).

Special Issue: In light of DFPS' duty to notify the court of the name and contact information of the education decision-maker, if DFPS does not include the required information regarding the education decision-maker in the permanency progress report, the court might inquire on the record about the identity of the education decision-maker for the child during the Permanency Hearings Before or After Final Order.

Upon request of a person providing substitute care for a child who is in the managing conservatorship of DFPS, DFPS shall allow the person to provide the child with an education in the home setting unless:

- The right of DFPS to allow the education of the child in a home setting has been specifically limited by court order;
- A court at a hearing conducted under [Tex. Fam. Code Chapter 263](#) finds, on good cause shown through evidence presented by DFPS in accordance with the applicable provisions in the CPS Policy Handbook, that education in the home setting is not in the best interest of the child; or
- DFPS determines that federal law requires another school setting. [Tex. Fam. Code § 263.0045](#).

3. Notice of Significant Education Events

School districts, campuses, and open-enrollment charter schools must provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

- Requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973, [29 U.S.C. § 794](#), or special education under [Tex. Educ. Code § 29.003](#);
- Admission, Review, and Dismissal (ARD) committee meetings;
- Manifestation determination reviews required by [Tex. Educ. Code § 37.004\(b\)](#);
- Any disciplinary actions under [Tex. Educ. Code Chapter 37](#) for which parental notice is

required;

Citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

- Reports of restraint and seclusion, including information about the restraint including the circumstances and details surrounding its use required by [Tex. Educ. Code § 37.0021](#);
- Use of corporal punishment as provided by [Tex. Educ. Code § 37.0011](#); and
- Appointment of a surrogate parent for the child under [Tex. Educ. Code § 29.0151](#). [Tex. Educ. Code § 25.007\(b\)\(10\)](#).

Special Issue: State law requires schools to notify caseworkers of the enumerated major education events, including the issuance of a Class C misdemeanor citation at school. Please note, however, that since 2013, ticketing is no longer permitted for school-related misbehavior constituting a Class C misdemeanor.

DFPS must provide notice of significant events, including a major change in school performance (such as any failing grade in a reporting period that jeopardizes the student's advancement to the next grade level) or a serious disciplinary event at school not later than the 10th day after the date DFPS becomes aware of a significant event affecting a child in the conservatorship of DFPS. This notice must be provided to:

- The child's parent;
- An attorney ad litem appointed under [Tex. Fam. Code Chapter 107](#);
- A guardian ad litem appointed under [Tex. Fam. Code Chapter 107](#);
- A volunteer advocate appointed for the child under [Tex. Fam. Code Chapter 107](#);
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;
- A foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
- Any other person determined by the court to have an interest in the child's welfare. [Tex. Fam. Code § 264.018\(a\)\(5\)\(D\) and \(f\)](#); [40 Tex. Admin. Code § 700.1355 \(a\)\(4\)\(A\)](#).

4. Education-Related Requirements for AALs and GALs

Before each scheduled hearing under [Tex. Fam. Code Chapter 263](#), an attorney ad litem appointed to represent a child in the managing conservatorship of DFPS must determine whether the child's educational needs and goals have been identified and addressed. [Tex. Fam. Code § 107.004\(d-2\)](#).

A guardian ad litem appointed to represent a child in the managing conservatorship of DFPS shall determine whether the child's educational needs and goals have been identified and addressed before each scheduled hearing under [Tex. Fam. Code Chapter 263](#). [Tex. Fam. Code § 107.002\(i\)](#). Guardians ad litem are required by law to interview the child's educators. [Tex. Fam. Code § 107.002\(b\)](#).

5. Decisions Related to Special Education

A foster parent for a child may act as a parent for the child, as authorized under [20 U.S.C. § 1415\(b\)](#), if:

- The rights and duties of DFPS to make decisions regarding the child's education under [Tex. Fam. Code § 153.371](#) have not been limited by court order; and
- The foster parent agrees to participate in making special education decisions on the child's behalf and complete a training program that complies with TEA minimum standards before the next ARD meeting but no later than 90 days after assuming the role. [Tex. Fam. Code § 263.0025\(a-1\)](#), [Tex. Educ. Code § 29.015 \(a\)](#), and [Tex. Educ. Code § 29.015\(b\)](#).

A school district may not require a foster parent to retake a training program to continue to serve as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training provided by DFPS, a school district, an Education Service Center, or any other entity that receives federal funds to provide special education training to parents. [Tex. Educ. Code § 29.015\(b-1\)](#).

Special Issue: *A foster parent may serve as parent for the purposes of making special education-related decisions from the day the child is placed in their home and appointment of a surrogate parent is not necessary unless the foster parent is unable or unwilling to serve in that role.*

Under the Individuals with Disabilities Education Act (IDEA), if a "parent" cannot be identified or located the school district must assign an individual to act as a surrogate for the parent for a child with a disability in foster care who is eligible to receive special education services. [20 U.S.C. § 1415\(b\)\(2\)\(A\)](#). The school district has 30 days to appoint a surrogate parent upon determining the need for a surrogate parent. [20 U.S.C. § 1415\(b\)\(2\)\(B\)](#).

To ensure the educational rights of a child are protected in the special education process, the court may appoint a surrogate parent for the child if:

- The child's school district is unable to identify or locate a parent for the child; or
- The foster parent of the child is unwilling or unable to serve as a parent for the purposes of [Tex. Fam. Code Chapter 263, Subchapter A](#). [Tex. Fam. Code § 263.0025\(b\)](#).

Special Issue: *School districts have a mandatory duty to appoint a surrogate parent if a parent cannot be identified or located. Courts have permissive authority to appoint a surrogate parent.*

Except as provided by [Tex. Fam. Code § 263.0025\(d\)](#), the court may appoint a person to serve as a child's surrogate parent if the person is willing to serve in that capacity and meets the requirements of [20 U.S.C. § 1415\(b\)](#). [Tex. Fam. Code § 263.0025\(c\)](#). Employees of DFPS, TEA, a school or school district, or any other agency involved in the education or care of the child cannot serve as surrogate parents. [Tex. Fam. Code § 263.0025\(d\)](#).

The court may appoint a child's guardian ad litem or court-certified volunteer advocate, as provided by [Tex. Fam. Code § 107.031\(c\)](#), as the child's surrogate parent. [Tex. Fam. Code § 263.0025\(e\)](#). To act as a surrogate parent for the child, the volunteer advocate must complete a training program for surrogate parents that complies with minimum standards established by TEA rule within the time specified by [Tex. Educ. Code § 29.015\(b\)](#). [Tex. Fam. Code § 107.031\(c\)\(4\)](#); [19 Tex. Admin. Code § 89.1047](#).

In appointing a person to serve as the surrogate parent for a child, the court must consider the person's ability to meet the following qualifications:

- Be willing to serve in that capacity;
- Exercise independent judgment in pursuing the child's interests;
- Ensure that the child's due process rights under applicable state and federal laws are not violated;
- Complete a training program that complies with minimum standards established by TEA rule within the time specified in [Tex. Educ. Code § 29.015\(b\)](#);
- Visit the child and the school where the child is enrolled;
- Review the child's educational records;
- Consult with any person involved in the child's education, including the child's teachers, caseworkers, court-appointed volunteers, guardian ad litem, attorney ad litem, foster parent and caregiver; and
- Attend meetings of the child's ARD committee. [Tex. Educ. Code § 29.0151\(d\)](#) and [Tex. Fam. Code § 263.0025\(f\)](#).

Special Issue: Consider appointing a surrogate parent for each youth placed in a Residential Treatment Center who receives special education services.

Pursuant to [Tex. Educ. Code § 29.001\(10\)\(A\)](#), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

- The identification of a student with a disability;
- The collection of evaluation and re-evaluation data relating to a student with a disability;

-
- The ARD committee process;
 - The development of an Individualized Education Program (IEP), including the consideration of transition services for a student who is at least 14 years of age;
 - The determination of least restrictive environment;
 - The implementation of an IEP;
 - The procedural rights and safeguards available under IDEA; and
 - Where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities; and
 - The duties and responsibilities of surrogate parents as required under [Tex. Educ. Code § 29.0151\(d\)](#). [19 Tex. Admin. Code § 89.1047\(c\)\(1\)](#).

If a court appoints a surrogate parent for a child with a disability under [Tex. Fam. Code § 263.0025](#) and the school district determines that the surrogate parent is not properly performing the duties listed under [Tex. Educ. Code § 29.0151\(d\)](#), the district shall consult with DFPS regarding whether another person should be appointed to serve as the surrogate parent for the child. [Tex. Educ. Code § 29.0151\(f\)](#).

On receiving notice from a school district under [Tex. Educ. Code § 29.0151\(f\)](#), if DFPS agrees with the district that the appointed surrogate parent is unable or unwilling to properly perform the duties required under [Tex. Educ. Code § 29.0151](#):

- DFPS must promptly notify the court of the agreement; and
- As soon as practicable after receiving notice under [Tex. Educ. Code § 29.0151\(g\)\(1\)](#), the court must:
 - review the appointment; and
 - enter any orders necessary to ensure the child has a surrogate parent who performs the required duties. [Tex. Educ. Code § 29.0151\(g\)](#).

For more information on special education, see Section F of this chapter [Special Education and Section 504](#).

D. School Transitions

1. Foster Care Liaison in Each Texas School District and at the Texas Education Agency

Each school district and open enrollment charter school must appoint at least one employee to facilitate the enrollment in and transfer to a public school of a child in the district who is in the conservatorship of the state. [Tex. Educ. Code § 33.904\(a\)\(1\)](#). Each school district and open-enrollment charter school must also report the liaison's name and contact information to TEA. [Tex. Educ. Code § 33.904\(a\)\(2\)](#).

TEA must designate at least one agency employee to act as a liaison officer regarding educational issues related to students in DFPS conservatorship. [Tex. Educ. Code § 25.007\(b\)\(14\)](#).

Special Issue: TEA developed several resources regarding foster care liaisons:

- Updated contact information for the district and open enrollment charter school foster care liaisons is now located in the Ask Texas Education Directory (AskTED).
 - If the school district liaison information cannot be located on the AskTED system, please reference TEA AskTED guidance.
 - Other resources for liaisons, including contact information for Education Service Center Foster Care Champions, are available on the TEA Foster Care & Student Success – Texas School Foster Care Liaison webpage.
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2. Enrollment

If DFPS takes possession of a child under [Tex. Fam. Code Chapter 262](#) during the school year, DFPS shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by DFPS, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible. [Tex. Fam. Code § 264.115\(a\)](#).

Special Issue: DFPS CPS Policy Handbook requires enrollment within two days of the initial removal or placement change. See the [CPS Policy Handbook § 15300](#).

A child may be enrolled by any person showing evidence of legal responsibility of the child. [Tex. Educ. Code § 25.001\(j\)](#). A child in foster care may attend a school free of charge, whether the school is their school of origin or is in the district where the foster parent resides. [Tex. Educ. Code § 25.001\(g\), \(g-1\), and \(f\)](#). A school district shall accept a child for enrollment in a public school without the documentation required by [Tex. Educ. Code § 25.002\(a\)](#) if DFPS has taken possession of the child under [Tex. Fam. Code Chapter 262](#). DFPS must ensure that the documentation is furnished to the school district not later than the 30th day after the date the child is enrolled in the school. [Tex. Educ. Code § 25.002\(g\)](#).

A child may be provisionally admitted to an elementary or secondary school if the child has begun the required immunizations and if the child continues to receive the necessary immunizations as rapidly as is medically feasible. [Tex. Educ. Code § 38.001\(e\)](#).

Special Issue: In general, DFPS delegates day-to-day decision-making to the child's caregiver, including responsibility for school enrollment. Upon enrollment in school, a caregiver should present the applicable DFPS 2085 Placement Authorization and Education Decision-Maker forms to ensure the school recognizes the caregiver's legal authority to enroll the child. These documents also serve to notify the school that the child is in foster care and to provide the name of the education decision-

maker and the surrogate parent, if applicable. For more information on acceptable forms for school enrollment, please see TEA PEIMS supplemental guidance.

3. Records Transfer

TEA must assist in the transition of students in substitute care from one school to another by ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school. [Tex. Educ. Code § 25.007\(b\)\(1\)](#).

Special Issue: Districts failing to provide the required information within 10 calendar days of a written request by the receiving school district may be reported to the Texas Records Exchange Help Desk: (512) 463-7246 or by email to TREx@tea.texas.gov.

4. Education Passport

Each child in DFPS conservatorship must have an education passport. The education passport contains educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other important educational information. [Tex. Fam. Code § 266.008\(a\)](#). DFPS shall maintain the passport as part of DFPS records for the child as long as the child remains in foster care. [Tex. Fam. Code § 266.008\(b\)](#). DFPS has a duty to make the education passport available to any person authorized by law to make educational decisions for the child in foster care. [Tex. Fam. Code § 266.008\(c\)\(1\)](#).

Special Issue: For more information about the education passport, referred to as the Education Portfolio or "green binder," please see:

- [CPS Policy Handbook § 15400](#)
 - *Education for Children Resource Guide*
-

5. Confidentiality of Education Records

The federal Family Educational Rights and Privacy Act of 1974 (FERPA) allows for release of student records between school districts without parental consent in compliance with a court order upon enrollment in the receiving school. [20 U.S.C. § 1232g](#).¹⁷⁹

The Uninterrupted Scholars Act of 2013 amended FERPA to permit caseworkers and other child welfare or tribal organization representatives to access personally identifiable student information without parental consent and allows for disclosure of student records pursuant to a judicial order related to a child welfare proceeding without further notice to the parent. [20 U.S.C. § 1232g\(b\)\(2\)\(B\)](#).¹⁸⁰

The Uninterrupted Scholars Act provisions also apply to special education-related records for children ages birth to 21 with disabilities under IDEA Parts B and C.¹⁸¹

6. Credit Transfer and Recovery

In recognition of the challenges facing students in foster care, TEA is now required to develop policies and procedures to address:

- Awarding credit (including partial credit if appropriate) for course work, including electives, completed by a student in substitute care while enrolled at another school. [Tex. Educ. Code § 25.007\(b\)\(3\)](#);
- Placing a student in comparable courses or educational programs to those offered at a previous school to the extent comparable courses and programs are available. [Tex. Educ. Code § 25.007\(b\)\(4\)](#);
- Allowing a student in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course at no cost to the student before the beginning of the next school year. [Tex. Educ. Code § 25.007\(b\)\(11\)](#); and
- Ensuring that a student in substitute care who is not likely to receive a high school diploma before the 5th school year following the student’s enrollment in grade 9, as determined by the district, has the student’s course credit accrual and personal graduation plan reviewed. [Tex. Educ. Code § 25.007\(b\)\(12\)](#).

School districts must make credit by examination available, at any point during the school year, to students in foster care. [19 Tex. Admin. Code § 74.24\(a\)\(2\)](#). Credits earned towards state graduation requirements in an accredited school district are transferable and must be accepted by another school district in the state. [19 Tex. Admin. Code § 74.26\(a\)\(1\)](#). A school district shall award credit proportionately to a student in substitute care who successfully completes only one semester of a two-semester course. [19 Tex. Admin. Code § 74.26\(e\)](#).

E. Attendance and School Experience

1. School Year

A child who is required to attend school under [Tex. Educ. Code § 25.085](#) shall attend school each school day for the entire period the program of instruction is provided. [Tex. Educ. Code § 25.085\(a\)](#). Unless specifically exempted by [Tex. Educ. Code § 25.086](#), a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade and who has not yet reached the child’s 19th birthday, shall attend school. [Tex. Educ. Code § 25.085\(b\)](#). Upon enrollment in prekindergarten or kindergarten, attendance is also compulsory. [Tex. Educ. Code § 25.085\(c\)](#).

Special Issue: *When considering the timing of a school move, courts, DFPS, and school staff should be aware of both the sending and receiving local school district calendars, including the administration schedule for the State of Texas Assessment of Academic Readiness (STAAR), which can be found on the TEA Website and on local school district websites. It is most helpful to children and youth in care, and least disruptive to schools, to avoid making a school change during a testing period.*

2. Minimum Attendance for a Class Credit or a Final Grade

A student in any grade level from kindergarten through grade 12 may not be given credit or a final grade for a class unless the student is in attendance for at least 90 percent of the days the class is offered. [Tex. Educ. Code § 25.092\(a\)](#). A student who is in attendance for at least 75 percent but less than 90 percent of the days a class is offered may be given credit or a final grade for the class if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. [Tex. Educ. Code § 25.092\(a-1\)](#). [Tex. Educ. Code § 25.092\(a\)](#) does not apply to a student who receives credit by examination for a class as provided by [Tex. Educ. Code § 28.023](#). [Tex. Educ. Code § 25.092\(a-2\)](#).

3. Excused Absences for Court-Ordered Activities

A school district shall excuse a student in DFPS conservatorship from attending school, including travel, if the student is participating, as determined and documented by DFPS, in an activity which is:

- Ordered by a court under [Tex. Fam. Code Chapter 262 or Chapter 263](#), provided that it is not practicable to schedule the participation outside of school hours; or
- Required under a service plan under [Tex. Fam. Code Chapter 263, Subchapter B](#). [Tex. Educ. Code § 25.087\(b\)\(1\)\(F\)](#).

A student whose absence is excused under [Tex. Educ. Code § 25.087\(b\)](#) may not be penalized for that absence, shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district, and must be allowed a reasonable time to make up schoolwork missed on those days. [Tex. Educ. Code § 25.087\(d\)](#).

Special Issue: *If feasible, judges may consider scheduling court hearings for school-aged children outside of school hours or allowing for the child's participation via video conferencing such as Zoom. Additionally, to ensure a child does not incur unnecessary unexcused absences, it is helpful to clarify in the court order which appointments and activities require the child's presence or involvement.*

4. Truancy

With certain exceptions, if a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall within 10 school days of the student's 10th absence refer the student to a truancy court for truant conduct under [Tex. Fam. Code § 65.003\(a\)](#). [Tex. Educ. Code § 25.0951\(a\)](#). Truant conduct may be prosecuted only as a civil case in a truancy court. [Tex. Fam. Code § 65.003\(b\)](#). However, if a student fails to attend school without excuse as specified by [Tex. Educ. Code § 25.0951\(a\)](#), a school district may file a complaint against the student's parent in a county, justice, or municipal court for an offense under [Tex. Educ. Code § 25.093](#), if the school district provides evidence of the parent's criminal negligence. [Tex. Educ. Code § 25.0951\(b\)](#). It is an affirmative defense to truant conduct if the absence was due to abuse as defined by [Tex. Fam. Code § 261.001](#). [Tex. Fam. Code § 65.003\(c\)\(3\)](#).

A school district shall adopt truancy prevention measures designed to address student conduct related to truancy in the school setting before the student engages in conduct described by [Tex. Fam. Code § 65.003\(a\)](#) and minimize the need for referrals to truancy court for conduct described by [Tex. Fam. Code § 65.003\(a\)](#). [Tex. Educ. Code § 25.0915\(a\)](#). A school district shall offer additional

counseling to a student and may not refer the student to truancy court if the school determines that the student's truancy is the result of being in the state foster program. [Tex. Educ. Code § 25.0915 \(a-3\)](#).

For more information, please visit the Texas Judicial Branch website Truancy Reform Training Materials webpage.¹⁸²

5. Extracurricular Activities

A child in foster care may attend a school free of charge in the district where the foster parent or relative caregiver resides, and a durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by the school district. [Tex. Educ. Code § 25.001\(f\)](#). The Office of the Attorney General of Texas interpreted this language to mean that the University Interscholastic League (UIL) cannot apply any durational residency requirement to children placed in foster care, regardless of whether the placement is the child's first placement or a move from one placement to another.¹⁸³

6. Discipline

If a school district permits the use of corporal punishment as a method of student discipline, the person having lawful control of a student must provide a signed, written statement each school year to prohibit corporal punishment for that student. [Tex. Educ. Code § 37.0011\(c\)](#). It is DFPS' policy to prohibit the use of corporal punishment for all children in foster care and caregivers are directed to "opt out" of school policy on corporal punishment in writing on an annual basis.¹⁸⁴

Schools are required to designate a campus administrator to serve as a campus behavior coordinator. [Tex. Educ. Code § 37.0012](#). In addition to other duties, the campus behavior coordinator must promptly notify the student's parent or guardian if the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. [Tex. Educ. Code § 37.0012\(d\)](#). A campus behavior coordinator must:

- Promptly contact the parent or guardian by telephone or in person; and
- Make a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian. [Tex. Educ. Code § 37.0012\(d\)](#).

[Tex. Educ. Code § 37.0012](#) also allows for the principal or other designee to provide notice if the campus behavior coordinator is unable or unavailable to promptly provide notice. [Tex. Educ. Code § 37.0012\(f\)](#). Written notice may be mailed if the child's parent or guardian is not reached by the end of the first business day after the disciplinary action is taken. [Tex. Educ. Code § 37.0012\(e\)](#).

Each school district must adopt a student code of conduct that specifies consideration will be given as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

- Self-defense;

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- Intent or lack of intent at the time the student engaged in the conduct;
 - A student's disciplinary history;
 - A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
 - A student's status in the conservatorship of DFPS; or
 - A student's status as a student who is homeless. [Tex. Educ. Code § 37.001\(a\)\(4\)](#).

With limited exceptions for serious offenses, a student who is enrolled in a grade level below grade three may not be placed in out-of-school suspension. [Tex. Educ. Code § 37.005\(c\)](#). The school district must provide a student placed in in-school or out-of-school suspension an alternative means of receiving all coursework, including at least one option that does not require the internet. [Tex. Educ. Code § 37.005\(e\)](#).

7. High School Graduation

Graduation planning now includes review of a Personal Graduation Plan (PGP) for some junior high or middle school students and all high school students. [Tex. Educ. Code § 28.0212](#) and [Tex. Educ. Code § 28.02121](#). For further information on the graduation programs, see the TEA Graduation Toolkit.¹⁸⁵

Special Issue: *A PGP provides each student with a roadmap for academic progress, graduation, and college and career readiness. A PGP is a helpful tool to keep students in foster care on track for graduation, especially when their progress is disrupted by school changes.*

Until September 2023, if a student in the 11th or 12th grade fails to comply with the end-of-course assessment instrument performance requirements under [Tex. Educ. Code § 39.025](#) for not more than two courses, the school district that the student attends shall establish an individual graduation committee at the end of or after the student's 11th grade year to determine whether the student may qualify to graduate. [Tex. Educ. Code § 28.0258](#).¹⁸⁶

If an 11th or 12th grade student in the conservatorship of DFPS transfers to a different school district and is ineligible to graduate from the district to which the student transfers, the district from which the student transferred shall award a diploma at the student's request, if the student meets the graduation requirements of the district from which the student transferred. [Tex. Educ. Code § 28.025\(i\)](#).

F. Special Education and Section 504

1. The Individuals with Disabilities Education Act

Under the Individuals with Disabilities Education Act (IDEA), all children with disabilities between the ages of 3 and 21 are entitled to a Free, Appropriate Public Education (FAPE). [20 U.S.C. § 1412\(a\)\(1\)\(A\)](#). A child qualifies for special education if they have an identified disability and that disability adversely affects the child's performance in school. [20 U.S.C. § 1400 et seq.](#) and [Tex. Educ. Code § 29.003](#).

2. Section 504

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal law aimed at protecting individuals from discrimination on the basis of a physical or mental disability that substantially impairs a major life activity.¹⁸⁷ [29 U.S.C. § 794](#).

Special Issue: *Some children may qualify for Section 504 accommodations to “level the playing field” without changing what the child is expected to master. For example, a child with dyslexia may not be eligible for special education services, but might qualify for Section 504 accommodations, such as additional time to complete an exam or preferred seating in the classroom.*

3. Referral and Consent

School districts have a "Child Find" duty to identify, locate, and evaluate children with disabilities to determine which children are currently receiving needed special education and related services. [20 U.S.C. § 1412\(a\)\(3\)\(A\)](#).

If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

- Provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
- Refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under [20 U.S.C. § 1415\(b\)](#) and [Tex. Educ. Code § 29.004\(c\)](#).

If the rights of a parent have been terminated or subrogated by court order or the school has made reasonable efforts and cannot locate the parent, an initial evaluation may be initiated without parental consent. [20 U.S.C. § 1414\(a\)\(1\)\(D\)\(iii\)](#).

The school has 45 days to complete a full individual and initial evaluation of the student for special education services. [Tex. Educ. Code § 29.004\(a\)\(1\)](#).

4. Individualized Education Program

Children who receive special education services will have an IEP. [20 U.S.C. § 1414\(d\)](#). Members of the child's IEP team, known in Texas as the ARD committee, participate in the formulation and approval of the IEP.¹⁸⁸ [Tex. Educ. Code § 29.005](#). A student's ARD committee must meet at least annually to review a student's Behavioral Intervention Plan (BIP) to account for changes in circumstances. [Tex. Educ. Code § 29.005\(h\)](#).

It is the responsibility of the school district to ensure that the ARD Committee includes:

- The parents of a child with a disability;
- Not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

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- Not less than one special education teacher, or where appropriate, not less than one special education provider of such child;
 - A representative of the local educational agency who:
 - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - is knowledgeable about the general education curriculum; and
 - is knowledgeable about the availability of resources of the local educational agency;
 - An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in [20 U.S.C. § 1414\(d\)\(1\)\(B\)\(ii\)-\(vi\)](#);
 - At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - Whenever appropriate, the child with a disability. [20 U.S.C. § 1414\(d\)\(1\)\(B\)](#).

5. Special Education Transitions

A receiving school must accept a referral for special education services made for a student in substitute care by a school previously attended by the student. [Tex. Educ. Code § 25.007\(b\)\(9\)](#). If there is an existing IEP for the child, the receiving school must provide services comparable to those described in the previous IEP, until it either adopts the previous IEP or develops a new IEP. [20 U.S.C. § 1414\(d\)\(2\)\(C\)\(i\)\(I\)](#) and [Tex. Educ. Code § 25.007\(b\)\(9\)](#).

6. Manifestation Determination Review

The right to FAPE includes students who have been suspended or expelled from school. [20 U.S.C. § 1412\(a\)\(1\)\(A\)](#). Members of the ARD Committee must conduct a manifestation determination review within 10 school days of any decision to change the educational placement, including suspension, removal, or expulsion, of a student with a disability due to a violation of the student code of conduct to determine if:

- The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- The conduct in question was the direct result of the local educational agency's failure to implement the IEP. [20 U.S.C. § 1415\(k\)\(1\)\(E\)](#) and [Tex. Educ. Code § 37.001\(a\)\(4\)\(D\)-\(E\)](#).

7. Graduation

A child who successfully completes their IEP under [Tex. Educ. Code § 29.005](#) is eligible for a high school diploma. [Tex. Educ. Code § 28.025\(c\)](#).

G. Eligibility for Special Programs

1. Prekindergarten

A school district must offer free prekindergarten if it identifies at least 15 eligible children who are at least four years old. [Tex. Educ. Code § 29.153\(a-1\)](#). A child is eligible for prekindergarten, without paying tuition, if the child is or ever has been in the conservatorship of DFPS following an Adversary Hearing held as provided by [Tex. Fam. Code § 262.201](#), or in foster care in another state or territory if the child resides in Texas. [Tex. Educ. Code § 29.153\(b\)\(6\)](#). A child who is eligible under [Tex. Educ. Code § 29.153\(b\)](#) at the age of three remains eligible for prekindergarten for the following school year. [Tex. Educ. Code § 29.153\(g\)](#).

Special Issue: *The school district will require a prekindergarten verification letter from DFPS to verify eligibility for children currently or formerly in DFPS conservatorship. For children not in Texas DFPS conservatorship, the letters will likely need to be obtained through the child welfare agency of the state where the child was in foster care.*

2. Compensatory, Intensive, or Accelerated Instruction

Students in foster care are considered to be at risk of dropping out of school and are eligible for supplemental education services. [Tex. Educ. Code § 29.081\(d\)\(1\)\(K\)](#). A school district shall offer an intensive program of instruction to any student who does not perform satisfactorily on an assessment instrument administered under [Tex. Educ. Code Chapter 39, Subchapter B](#), or is not likely to receive a high school diploma before the fifth school year following the student's enrollment in the 9th grade, as determined by the district. [Tex. Educ. Code § 28.0213\(a\)](#).

Special Issue: *The 87th Legislature instructed TEA to establish a program for supplemental special education services and instructional materials for eligible students who receive special education. [Tex. Edu. Code § 29.041- 29.050](#). Eligible students may receive a grant up to \$1,500 for compensatory educational services. This law expires September 1, 2024.*

3. Nutrition

Students in foster care are categorically eligible for all U.S. Department of Agriculture child nutrition programs including the National School Lunch Program / School Breakfast Program, Special Milk Program, Fresh Fruit and Vegetable Program, Summer Food Service Program, and the Child and Adult Care Food Program. [42 U.S.C. § 1758](#).

Special Issue: *Schools use DFPS Form 2085 to verify that a child is in foster care and thus eligible for free school meals. If it is not otherwise addressed in the court reports, a court might ask the caseworker about whether the child's nutritional needs are being met in both the school and home settings. Foster or relative caregivers may not be required to provide personal financial information to determine eligibility.*

4. Texas Virtual School Network (TxVSN)

Each school district must have a written policy about opportunities to enroll in electronic courses provided by TxVSN. [Tex. Educ. Code § 30A.007](#). Children in foster care are eligible for part-time or full-time enrollment in the TxVSN, regardless of whether the student was enrolled in a public school in this state in the preceding school year. [Tex. Educ. Code § 30A.002](#).

Special Issue: *The TxVSN is an online resource offered by state certified teachers that can assist students in foster care with obtaining course credit. On a case-by-case basis, DFPS will determine whether enrollment in virtual instruction is appropriate for a child in foster care. If the child receives special education services, that determination will be made in consultation with the child's ARD committee.*

5. Early College

An at-risk student, as defined by [Tex. Educ. Code § 29.081](#), can participate in an early college education program that:

- Enables a participating student to combine high school courses and college-level courses during grade levels 9 through 12;
- Allows a participating student to complete high school and, on or before the fifth anniversary of the date of the student's first day of high school, receive a high school diploma and either an associate degree; or at least 60 semester credit hours toward a baccalaureate degree;
- Includes articulation agreements with colleges, universities, and technical schools in this state to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school; and
- Provides a participating student flexibility in class scheduling and academic mentoring. [Tex. Educ. Code § 29.908](#).

6. Dual Credit

Each school district shall implement a program under which students may earn the equivalent of at least 12 semester credit hours of college credit in high school. [Tex. Educ. Code § 28.009\(a\)](#).

A program implemented under [Tex. Educ. Code § 28.009](#) must provide a student the opportunity to earn credit for a course or activity, including an apprenticeship or training hours:

- Which satisfies a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree and is approved by the Texas Higher Education Coordinating Board (THECB); and
- For which a student may earn credit concurrently toward both the student's high school diploma and postsecondary academic requirements. [Tex. Educ. Code § 28.009\(a-1\)](#).

A school district is not required to pay a student's tuition or other associated costs for taking a course under this section. [Tex. Educ. Code § 28.009\(a-2\)](#).

H. Post-Secondary Opportunities

Special Issue: *During hearings involving middle and high school students in foster care, courts may inquire about the youth's post-secondary education goals. If the youth or caregiver is present at the hearing, a court may encourage options, including vocational and technical training, certificate programs, and two and four-year higher education opportunities.*

1. Tuition and Fee Waiver

A student is exempt from the payment of tuition and fees charged by a state supported institution of higher education for a dual credit course or other course for which a high school student may earn joint high school and college credit, if the student:

- Was in the conservatorship of DFPS:
 - on the day preceding the student's 18th birthday; or
 - on or after the student's 14th birthday, if the student was also eligible for adoption on or after that day; or
 - on the day the student graduated from high school or received the equivalent of a high school diploma; or
 - on the day preceding the date the student is adopted or permanent managing conservatorship (PMC) is awarded to a person other than a parent, if that date is on or after September 1, 2009; or
 - during an academic term in which the student was enrolled in a dual credit course or other course for which a high school student may earn joint high school and college credit; and
- Enrolls in an institution of higher education in Texas as an undergraduate student or in a dual credit course or other course for which a high school student may earn joint high school and college credit not later than the student's 25th birthday. [Tex. Educ. Code § 54.366\(a\)](#).

Notwithstanding [Tex. Educ. Code Ann § 54.366\(a\)\(1\)](#), a child who exits the conservatorship of DFPS and is returned to the child's parent, including a parent whose parental rights were previously terminated, may be exempt from the payment of tuition and fees if DFPS determines that the child is eligible. [Tex. Educ. Code § 54.366\(c\)](#). Youth age 14 or older in the permanent managing conservatorship (PMC) or youth age 16 or older in the temporary managing conservatorship (TMC) of DFPS on or after June 1, 2016 who subsequently exit conservatorship to the legal responsibility of a parent are eligible for the tuition and fee waiver. [40 Tex. Admin. Code § 700.1630\(a\)](#). If after exiting the foster care system the youth returns to DFPS conservatorship, the youth's eligibility will be based on their current foster care circumstances. [40 Tex. Admin. Code § 700.1630\(b\)](#).

A student is also exempt from the payment of tuition and fees if the student was adopted and was the subject of an adoption assistance agreement under [Tex. Fam. Code Chapter 162, Subchapter D](#), that:

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- Provided monthly payments and medical assistance benefits; and
 - Was not limited to providing only for the reimbursement of nonrecurring expenses, including reasonable and necessary adoption fees, court costs, attorney's fees, and other expenses directly related to the legal adoption of the child. [Tex. Educ. Code § 54.367\(a\)](#).

Note that [Tex. Educ. Code § 54.2001\(g\)](#) specifically states the conditional receipt of the exemptions and waivers does not apply to students who receive the exemption in accordance with [Tex. Educ. Code § 54.366](#) or [Tex. Educ. Code § 54.367](#). [Tex. Educ. Code § 54.2001\(g\)\(3\)](#).

2. Information about Higher Education

TEA and the THECB must develop outreach programs to ensure that students in the conservatorship of DFPS or adopted students in grades 9-12 are aware of the availability of the exemptions from the payment of tuition and fees. [Tex. Educ. Code § 54.366\(b\)](#) and [Tex. Educ. Code § 54.367\(b\)](#).

TEA must also develop procedures to ensure that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under [Tex. Educ. Code § 54.366](#) for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit. [Tex. Educ. Code § 25.007\(b\)\(13\)](#).

Special Issue: *Regional Preparation for Adult Living (PAL) staff or the adoption eligibility specialists determine eligibility for the tuition and fee waiver. For more information about informing youth and young adults about the waiver, please see the [CPS Policy Handbook § 10300](#).*

In coordination with DFPS, each school district must facilitate the transition of each child enrolled in the district who is eligible for a tuition and fee waiver under [Tex. Educ. Code § 54.366](#), and who is likely to be in the conservatorship of DFPS on the day preceding the child's 18th birthday to an institution of higher education by:

- Assisting the child with the completion of any applications for admission or financial aid;
- Arranging and accompanying the child on campus visits;
- Assisting the child in researching and applying for private or institution-sponsored scholarships;
- Identifying whether the child is a candidate for appointment to a military academy;
- Assisting the child in registering and preparing for college entrance examinations, including, subject to the availability of funds, arranging for the payment of any examination fees by the department; and
- Coordinating contact between the child and a liaison officer designated under [Tex. Educ. Code § 61.0908](#) for students formerly in DFPS conservatorship. [Tex. Fam. Code § 264.1212\(c\)](#).

Special Issue: To encourage post-secondary success, it is important for the court, attorneys ad litem, schools, caseworkers, and others to explain the tuition and fee waiver and other benefits to assist youth with their successful transition out of foster care. Two great resource for youth in care are the websites for the [Texas Youth Helpline](#) and [Preparation for Adult Living](#) .

3. Education Training Voucher (ETV) and Other Programs

Under the *John H. Chaffee Foster Care Independence Program*, eligible youth are entitled to up to \$5,000 a year to cover education-related expenses from the federal ETV program.¹⁸⁹ [42 U.S.C. § 677](#). For more details about the DFPS Preparation for Adult Living services and other higher education resources, see the DFPS Transitional Living Services webpage.¹⁹⁰

4. Liaisons at the THECB and Institutions of Higher Education

Each institution of higher education, as defined by [Tex. Educ. Code § 61.003](#), must designate at least one employee of the institution to act as a liaison officer for current and incoming students at the institution who are or were formerly in the conservatorship of DFPS. [Tex. Educ. Code § 51.9356\(b\)](#). The liaison officer shall provide to those students information regarding support services and other resources available to the students at the institution and any other relevant information to assist the students. [Tex. Educ. Code § 51.9356\(d\)](#).

The THECB shall designate at least one employee of the board to act as a liaison officer for current and incoming students at institutions of higher education who were formerly in the conservatorship of DFPS. The liaison officer shall assist in coordinating college readiness and student success efforts relating to those students. [Tex. Educ. Code § 61.0908](#).

Special Issue: The THECB maintains a Foster Care Liaison List with contact information for designated liaisons at Texas institutions of higher education.

I. Resources

The Texas Blueprint

- The Texas Blueprint: Transforming Education Outcomes for Children and Youth in Foster Care (Texas Blueprint).¹⁹¹

Resource Guide for Foster Care Liaisons in School Districts

- Foster Care & Student Success: Texas Systems Working Together to Transform Education Outcomes of Students in Foster Care.¹⁹²

Texas Court Appointed Special Advocates (CASA) Educational Advocacy Toolkit

- Educational Advocacy Guidebook (CASA).¹⁹³

Foster Care and Education Data Workgroup Infographic

- Texas Commits to Transform Education Outcomes of Students in Foster Care: Findings

from the Texas Blueprint Implementation Data Workgroup.¹⁹⁴

Confidentiality Guide

- Information Sharing between Child Welfare and Schools: Maintaining Privacy and Promoting Educational Success.¹⁹⁵

Transition Planning

- Transition Planning Guide for Students in Foster Care Receiving Special Education Services.¹⁹⁶

Higher Education Information and Resource Guide

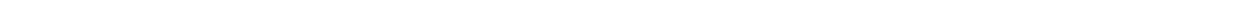
- Texas Higher Education Information and Resource Guide for Foster Care Liaisons.¹⁹⁷

Judicial Checklists

- Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges, Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care; (2008).
- Foster Youth Education Judicial Checklist; Texas specific one-page checklist on education.

Websites

- American Bar Association Legal Center for Foster Care and Education¹⁹⁸
- Texas DFPS CPS Policy Handbook on Education¹⁹⁹
- Texas Education Agency Foster Care and Student Success²⁰⁰
- Children's Commission Foster Care and Education²⁰¹



CHILD AND YOUTH VOICE

A. Presence in Court

1. The Law

[Texas Family Code Chapter 263](#) mandates that all children and youth who are in the conservatorship of DFPS attend all permanency hearings. Specifically, [Tex. Fam. Code § 263.302](#) states that the child shall attend each permanency hearing, unless the court specifically excuses the child's attendance, and that the court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. [Tex. Fam. Code § 263.302](#).

The law does not require or appear to contemplate that the child will attend an Ex Parte, Adversary Hearing, Status Hearing, or any hearings for Orders to Participate cases filed under [Tex. Fam. Code § 264.203](#). Although there are different interpretations, many read the law to say that the child must attend each permanency hearing, unless the judge makes an individual determination that excuses that child from attending a specific hearing. Issuing a blanket order excusing a child from attending permanency hearings or even more generally, for all children to be excused from all permanency hearings, is not considered a best practice. Additionally, and of note, youth who are committed to the Texas Juvenile Justice Department may (and should) attend permanency hearings by video, telephone, or in person. [Tex. Fam. Code § 263.302](#).

2. Pros of Involving Children in Court Proceedings

There have been many studies by the American Bar Association as well as Court Improvement Programs around the country on this singular issue, and children in foster care repeatedly express the desire to be involved in decisions about their lives.²⁰² Children are often told that "the judge makes the decisions." Being involved in court proceedings gives children a sense of control, helps them understand the process, and provides direct contact with the court which benefits the judge and the child. There are other reasons to engage a child in court, including the following factors: attorneys are not always reliable and informed advocates; hearing quality is better when the judge can hear directly from the child; hearings can present an opportunity for parent-child visitation; and foster parents and relatives caring for the child often attend because they bring the child to the hearing.

3. Cons of Involving Children in Court Proceedings

There are also cons of involving or requiring the presence of children in child welfare hearings. A few examples include the following factors: missed time in school and other important events for the child, information shared in court can be emotionally damaging for children, and children at times may not want to attend. Other obstacles include lack of transportation; timing of court dockets are not accommodating; notice is inadequate; and judges are sometimes uncomfortable speaking with and interviewing children.

B. Child and Youth Engagement

Making court attendance a positive experience for children and youth is critical. Judges can help make the experience for everyone feel more beneficial by utilizing the following practices and setting expectations for the courtroom:

- Ensure attorneys and caseworkers do their job by helping to prepare the child for the hearing.
- Learn child-specific interviewing techniques so that engaging the child in conversation is easier. Even young children have the competence to tell adults what they want and need when questioned in an age-appropriate manner.
- Restructure dockets and offer to schedule hearings involving children in the afternoon, after school.
- Employ video conferencing as a convenient alternative for children, youth, and their caregivers.
- Invite youth to submit letters or other information to the court.

Generally, every child should appear at every Permanency Hearing. The Family Code presumes that all children will attend their Permanency Hearings, but also accommodates the occasion when children should be excused from attending by the judge. The expectation is that the court will excuse a child on a case-by-case basis and not operate under a blanket order or rule.

For a more complete report on the benefits of youth in court and practical tips for accommodating their presence, please read the Children’s Commission’s July 2016 report on [Youth Presence in Court Proceedings](#).²⁰³

To hear examples from youth formerly in care about their different experiences attending permanency hearings, judges can access the 2021 Judicial Trauma Institute session [Learning from the Experts: A Panel Discussion on Lived Experience](#).²⁰⁴

C. Talking with Children and Youth in Court

Children and youth involved in the child welfare system can often feel disconnected from what is occurring around them. By speaking with youth directly and involving them in the process, they are given the opportunity to share their feelings, desires, and needs. Talking with children requires some skill; below are some questions that can help get the conversation started. Sharing some of your own answers to the questions can create a more natural conversation and help the youth feel more comfortable and willing to share honestly. Acknowledging some of their answers in the moment and later will also let them know you are hearing them. For a full example by age group, consult the New York State Permanent Judicial Commission on Justice for Children’s document “[Tools for Engaging Children in Their Court Proceedings](#).”²⁰⁵

- Initial Questions
 - Make introductions.
 - Did I pronounce your name correctly?

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- Do you know who everyone is here?
 - How old are you?
 - Tell me about something that has happened to you since I last saw you.
 - Tell me about something that you did recently that you are proud of.
 - School
 - What is your favorite subject?
 - Are there any subjects where you would like to have additional help? (older youth)
 - Have you changed schools during the school year? When was the last time?
 - What would help you do better in school?
 - Have you started to think about college or vocational school? (older youth)
 - Friends
 - What do you do for fun?
 - Who do you do that with?
 - Family
 - When was your last visit with your family?
 - What did you do at your last visit with your siblings? When was that?
 - What kind of chores do you have?
 - Health
 - Have you been to the doctor since I last saw you? The dentist?
 - Who would you talk to about health issues?
 - Feelings
 - What makes you feel happy?
 - What worries you the most?
 - When you think about the future, what are you most concerned about? What are you most excited about?
 - Wrap-up Questions
 - Did anyone use any words you didn't understand today?
 - Did you want to tell me anything? Do you want to talk with me separately?
 - Do you have any questions for me or for anyone else here?

Making notes on the conversation with the child or youth may be beneficial so that when they return for their next conference, any concerns can be readdressed. Following up on small details can also help create a more trusting relationship with the child or youth.

D. Normalcy

1. What Is Normalcy?

[Tex. Fam. Code § 264.001](#) requires court consideration of age-appropriate normalcy activities, defined as an activity or experience:

- That is generally accepted as suitable for a child’s age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and
- In which a child who is not in the conservatorship of DFPS is generally allowed to participate, including extracurricular activities, cultural and enrichment activities, and employment opportunities. [Tex. Fam. Code § 264.001\(1\)](#).

In addition to the requirements of [Tex. Fam. Code § 263.306\(a-1\)](#), at each Permanency Hearing before a final order is rendered, the court shall review DFPS’ efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child’s service plan. [Tex. Fam. Code § 263.306\(c\)](#).

[Tex. Fam. Code § 263.5031](#) requires that at each Permanency Hearing After a Final Order the court shall review DFPS’ efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities as defined by [Tex. Fam. Code § 264.001](#); this may include activities not listed in the child’s service plan.

2. Reasonable and Prudent Parent Standard

In determining whether to allow a child in the managing conservatorship of DFPS to participate in an activity, a substitute caregiver must exercise the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.125\(b\)](#).

The 2014 Preventing Sex Trafficking and Strengthening Families Act required states to define a “reasonable and prudent parenting standard.”²⁰⁶ In Texas, the standard of care of a reasonable and prudent parent means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- The overall health and safety of the child;
- The child’s age, maturity, and development level;
- The best interest of the child based on the caregiver’s knowledge of the child;
- The appropriateness of a proposed activity and any potential risk factors;

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- The behavioral history of the child and the child’s ability to safely participate in a proposed activity;
 - The importance of encouraging the child’s social, emotional, and developmental growth; and
 - The importance of providing the child with the most family-like experience possible. [Tex. Fam. Code §264.001\(5\)](#).

A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child’s participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child’s participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.114\(c\)](#).

3. Normalcy Resources

For a more complete report including the importance of normalcy and tips for encouraging normalcy, please read the Children’s Commission’s May 2019 [Normalcy for Children and Youth in Foster Care Round Table Report](#).²⁰⁷

Capacity Building Center for States, [Having the Normalcy Conversation: A Guide for Discussing Developmentally Appropriate Services for Children, Youth, and Young Adults in Foster Care](#)²⁰⁸

Texas CASA:

- [Normalcy for Children & Youth in Foster Care](#)²⁰⁹
- [Normalcy Matters: A Guide to Supporting Children & Youth in Texas Foster Care](#)²¹⁰

Texas Council of Child Welfare Boards, [Normalcy for Children Resources](#)²¹¹

