

TEXAS CENTER  
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FOR THE JUDICIARY

# 2018 Foster Care & Education Summit

Special Education

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# Presentation Overview

- Education Decision-Making
- Special Education
- Information Sharing
- School Discipline
- Transition Planning
- Key Education Provisions
- Additional Resources

# Education Decision-Making



# Education Decision-Maker

- Makes day to day education decisions (ex: field trip).
- Required for all children and youth in conservatorship.
- Using Form 2085-E, DFPS must name and include contact information for Education Decision-Maker, Surrogate Parent (if applicable), Caseworker, and Supervisor.
- DFPS must file Notice of EDM with the court. Form 2085-E must be provided to the school within 5 days of any change.

Tex. Fam. Code § 263.004

- Per contract, providers must bring Placement Authorization Form (Form 2085) and Form 2085-E to the school at the time of the child's enrollment and at the beginning of each school year.

# DFPS Form 2085-E

Revised September 2015



## DESIGNATION OF EDUCATION DECISION-MAKER CHILD PROTECTIVE SERVICES (CPS) - PERMANENCY

**Purpose:** DFPS must ensure that this form is provided to the court and the child's school under Texas Family Code [§263.004](#) within five days of the Adversary Hearing. DFPS must inform the court of any changes in the Education Decision-Maker or Surrogate Parent, if applicable, in the next permanency hearing report. DFPS must provide the updated information to the school no later than five days after any changes in the Education Decision-Maker or Surrogate Parent, if applicable.

**Directions:** To complete this form, fill in all applicable fields. For additional questions, contact your Regional Education Specialist. DFPS staff may not appoint a surrogate parent. DFPS staff may only list the name of the surrogate parent appointed by the court or the school.

### SECTION 1: AUTHORITY TO MAKE EDUCATION DECISIONS

The Texas Department of Family and Protective Services (DFPS) is authorized by court order as provided in the Texas Family Code [§153.371](#) to make education decisions on behalf of the following child currently in the conservatorship of DFPS.

Child's Full Name:	Child's DFPS IMPACT Person ID:	Child's Medicaid Number:
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Date of Birth:	County:	Court Number:	Cause Number:
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DFPS delegates to the following individual(s) (hereinafter referred to as the Education Decision-Maker) the education decision-making responsibilities on behalf of the child as described in this form. **Note: A representative of DFPS may be named as a primary and and/or backup Education Decision-Maker.**

Designated primary Education Decision-Maker (and spouse, if applicable):	Date of designation:
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Email:	Telephone Number(s):
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Backup Education Decision-Maker:	Date of designation:
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Surrogate Education Decision-Maker for special education decisions:	Date of designation:	Designated by:
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	<input type="checkbox"/> Court
	<input type="checkbox"/> ISD

Email:	Telephone Number(s):
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### SECTION 2: SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES — IF APPLICABLE

Federal and state law authorize the individual who is acting in the role of the child's parent or who is appointed by the school or the court to be the "surrogate parent" for the child to exercise the rights and responsibilities as outlined by the Individuals with Disabilities Education Act and state law and rule. The individual is usually the foster parent or daily caregiver, but may be a Court Appointed Special Advocate or other individual with knowledge of the child. In some cases the biological parent may retain the right to make certain special education decisions.

The law does not allow a DFPS staff person, school district staff, or anyone employed to provide care or treatment for the child to act as the parent or surrogate for special education decision-making. A foster parent is not considered a person employed to provide care for the child.

At age 18, the rights of the parent to make education decisions are transferred to the child, except for the child with a disability who has been determined to be incapacitated under state law.



# Who is Considered a “Parent” Under IDEA?

- Biological or adoptive parent,
- Foster parent unless prohibited by state law,
- Legal guardian (not the state),
- Person acting in place of a parent and who the child lives with (can be non-relative),
- Person legally responsible for the child, or
- Surrogate parent (Ex: a child in foster care is placed in RTC).

34 C.F.R. § 300.30(a)

# Requirements for Surrogate Parents

- District must make “reasonable efforts” to ensure assignment of a surrogate parent not more than 30 days after the need arises.
- Criteria for selection:
  - NOT a school district employee or any agency involved in care or education of the child (DFPS, TJJD, State Supported Living Center, RTC, etc.).
  - No personal or professional interest that conflicts with the interests of the child.
  - Has knowledge and skills to ensure adequate representation of the child.

# Requirements for Surrogate Parents

- Represents the child in all matters relating to:
  - Identification, evaluation, placement, and
  - Provision of FAPE to the child.

34 C.F.R. § 300.519; Tex. Educ. Code § 29.015

- The court may appoint a surrogate parent for a child in foster care.

34 C.F.R. § 300.519(c); Tex. Fam. Code § 263.0025

# Duties of Surrogate Parent Under Texas Law

- A surrogate parent must:
  - Complete a training program for surrogate parents,
  - Visit the child and the child's school,
  - Consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers,
  - Review the child's educational records,
  - Attend the child's ARD committee meetings,
  - Exercise independent judgment in pursuing the child's interests, and
  - Exercise the child's due process rights under state and federal special education law.

Tex. Educ. Code § 29.001(10)

# CASA as a Surrogate Parent?

- Under Texas law, a CASA volunteer may serve as surrogate parent if:
  - The child is under the conservatorship of DFPS,
  - CASA volunteer is the child's guardian ad litem,
  - The foster parent is not acting as the child's parent under Section 29.015 of the Texas Education Code, and
  - The CASA completes a surrogate parent training program.

Tex. Fam. Code § 107.031(c)

# Special Education



# IDEA Eligibility

- To be eligible, the student must have a qualifying disability and because of that disability need special education and related services.

# IDEA Eligibility

- These disabilities include:

- Intellectual disabilities
- Hearing impairments, including deafness
- Speech or language impairments
- Visual impairments, including blindness

- Serious emotional disturbance
- Orthopedic impairments
- Autism
- Traumatic brain injury
- Other health impairments
- Specific learning disabilities

20 U.S.C. § 1401(3)

# IDEA Purpose

- To ensure that all children with disabilities have available to them a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

20 U.S.C. § 1400(d)(1)(A)

- Applies to all public schools, including open-enrollment charter schools.

20 U.S.C. § 1413 (a)(5)

# Entitlement and FAPE

- IDEA guarantees that all students with disabilities age 3 through 21 have the right to FAPE. 21 means 21 at the beginning of a school year. Thus, a 22 year old student can often be served in a district.
- The right to a FAPE ends when a student graduates with a regular high school diploma. FAPE is still required for students who have received a certificate of attendance or a certificate of graduation that is not a regular high school diploma.

20 U.S.C. § 1412; 34 C.F.R. § 300.102(a)(3)

- School districts deliver FAPE by providing “special education services” and “related services.” They are required to do so in all settings including RTCs, hospitals, jails, juvenile facilities, etc.

# Child Find

- IDEA’s “child find” mandate imposes an affirmative duty on every school district to:
  - identify,
  - locate, and
  - refer for evaluation
- Each student residing in the district who is suspected of having a disability and, because of that disability, requires specially designed instruction in order to access the general curriculum.

20 U.S.C. §§ 1401(3) and 1412(a)(3)

# Admission, Review, and Dismissal (ARD) Committee

- Members of Committee:
  - Parents (or surrogate parent)
  - Student, whenever appropriate,
  - Representative of school district knowledgeable about special ed services,
  - 1+ special ed teacher or provider,
  - 1+ regular ed teacher (if student is or may be in regular ed classes), and
  - Someone who can interpret evaluations.

34 C.F.R. § 300.321; 19 Tex. Admin. Code § 89.1050

# ARD Committee's Purpose

- Primary duties of a student's ARD committee include:
  - Determining eligibility for special education;
  - Developing the student's IEP;
  - Reviewing and revising the IEP, at least annually.

34 C.F.R. § § 300.306; 300.324;  
Tex. Educ. Code § 29.005;  
19 Tex.Admin. Code § 89.1050

# ARD Meeting

- Meets at least annually to develop student's individualized education program (IEP).
- Parent/surrogate must receive 5+ school days notice of meeting, unless waived, and school must attempt to work with parent's schedule.

# ARD Process

- School districts must actively seek parent participation at all ARD committee meetings.
- A parent may request an ARD committee meeting at any time.
- Committee decisions must be reached by consensus; state law does not allow the committee to reach decisions by majority vote.
- If the ARD committee cannot agree on the substance of the IEP, the parent is offered an opportunity to recess and reconvene.
- If, upon reconvening, the parties still disagree, the school district must implement the IEP that it determines to be appropriate for the student.

Tex. Educ. Code §29.005(b); 19 TAC 89.1050

# Dispute Resolution

- The IDEA requires the state education agency (TEA) to offer dispute resolution options to assist with disagreements over eligibility and the special education and related services offered to a student.
  - These include:
    - Mediation,
    - State complaint investigation, and
    - Due process hearings.

34 CFR § §300.151-153; 300.506-518

# Contents of the IEP

- The IEP is the written statement developed by the ARD committee of the student's education program that contains certain components, including:
  - Present levels of academic achievement and functional performance;
  - Statement of goals;
  - Method of measuring progress;
  - Special education, related services, & supplementary aids/services;
  - Participation in general education class and activities;
  - Accommodations for assessments;
  - Time, place, and duration of services;
  - Transition services;
  - Transfer of rights at age of majority

20 U.S.C. §§ 1414(d)(1)(A) and (d)(6)

# Model IEP Form

- State law requires TEA to post a model individualized education program (IEP) form.
- It provides a helpful guide to what must be included in a student's IEP.
- Available online at:
  - [https://tea.texas.gov/Academics/Special\\_Student\\_Populations/Special\\_Education/Programs\\_and\\_Services/IEP\\_Model\\_Form/](https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/IEP_Model_Form/)

# Least Restrictive Environment (LRE)

- School districts must ensure that students with disabilities, including students in public or private institutions or other care facilities, are educated with their peers who are not disabled to the extent appropriate.
- School districts must offer a continuum of alternative placements, including instruction in:
  - regular classes;
  - special classes;
  - special schools;
  - home instruction; and
  - instruction in hospitals and institutions.

20 U.S.C. § 1412(a)(5); 19 Tex. Admin. Code § 89.63

# IEP and School Transfer

- If a child with an IEP transfers to a new school district in Texas within the same school year, the new district must provide FAPE to the student until the new district:
  - Adopts the child's IEP from the previous school district; or
  - Develops, adopts, and implements a new IEP that meets the applicable federal requirements.

34 C.F.R. §§ 300.320-300.324

# §504 v. Special Education

- §504 requires accommodations for students' disabilities, regardless of whether they have an educational need for special education.
- To be eligible a student must have a physical or mental impairment that substantially limits a major life activity.
- There is no funding that comes with §504.
- There is no standard for what a §504 plan looks like, though one must exist.
- §504 teams meet on an annual basis, similar to ARD committees.

*See 29 U.S.C. § 794*

# Information Sharing



# Confidentiality - Education

- Under the Uninterrupted Scholars Act of 2013 amendment to the Family Educational Rights and Privacy Act, schools can disclose records to child welfare agency representative without parental consent.

42 U.S.C. § 1232g(b)(1)(L)

# Confidentiality - Child Welfare

- When necessary to meet a child's needs, DFPS staff and providers may share child information with those responsible for the child's:
  - protection,
  - diagnosis,
  - care,
  - treatment,
  - supervision, or
  - education
- Case by case decision. "Need to know."
- Share minimum amount needed.

# Confidentiality –Child Welfare

- Information generally appropriate for CPS to share with school personnel:
  - 2085 Placement Authorization and 2085-E Designation of Education Decision-Maker forms.
  - CPS caseworker and supervisor contact information.
  - Fact that the student is in DFPS care.
  - Important documents needed for enrollment or services.
  - Vision & hearing evaluations.
  - Medications administered during the school day.
  - Medicaid eligibility/number.
  - Information for transition planning.

# Confidentiality – Child Welfare

- Okay to share if it relates to the child’s care and needs in the educational setting:
  - Medical, disability, or health information.
  - Psychological evaluations (redacted).
  - Behavior supports used in the home.
  - Juvenile justice information.
  - Information about the impact of abuse or neglect history when related to school behavior (effects of trauma and triggering events).

# Confidentiality – Child Welfare

- Information that should never be shared:
  - Reporter name or identity.
  - The fact that the child was adopted.
  - Alcohol or substance abuse history and treatment.
  - Biological or foster family income.

# School Discipline



# Federal Law Protections

- Under IDEA, removal means more than 10 consecutive school days OR a pattern (because removals total 10+ days/year, the behavior is substantially similar, and removals are close in time).

20 U.S.C. § 1415(k)

- School must:
  - Notify parent of disciplinary decision and give them a copy of their procedural safeguards on the same day the school decides to take the disciplinary action; and
  - Assemble parents and relevant ARD members for a manifestation determination.

# Disciplinary Removals

- In all disciplinary removals, schools “consider” the following:
  - Self-defense,
  - Intent or lack of intent at the time the student engaged in the conduct,
  - A student ’s disciplinary history, or
  - A disability that substantially impairs the student ’s capacity to appreciate the wrongfulness of the student’s conduct.

Tex. Educ. Code § 37.001(a)(4)

- Exclusionary discipline only available in certain circumstances below Grade 3.

Tex. Educ. Code § 37.005(c)

# Manifestation Determination

- The school district, the parent, and relevant members of the ARD committee must decide if the student's conduct:
  - Was caused by, or had a direct and substantial relationship to the student's disability, or
  - Was the direct result of the school's failure to implement the student's IEP.
- If yes: The student's conduct is a manifestation of the student's disability and the school must:
  - Conduct a functional behavioral assessment (FBA) (unless one has already been conducted),
  - Implement a behavior intervention plan (BIP), and
  - Return the student to his prior placement.

20 U.S.C. § 1415; Tex. Educ. Code § 37.004

- **EXCEPTION:** Even if conduct was a manifestation, if the behavior involved drugs, weapons, or substantial bodily injury, the student can be placed in a DAEP for up to 45 days.

# Education Services During Suspension or Expulsion

- A district may be required to provide FAPE during suspensions and expulsions.
- If the removal is less than 10 days, the school is only required to provide the same services it provides to non-IDEA students.
- If the removal is for more than 10 days then the school must provide services.
  - The services provided don't have to be exactly the same services but the school must enable the child to continue to participate in the general curriculum.

20 U.S.C. § 1415

# Transition Planning



# What are transition services?

## CPS

- Coordinated set of activities
- Assists youth in DFPS conservatorship
- Includes PAL supports (e.g. life skills class, workforce readiness)
- To transition from foster care to independent living

## Special Education

- Coordinated set of activities
- Based on the individual needs of a student with a disability
- Focus on improving the academic and functional achievement
- To facilitate movement from school to post-school activities

# At what age is a student's transition plan first developed?

## CPS

- Age 14; OR
- The age of the youth upon entering conservatorship if the youth is older than 14

## Special Education

- No later than 14; OR
- If the student is not eligible before 14, when the student becomes eligible for special education

# At what age is transition planning no longer required?

## CPS

- Once the youth or young adult exits foster care

## Special Education

- Once the student is ineligible for special education

# How is the transition plan developed?

## CPS

- Transition Plan attached to youth's plan of service
- Developed at a Permanency Conference, Circles of Support, or Transition Plan meetings

## Special Education

- Individual transition plan (ITP) is a component of the student's IEP
- Developed at the admission, review, and dismissal (ARD) committee meeting

# Who participates in developing the transition plan?

## CPS

- The youth determines who should be invited
- May include:
  - Youth
  - Caregiver
  - Education Decision-maker and/or surrogate parent
  - Biological parents, siblings, extended family
  - Other caring adults who can provide support
  - Attorney, guardian ad litem

## Special Education

- Student (as appropriate)
- Parents
- Regular education teacher (s), Special education teacher(s) or provider(s) (as appropriate)
- District representative
- Individuals with knowledge or special expertise re: student (at discretion of parent and district)
- Individual to interpret evaluations

# What information is included in the transition plan?

## CPS

- Personalized at the direction of the youth. Includes specific information regarding:
  - Housing
  - Health insurance
  - Education
  - Local opportunities for mentors and continuing support service
  - Workforce supports and employment services

## Special Education

- Outlined in TEC § 29.011
- Includes appropriate:
  - Postsecondary education options, including preparation for postsecondary-level coursework
  - Functional vocational evaluation
  - Employment goals and objectives
  - Independent living goals and objectives

# Transitions-Best Practices

- Collaborate and Coordinate
- Start early
- Engage youth and caregivers
- Be realistic
- Meet regularly
- Share information and documents, while respecting privacy
- Recognize individual student needs and goals
- Add informal pre-planning to formal meeting structure
- Use resources efficiently

# Other Key Education Provisions

# Excused Absences

- Student in care excused, including travel, if activity:
  - Ordered by court under Texas Family Code Chapters 262 or 263 (if not practicable outside of school hours), or
  - Required under DFPS service plan.
- If excused, must be allowed reasonable time to make up school work.

Tex. Educ. Code § 25.087
- Per contract, Providers must schedule therapy, visitation, and other appointments outside of school hours whenever possible.

# Award of Credit

- School districts must make credit by examination available, at any point during the school year, to students who are homeless or in foster care.

19 Tex. Admin. Code § 74.24

- School districts must award credit proportionally to a student who is homeless or in substitute care who successfully completes one semester of a two semester course.

19 Tex. Admin. Code § 74.26

# Additional Resources



# Helpful Links

- Children's Commission
  - <http://texaschildrenscommission.gov/our-work/foster-care-education/>
- Department of Family & Protective Services
  - [https://www.dfps.state.tx.us/Child\\_Protection/State\\_Care/education.asp](https://www.dfps.state.tx.us/Child_Protection/State_Care/education.asp)
  - [https://www.dfps.state.tx.us/PCS/Residential\\_Contracts/contract\\_forms.asp](https://www.dfps.state.tx.us/PCS/Residential_Contracts/contract_forms.asp)
- Texas Education Agency
  - <https://tea.texas.gov/FosterCareStudentSuccess/>
  - [https://tea.texas.gov/Academics/Special\\_Student\\_Populations/Special\\_Education/Special\\_Education/](https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Special_Education/)

# Contact Information

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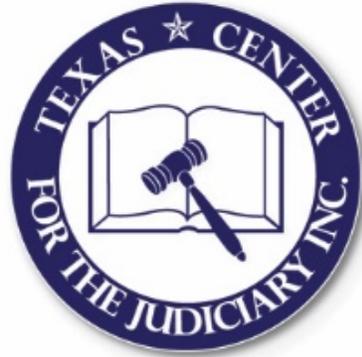
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