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CHAPTER 9

Education Decision-Making

EDUCATION DECISION-MAKING AUTHORITY

When a court order places a student in DFPS conservatorship, state law authorizes DFPS to assume roles usually assumed by parents and guardians, including the responsibility to make educational decisions for the student.¹¹⁵ DFPS generally gives certain day-to-day education decision-making responsibilities to the student's caregiver.



DFPS uses *Designation of Education Decision-Maker Form 2085-E* as its primary way of designating to whom it has given education decision-making power.



DFPS uses *Designation of Education Decision-Maker Form 2085-E* as its primary way of designating to whom it has given education decision-making power. An individual holding a Form 2085-E which names them as the primary education decision-maker for the student operates under the authority of DFPS to make education decisions or to take actions that carry out DFPS decisions about the student's education. This person does not need to show any further proof to the school that they have that authority. The student's caregiver is often the designated education decision-maker, however there may be times when someone other than the caregiver is selected. The school should contact the student's caseworker or caregiver to seek permission to communicate with anyone who is not listed on the 2085-E concerning education decisions (*see Caregiver & Caseworker General Education Decision-Making Responsibilities, on page 98*).

DFPS requires caregivers to present an Education Decision-Maker 2085-E form at enrollment for all students in foster care.¹¹⁶ This clarifies for schools who the education decision-maker and caseworker are for each student. This document can also be used to confirm that the student is in foster care and that the caregiver has the authority to enroll the student. If a student does not have this form at enrollment, request it from the caregiver. The form includes the contact information for the education decision-maker and caseworker.



TIP: The student's daily caregiver or caseworker will be listed on the 2085-E, as the education decision-maker.



LAW: Under ESSA, schools have a responsibility to contribute to education best interest decision-making concerning the student. Ultimately, DFPS makes the final decision; however, schools and DFPS representatives (who are responsible for education decisions) are required to work together under ESSA and federal child welfare law. See *Chapter 8* for more information concerning ESSA and coordination to support education best interest decision-making. See *Appendix K* for questions concerning the 2085-E, school decisions, and related permissions.



LAW: Texas law requires DFPS to notify the school regarding who is designated to be the student's education decision-maker within five days after the Adversary Hearing or a change in the designated education decision-maker.¹¹⁷

EDUCATION DECISION-MAKING FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES

For students who are eligible for or who receive special education services, the Education Decision-Maker form 2085-E will also name the Surrogate Parent who can make special education decisions for the student if the student's caregiver is unable or unwilling to serve as the parent for special education purposes, or if the student is not placed in a foster home or kinship caregiver setting. The school has the responsibility to appoint a Surrogate Parent when one is needed and to inform DFPS in writing when an appointment has been made. The court also has the authority to appoint a Surrogate Parent for the student. DFPS will include the Surrogate Parent's information on the 2085-E form if a Surrogate has been appointed for the student and DFPS is notified of the appointment.

See *Appendix K* for frequent questions about the 2085-E. See *Appendix F* for a sample copy of the 2085-E form.



Note: As discussed in **Chapter 12**, students who are eligible for special education services have additional legal protections to ensure the person making special education decisions is knowledgeable about those services and has no conflicts of interest. While federal law prohibits a DFPS or residential facility staff member from making decisions regarding special education services for a student in foster care, they may be authorized to make other, non-special education-related decisions. All the individuals who are responsible for decisions regarding a student's education should work in collaboration to ensure the student's special education needs are being met.

DID YOU KNOW?

Students who are eligible for special education services have additional legal protections.

Being placed in an alternate education program once my school discovered that I was in foster care just reinforced negative stereotypes and limited my educational opportunities.



CAREGIVER & CASEWORKER GENERAL EDUCATION DECISION-MAKING RESPONSIBILITIES

CAREGIVER RESPONSIBILITIES — Unless the DFPS caseworker or Community-Based Care worker indicates otherwise, the caregiver or foster parent may make the following education-related decisions, take the following types of actions, or be contacted for the following purposes:

- ▷ Enroll a student in school, including providing identity or immunization information needed for enrollment.
- ▷ Determine, in conjunction with the student if appropriate, course selection and participation in extra-curricular activities.
- ▷ Attend routine school activities such as “Family Night,” parent/guardian-teacher conferences, PTA meetings, and similar activities that involve students’ families.
- ▷ Approve the student’s participation in routine or non-routine school activities such as dances, field trips, sporting events, etc.
- ▷ Be notified of injury or illness on school grounds or at a school activity on or off school grounds.
- ▷ Sign agreement with the Student Code of Conduct, and, as applicable, assist the student with understanding the Code of Conduct.
- ▷ Receive report cards, permission slips, and other routine school correspondence, including homework assignments on behalf of the student, if necessary.
- ▷ Have access to education records and the student’s Education Portfolio. (DFPS is responsible for ensuring that the education decision-maker has access to the student’s Education Portfolio¹¹⁸).
- ▷ Be notified of and take action regarding any events that may significantly impact the student’s education, including disciplinary or attendance matters, as required by TEC § 25.007.
- ▷ Determine whether the student should participate in special programs such as compensatory education, bilingual education, Gifted and Talented, and after-school tutoring.
- ▷ Determine when a referral for a special education evaluation is necessary or make a referral for an evaluation.



Note: The education decision-maker may be instructed by DFPS to notify or consult with the caseworker or supervisor on these matters before communicating a decision to the school.

CASEWORKER RESPONSIBILITIES — Unless otherwise indicated, the DFPS or Community-Based Care caseworker makes the following education-related decisions, takes the following types of actions, or is contacted for the following purposes:

- ▷ Select the appropriate school placement, in consultation with the regional education specialist and adhere to federal and state laws.
- ▷ Receive notification regarding truancy, suspension, expulsion, or removal to a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEPP) as required by TEC § 25.007.
- ▷ Receive written notification of district and charter school surrogate parent appointments as required by TEC § 25.007. Written notification of the surrogate parent assignment must also go to the student’s designated education decision-maker.
- ▷ Sign and submit the form prohibiting using corporal punishment on the student or ensure the caregiver signs and submits the form.
- ▷ Ensure records transfer from previously attended schools.
- ▷ Consult with the education decision-maker and regional education specialist regarding retaining a student in a grade.



DECIDING WHERE A STUDENT ATTENDS SCHOOL

DFPS or the Community-Based Care provider is ultimately responsible for deciding where a student will attend school. Under ESSA and other federal laws, child welfare and school points of contact are required to work together to support education decision-making. Depending on the circumstances surrounding a student's placement, the opportunities and timeline for coordination will look different.



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In order to promote educational stability for students in foster care, federal child welfare and education law requires child welfare agencies and the student's school to maintain a student's school of origin when the student enters foster care and during any subsequent placement changes unless remaining in that school is not in the student's best interest¹¹⁹ (see *Chapter 8, on page 90*).



RESOURCES:

[Education Best Interest Coordination and Individual Transportation Plan Template for Students in Foster Care](#) - TASB, TEA, and DFPS worked together to develop resources to assist with collaborative decision-making and transportation coordination between education and child welfare systems in alignment with ESSA.

For more information on ESSA and coordination between child welfare and schools to support education decision-making see *Chapter 8*.

INVOLVEMENT OF THE STUDENT'S PARENTS OR OTHER FAMILY MEMBERS

When a student is in the managing conservatorship of DFPS, DFPS is authorized to make education and other important decisions for the student unless the court order indicates the biological family retains or another individual is given those rights. If educators are contacted by a parent and are unsure about discussing academic issues or allowing contact with the student, they should contact the caseworker or DFPS Education Specialist. Contact information for the student's caseworker can be located on Placement Authorization Form 2085 and Form 2085-E, Designation of Education Decision-Maker.