

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS)

1  Children in foster care should participate in decisions about where and how they receive education.

2  Coordination between child welfare and education stakeholders is essential to ensure academic success for children in foster care.

3  Providers should ensure equitable access to educational opportunities and adopt rigorous educational practices that reflect the importance of education for children in foster care.

4  A child's treatment and school teams should collaborate to address how to best serve each student's individual education needs.

5  Federal and State law require children in foster care to remain in their school of origin unless it is not in the child's best interest.

6  Children in foster care should receive services in the least restrictive setting.

7  RTCs must notify the local school district within three days of a child's placement in their facility, unless there is an on-campus charter at the facility.

8  Children in foster care receive special considerations when disciplinary decisions are made in the school setting.

9  Children in foster care need access to age-appropriate activities and experiences.

10  The local school district must appoint a surrogate parent for children who receive special education services within 30 days of realizing there is a need.

# FOSTER CARE AND EDUCATION RESOURCES

Various agencies, advocates, and child welfare organizations offer resources and programs to assist students in foster care, including the Department of Family and Protective Services, the Texas Education Agency, every local education agency (schools districts and open-enrollment charter schools), the Texas Higher Education Coordinating Board, Texas public institutions of higher education, and Disability Rights Texas, the federally designated protection and advocacy agency for people with disabilities. Contact information and extensive foster care and education resources and tools are available through the non-exhaustive list of websites below:

[Children's Commission on Foster Care and Education](#)

[Disability Rights Texas - Education Resources](#)

[Texas Court Appointed Special Advocates - Educational Advocacy Guidebook](#)

[Texas Department of Family & Protective Services - Education](#)

[Texas Education Agency - Foster Care and Student Success](#)

[Texas Higher Education Coordinating Board - College for All Texans](#)

[Texas Workforce Commission - Foster Care Programs](#)



Texas Department of  
Family and Protective Services



STRENGTHENING THE VOICES OF CASA STATEWIDE



The materials in this report should not be construed as an advisory or ruling issued by the Supreme Court of Texas or any other court on specific cases or legal issues. Contributions to this guide are solely intended to address the improvement of the law, the legal system, and the administration of justice related to child welfare cases. This Top Ten List was developed by a multi-disciplinary workgroup with members representing the education, legal, and provider communities and is designed to be used as a guide to assist with considerations for the education of children in foster care who reside in a Residential Treatment Center. For a detailed document addressing the topics highlighted in this Top Ten List please visit [TexasChildrensCommission.gov](https://www.texaschildrenscommission.gov).

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS)

There are three documents in this Top 10 series: one for providers, one for educators, and one for legal professionals. Each document is designed for a specific audience to encourage improved educational outcomes for children in foster care and complement the information in the other documents in the series. This resource was developed by a multi-disciplinary workgroup with members representing the provider, education, and legal communities. It is intended to raise awareness and provide a basic introduction to several educational considerations for children residing in residential treatment centers.

1



**Children in foster care should participate in decisions about where and how they receive education.**

Stakeholders in the child protection system, including judges, lawyers, providers, advocates, caregivers, and others, recognize the critical importance of child and family engagement the voices of youth, parents, and family. Encouraging children in foster care<sup>1</sup> to participate in the decisions about where and how they receive education can build trust and improve engagement. Youth voice is important in valuing and respecting the child and encourages meaningful involvement and control that is psychologically and emotionally beneficial for them. The school<sup>2</sup> setting offers children in foster care opportunities to develop positive connections with peers and supportive adults as well as building skills for success, social-emotional learning, and resilience. As the individuals responsible for the care of children in foster care, providers have a unique opportunity to encourage and teach children to speak up for themselves at education and child welfare meetings. Asking children about their interests can also help develop post-secondary pathways.

Children should be allowed to meaningfully participate in the decision-making process regarding their education and service plans, including their enrollment conference,<sup>3</sup> if developmentally and age appropriate. Educators, judges, attorneys, child welfare advocates, and providers should discuss the child's educational needs in terms that are clear and age appropriate and encourage the child's participation during these meetings. For children with disabilities, the Individuals with Disabilities Education Act (IDEA) requires that children age 16 and older be invited to attend or provide feedback with regard to their Individualized Education Program (IEP).<sup>4</sup> When the child turns 18, they will become a member of their own Admission, Review, and Dismissal (ARD) Committee and will have decision-making power with regard to their IEP and other special education decisions.<sup>5</sup>

In addition to education and service planning meetings, children in foster care are required to attend each permanency hearing regarding their child welfare case unless they are specifically excused by the court.<sup>6</sup> This provides the child with an opportunity to address the court regarding their individual needs and educational goals. When a child cannot attend court in person, providers should coordinate with the child's caseworker and legal advocates to set up communication by telephone or video conferencing as an alternative means of participation.

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

2



**Coordination between child welfare and education stakeholders is essential to ensure academic success for children in foster care.**

National studies show that children in foster care are more likely to be suspended or expelled from school, to score lower on statewide standardized tests, to repeat a grade, and are less likely to graduate compared to their peers who are not in foster care.<sup>7</sup> Children in foster care have often experienced chaotic educational, social, emotional, and family history prior to entering foster care that may contribute to these outcomes. Additional hurdles including multiple residential and school changes and missed school days for visits, court appearances, and other case-related appointments that frequently occur during school hours may further compound educational delays for these children once they enter foster care.

Children in foster care may find themselves lost between the child welfare and education systems – while the two systems frequently overlap, there may be infrequent ongoing and effective communication between the two. It is essential for education and child welfare stakeholders to coordinate efforts, especially during school transitions, to reduce the negative impact the loss of records, credits, services, and support systems can have on academic success and well-being.

3



**Providers should ensure equitable access to educational opportunities and adopt rigorous educational practices that reflect the importance of education for children in foster care.**

Providers should continue to make education a priority and strive to create learning environments where all children can progress academically. These practices should include an emphasis on closing academic achievement gaps, and credit recovery. Providers and schools should work together on collaborative integration of each child's RTC treatment plan, graduation plan, and, where appropriate, the services required to support students with disabilities.

According to the Texas Education Agency (TEA) 2018-2019 Federal Report Card for Texas Public Schools, students in foster care<sup>8</sup> not only had a graduation rate of 63.4% compared to 90.0% of all students in Texas, but also performed at lower levels on statewide assessments.<sup>9</sup> Accordingly, it is crucial for RTCs to develop community partnerships to support and extend the educational progress that should be made while a child resides in an RTC. Securing community partnerships enables the RTC to offer services like tutoring and mentoring, which can help close academic achievement gaps and support credit recovery once a child leaves the RTC. Transition plans to help children move from RTCs into community-based placements should include access to those education resources to the maximum possible extent.

Section 504 of the Rehabilitation Act of 1973 prohibits schools from discrimination against children with disabilities.<sup>10</sup> While Section 504 is similar to IDEA, a child cannot simultaneously receive services under both the IDEA as a special education student and Section 504. Students are eligible to receive services under one classification or the other. The goal of Section 504 is to level the playing field by accommodating students with disabilities so they can access the same services as their peers. The goal of special education is to provide a Free Appropriate Public Education (FAPE) by providing an IEP and related services to the student. Rather than just accommodating a student, schools are required to take action to provide needed services to students eligible for special education.

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

4



**A child's treatment and school teams should collaborate to address how to best serve the student's individual education needs.**

School districts and RTCs should develop agreements about providing education services to students placed in RTCs pursuant to TEA and DFPS rules to best serve the student's individual education needs.<sup>11</sup>

When a student in foster care changes schools because of a placement change, prompt records transfer is critical to inform the new school about their current coursework, grades, and educational progress. The student's prior schools must ensure records, including any special education records or plans, are transferred within 10 working days of the date the student begins enrollment at a new school.<sup>12</sup> Additionally, the new school must initiate several crucial actions within the first few weeks of the date the student in foster care enrolls at the school.<sup>13</sup> Due to the special needs of children residing in RTCs, it is imperative that the child's caregiver and advocates work with schools to ensure that these processes are promptly completed. Beyond records transfer, communication and collaboration between the education, child welfare, and legal professionals can support a more seamless transition between schools.

For students who receive special education services, Texas law requires that transition services be included in the IEP no later than when the student reaches the age of 14.<sup>14</sup> While these transition services focus on post-secondary activities that tend to be different from the transition services provided through a Preparation for Adult Living (PAL) specialist, including the PAL specialist in the planning process is recommended to coordinate services. According to federal regulations, beginning no later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, the IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.<sup>15</sup>

5



**Federal and State law require children in foster care to remain in their school of origin unless it is not in the child's best interest.**

Under federal and state law, children in foster care have the right to remain enrolled in their school of origin regardless any residential placement changes. The school of origin can be the same school that the child was attending when they entered foster care or the school that the child is attending at the time of any subsequent change to their residential placement while in foster care. A child in foster care should continue in their school of origin unless it is not in the child's best interest.<sup>16</sup> If a school change is necessary, prompt enrollment in the new school and records transfer is required.

Determining where a child in foster care will attend school while placed in an RTC is an important step in the placement process. If the child can continue at their school of origin, then that should be considered; however, if that is not possible, early coordination between the child's school of origin and new school is critical. Because each situation is unique, including timeframes for transition, it is important that education stability and transition be discussed early in the placement process.

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

6



**Children in foster care should receive services in the least restrictive setting.**

Federal and state child welfare law require that children in foster care be placed in the least restrictive, most appropriate, family-like, residential setting possible. It is well-known among providers that RTCs and other congregate care facilities are not considered least restrictive placements and are not intended to be long-term. They are meant to address intensive needs that cannot be met in a traditional home setting. Once a child achieves their treatment goals, the child should transition out of the RTC and back into the most family-like, residential setting possible, consistent with the child's needs.

Many RTCs choose to have an on-campus charter school to provide consistency in the therapeutic or treatment approach. Per DFPS policy, children placed at an RTC may attend school at the RTC facility if the school meets the child's individual educational needs and is the least restrictive environment.<sup>17</sup> Children placed in RTCs should not be segregated from the general school population as a standard procedure or excluded from normal school activities unless such activities are discussed and determined to be prohibitive for appropriate reasons other than location of residence. Children residing in RTCs and attending local, off-campus public schools in a school district or public charter schools should have as typical a school experience as their needs and behaviors allow.

7



**RTCs must notify the local school district within three days of a student's placement in their facility, unless there is an on-campus charter at the facility.**

Texas state law and rules require a residential facility to notify the school district in which the facility is located not later than the third day after a person aged three to 22 years is placed in the facility.<sup>18</sup> The provider must send written notice to the school district where the facility is located, unless the facility operates their own open enrollment charter school.<sup>19</sup> School districts and RTCs are required to develop agreements about providing education services to students placed in RTCs who will be receiving education services on the RTC campus pursuant to TEA and DFPS rules.<sup>20</sup>

Public schools are required to identify, locate, and evaluate children whom the school districts have reason to suspect have a disability and may need special education and related services.<sup>21</sup> A school district must provide special education and related services to eligible students residing in a licensed facility within district boundaries unless those services are provided through a charter school, approved non-public school, or a facility-operated private school.<sup>22</sup> The school district must contact the facility annually to offer services to eligible students with disabilities.<sup>23</sup> Notifying the school of the placement of a school-aged child in an RTC within the school district may aid the school in meeting this requirement.

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

8



## Children in foster care receive special considerations when disciplinary decisions are made in the school setting.

Children in care are dealing with many uncertainties and stresses that most children do not have to endure. This may manifest into behavioral issues in the school setting. Students in foster care are 3.4 times more likely to be suspended from school compared to their peers.<sup>24</sup> Communication and collaboration between RTC staff and instructional staff is essential for helping children in foster care learn positive behaviors that can amplify their successes in life.

When a student in foster care is facing disciplinary action at school, Texas law requires the school to consider whether the impact of being in foster care or of having a disability that impairs the student's capacity to appreciate the wrongfulness of the student's conduct was a factor in the inappropriate behaviors before a removal may occur.<sup>25</sup>

Additionally, under IDEA, if a child with a disability is removed from class for disciplinary reasons, special procedures apply. The removal of a child receiving special education services from their classroom or school in excess of 10 school days, including consecutive school days or parts of days, or nonconsecutive days, if they form a pattern, constitutes a school removal.<sup>26</sup> The school, the parent, and relevant members of the child's ARD Committee must hold a Manifestation of Determination Review (MDR) within 10 school days of any decision to change the educational placement, including suspension, removal, or expulsion, of a child with a disability due to a violation of the student code of conduct.<sup>27</sup> The school district must provide notice of the MDR to the child's educational decision-maker, DFPS or its representative, and parent or surrogate parent at least five school days prior to the scheduled MDR.<sup>28</sup>

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

9



## Children in foster care need access to age-appropriate activities and experiences.

Engaging in normal, age-appropriate activities and experiences is a critical component of healthy child development. However, experiencing abuse or neglect and being removed from a family to foster care is not “normal.” Although cultivating normal childhood experiences while in foster care is a challenge, especially for those who are residing in an RTC, federal and state law require that children in foster care are allowed to engage in normalcy activities and experiences.

In the educational setting, normalcy can range from making the school’s daily announcements to competing in a sport. A child in foster care should be encouraged to develop friendships and participate in school clubs and other positive activities in and out of school that pique their interests. Participation in activities can provide opportunities for young people to learn teamwork, build confidence, explore new interests, deepen relationships with peers, family and other adults, and meet new people.

Friendship and socialization are essential in maintaining health and psychological well-being. Providers should strive to ensure that children in RTCs can experience everyday normal activities, such as hanging out with friends, using a telephone or computer, shopping for clothes, going on school field trips, getting a driver’s license, attending the prom, and taking a vacation, when at all possible.<sup>29</sup> For more information on the importance of normalcy for children in foster care, please see the Children’s Commission Normalcy for Children and Youth in Foster Care Roundtable Report.

# TOP 10 THINGS PROVIDERS NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS)

10



**The local school district must appoint a surrogate parent for children who receive special education services within 30 days of realizing there is a need.**

Every child in foster care has an education decision-maker selected by DFPS to make day to day education decisions on the child's behalf.<sup>30</sup> In addition, children who receive special education services who do not have a parent who has retained education decision-making rights or a caregiver willing or able to act as a special education decision-maker need a surrogate parent to advocate on their behalf regarding their special education needs. Federal and state law require schools to appoint a surrogate parent for children who receive special education services within 30 days of realizing there is a need.<sup>31</sup>

A surrogate parent may also be appointed by the judge to ensure a child's special education rights are protected.<sup>32</sup> In doing so, courts can ensure a child placed in an RTC continues to have an informed and engaged surrogate parent who is familiar with their background, educational needs and goals, and is well-trained in the child welfare system as well as the impact of trauma on children. The surrogate parent may be a Court Appointed Special Advocate (CASA) volunteer, a community member, a retired educator, or any other qualified person who is willing to serve and complete required training.<sup>33</sup> However, the surrogate parent may not be the child's caseworker or any other employee of any agency that is involved in the child's education or care.<sup>34</sup> The surrogate parent must consult with the child's attorney ad litem, guardian ad litem, foster parent, caregivers, teachers, caseworkers, and other court-appointed volunteers and is an included member of the child's ARD Committee.<sup>35</sup>

If the court appoints a surrogate parent and the school district determines that the surrogate parent is not properly performing their duties, the school district must consult with DFPS about the issue, and DFPS will notify the court of any agreement to review the appointment of the surrogate parent.<sup>36</sup> Regardless of whether the surrogate parent is appointed by the school or the court, the surrogate parent fulfills a critical role of being a voice for the child for any decisions related to special education.

## REFERENCES

1. The term “child in foster care” includes all children, youth, and young adults in DFPS managing conservatorship. Where appropriate, the terms “child,” “youth,” or “young adult” are also used.
2. The term “school” in this document refers only to a public school, also known as a Local Education Agency (LEA), including school district campuses and open enrollment charter schools.
3. Each school district and open-enrollment charter school must develop systems to ease the transition of a student in foster care during the first two weeks of enrollment at a new school. An enrollment conference must also occur within this timeframe. See Tex. Admin. Code § 89.1605; Tex. Educ. Code § 25.007.
4. Public schools must provide a written IEP designed specifically for each child receiving special education services which is developed by an Admission, Review, and Dismissal (ARD) Committee outlining the manner in which the school district will provide a Free and Appropriate Public Education (FAPE) to the child, including where they will attend school and what positive and appropriate behavioral interventions will be used. See 34 CFR, §300.322 (b) (2).
5. A child’s ARD Committee consists of members designated by law who meet to determine eligibility for special education services, to develop an IEP for a child, if applicable, and to make most of the major decisions about a child’s special education program. When a child with a disability turns 18, the child becomes their own education decision-maker and joins their ARD Committee in place of their parents. See 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §300.321; Tex. Educ. Code § 29.005; 19 Tex. Admin. Code § 89.1050; 34 C.F.R. §§ 300.320(c) and 300.520; Tex. Educ. Code § 29.017; Tex. Admin. Code § 89.1049.
6. Tex. Fam. Code § 263.302.
7. For more information, please see National Working Group on Foster Care & Education. (April 2018). National Factsheet on the Educational Outcomes of Children in Foster Care. Available online at <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>.
8. The term “student in foster care,” when used in this document, includes all school age children, youth, and young adults in DFPS managing conservatorship. Where appropriate, the terms “child,” “youth,” or “young adult” are also used.
9. Texas Education Agency 2017-18 Federal Report Card for Texas Public Schools. Available online at <https://tea.texas.gov/frc.aspx>
10. 34 C.F.R. 104.4(a).
11. Tex. Educ. Code § 29.012; 19 Tex. Admin. Code § 89.1115 and 40 Tex. Admin. Code §702.417
12. Tex. Educ. Code § 25.007(b)(1).
13. See 19 Tex. Admin. Code §§ 89.1605, 89.1607, 89.1609, 89.1611, 89.1615.
14. Tex. Educ. Code §29.0111; 19 Tex. Admin. Code § 89.1055(h).
15. CFR §300.320(b); 19 TAC 89.1055(l); Tex. Educ. Code § 29.011.
16. 42 U.S.C. § 675(1)(G); 20 U.S.C. § 6311(g)(1).
17. CPS Policy Handbook Section 15231 Choosing a Public School or Residential Treatment Center (RTC) Program. Available online at [https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_x15000.asp#CPS\\_15231](https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15231).
18. Tex. Educ. Code § 29.012(a)(1).
19. *Id.*
20. Tex. Educ. Code § 29.012; 19 Tex. Admin. Code § 89.1115 and 40 Tex. Admin. Code §702.417
21. 20 U.S.C. §1412 (a)(3).
22. 19 Tex. Admin. Code §89.1001(c).
23. *Id.*
24. Fiscal Notes. Helping Foster Youth in Higher Education. (April 2020). Available at <https://comptroller.texas.gov/economy/fiscal-notes/2020/apr/education.php>.
25. Tex. Educ. Code § 37.001(a)(4)(E).

26. Under IDEA, removal means the child is not allowed to attend their regularly scheduled classes. Also, if a child is sent home at any point during the school day, the child is considered removed from the school for that full day. See 20 U.S.C. § 1415 (k).
27. The purpose of the MDR is to determine whether the conduct that led to the child's removal was caused by or had a direct and substantial relationship to the child's disability or was the direct result of the school's failure to implement the child's IEP. If either is true, the child cannot be removed from the child's educational placement, subject to exceptions. If neither is true, the child can be disciplined like any other child without disabilities.
28. Tex. Educ. Code § 25.007(b)(10); Tex. Admin. Code § 89.1617; CPS Policy Handbook Section 15373 Required Notification of School-Related Information. Available online at [https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_x15000.asp#CPS\\_15373](https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15373).
29. For more information, see "What Young People Need to Thrive: Leveraging the Strengthening Families Act to Promote Normalcy." Casey Foundation, 2015. <https://www.aecf.org/m/resourcedoc/aecf-whatyoungpeopleneedtothrive-2015.pdf#page=5>
30. Tex. Fam. Code § 263.004; CPS Policy Handbook Section 15371 Designating an Education Decision-Maker. Available online at [http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_x15000.asp#CPS\\_15371](http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15371).
31. 20 U.S.C. § 1415(b)(2); Tex. Educ. Code § 29.0151.
32. 20 U.S.C. § 1415(b)(2); Tex. Fam. Code § 263.0025.
33. Tex. Admin. Code § 89.1047(c)(1); Tex. Educ. Code §§ 29.015, 29.0151(e); Tex. Fam. Code § 263.0025(e).
34. Tex. Educ. Code § 29.0151(c); Tex. Fam. Code § 263.0025(d).
35. Tex. Educ. Code 29.0151(d)(7).
36. Tex. Educ. Code § 29.0151(f)-(g).