

CHAPTER

4



FOSTER CARE OVERVIEW: UNDERSTANDING THE FOSTER CARE SYSTEM

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CHAPTER 4

Foster Care Overview: Understanding the Foster Care System

This chapter provides an overview of the foster care system, including commonly used terms, phrases, and descriptions of people and systems involved in a student’s life while in foster care. The chapter also describes different living arrangements and addresses common questions and complexities related to the child welfare system. A hypothetical description of a student’s journey through foster care and the CPS “Stages of Service” are also included. A comprehensive list of terms and acronyms used by the child welfare and court systems is included in the glossary (*see page 113*). Lastly, a child in foster care has many rights. A list and description of these rights are described in Appendix B.

WHAT IS FOSTER CARE?

Foster care — When children can’t live safely at home and an appropriate non-custodial parent, relative, or close family friend is currently unable or unwilling to care for them, the court can give temporary legal possession to CPS and that agency temporarily places these children in foster care. Foster care settings include:

- Kinship Caregiver homes;
- Foster family homes;
- Foster family group homes;
- Residential group care facilities; and
- Facilities overseen by another state agency.

Foster care is meant to be temporary until a permanent living arrangement is found and CPS no longer has legal custody of the child. However, for some children, it can become permanent. CPS strives to ensure quality services for children in foster care. However, children in foster care may have to change placements several times while in foster care due to a variety of factors, such as licensing standards violations, court rulings, or changes in the foster home or facility. CPS consistently works towards increasing placement options to better match the needs of each individual child.

In Texas, CPS and the Texas Education Code use the term “substitute care” to refer to all children who are in the legal custody of CPS, including children who are placed either with a relative or in a licensed foster placement. “Conservatorship” is a term also used in the Texas Education Code and by CPS to describe the status of a youth who is placed in DFPS legal custody by a court order. Although not as commonly referenced, “substitute care” is interchangeable with the term “conservatorship.”

Conservatorship — There are two terms used to define whether a child is in short or long-term conservatorship:

- *Temporary Managing Conservatorship (TMC): DFPS may be the TMC while the agency works with the family on a reunification plan; or*
- *Permanent Managing Conservatorship (PMC): DFPS may be named the Permanent Managing Conservator for a child until custody is given to another individual or until the youth turns 18.*

Reminder: The term “foster care” is being used throughout this guide to refer to all children and youth in CPS conservatorship/substitute care.

HOW DOES A CHILD OR YOUTH ENTER THE FOSTER CARE SYSTEM?

A child or youth enters the foster care system when there is a “reason to believe” allegation of abuse and/or neglect. CPS must petition the court for approval to remove a child from his or her home because of safety concerns. Before a decision is made to remove a child, CPS must make reasonable efforts to safely maintain children with their families, including sometimes providing necessary supports and services. These services are called Family Based Safety Services (FBSS) and are provided by CPS staff, community agencies, or both. To ensure that reasonable efforts are made to keep



children in their homes, courts must approve all decisions to remove and must offer the parents and their attorneys an opportunity for a contested hearing within two weeks of the child's removal from the home.²⁴

WHERE CAN I GO TO LEARN MORE ABOUT REPORTING CHILD ABUSE AND NEGLECT?

Educators are mandated reporters of suspected child abuse and neglect. Schools are required to have policies and training for personnel regarding the reporting of suspected child abuse and neglect, in accordance with the relevant Texas statutes and the commissioner's rules.²⁵ Child abuse and neglect reports are made by phone, in-person, through postal mail, fax, or online. Most reports come from teachers, doctors, and law enforcement.²⁶

REPORTING CHILD ABUSE AND NEGLECT

If you suspect child abuse and/or neglect, you must make a report by calling **1-800-252-5400** or visiting www.txabusehotline.org

Call 911 if it is an emergency

(An emergency is a situation where a child faces an immediate risk of abuse or neglect that could result in death or serious harm.)



RESOURCES: Reporting Child Abuse and Neglect

DFPS, Online Training for Professionals — *a training course on how to report suspected abuse or neglect, including a video tutorial on mandatory reporting in the school setting, is available on the DFPS website:* www.dfps.state.tx.us/Training/Reporting/default.asp

DFPS, Report Abuse, Neglect, or Exploitation: www.dfps.state.tx.us/Contact_Us/report_abuse.asp

DFPS, "Reporting Abuse/Neglect: A Guide for School Professionals": www.dfps.state.tx.us/Training/Reporting/documents/Reporting_Guide_School_Professionals.pdf

DFPS, "A Guide For School Professionals" — *trifold brochure and fact sheet:* www.dfps.state.tx.us/Training/Reporting/documents/Reporting_Guide_Brochure.pdf

DFPS, "Reporting Abuse, Neglect or Exploitation" — *training handout on the law:* www.dfps.state.tx.us/documents/Contact_Us/documents/swiflyer.pdf

DFPS, Prevention and Intervention Resources — Programs Available in Your County: www.dfps.state.tx.us/Prevention_and_Early_Intervention/Programs_Available_In_Your_County/default.asp

TEA distributes important information for schools on reporting child abuse and neglect requirements. Please read March 6, 2013, To the Administrator Addressed (TAA) letter, "Child Abuse and Neglect Reporting and Requirements," including the attached list of resources and free training materials for more information: www.tea.state.tx.us/index4.aspx?id=25769803997

Additional resources are also available on the TEA *Child Abuse Prevention Overview* website: www.tea.state.tx.us/childabuse.html

WHAT TYPES OF ABUSE/NEGLECT DOES CHILD PROTECTIVE SERVICES (CPS) INVESTIGATE?

- ⇒ Emotional Abuse
- ⇒ Physical Abuse
- ⇒ Sexual Abuse
- ⇒ Abandonment
- ⇒ Physical Neglect
- ⇒ Medical Neglect
- ⇒ Neglectful Supervision
- ⇒ Refusal to Assume Parental Responsibility (RAPR)

Definitions of abuse and neglect as defined by Texas’ *Health and Safety Code (Chapter 481)* and *Penal Code (Chapter 21, 22, 43)*, which may result in investigation and placement in foster care are provided below:

FORM OF ABUSE/NEGLECT:	DEFINITION:
Emotional Abuse	<ul style="list-style-type: none"> • Mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning; • Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning; or • The current use by a person of a controlled substance as defined by Chapter 481 of the Health and Safety Code, in a manner or to the extent that the use results in mental or emotional injury to a child
Physical Abuse	<ul style="list-style-type: none"> • Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; • Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child; • The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical injury to a child; or • Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;



FORM OF ABUSE/NEGLECT:	DEFINITION:
Sexual Abuse	<ul style="list-style-type: none"> • Sexual conduct harmful to a child’s mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code; • Failure to make a reasonable effort to prevent sexual conduct harmful to a child; • Compelling or encouraging a child to engage in sexual conduct as defined by Section 43.01, Penal Code, including conduct that constitutes an offense of trafficking of persons under Section 20A(a)(7) or (8), Penal Code, prostitution under Section 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code; • Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Penal Code) or pornographic; • Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by 43.25, Penal Code; or • Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.
Abandonment	<ul style="list-style-type: none"> • The leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
Physical Neglect	<ul style="list-style-type: none"> • The failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
Medical Neglect	<ul style="list-style-type: none"> • The failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
Neglectful Supervision	<ul style="list-style-type: none"> • Placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child’s level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child; or • Placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child.
Refusal to Assume Parental Responsibility (RAPR)	<ul style="list-style-type: none"> • The failure by the person responsible for a child’s care, custody, or welfare to permit the child to return to the child’s home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

WHERE DOES A CHILD OR YOUTH LIVE WHEN PLACED IN FOSTER CARE?

There are a variety of different placement types for children and youth in foster care. Each placement is selected based on the child’s needs and the ability of the caregiver to best meet the child’s needs. The goal of each placement is to provide a child or youth with a safe, stable, and nurturing environment.



TIP: These settings may influence a student’s time during and after school differently. It is helpful when educators remain sensitive and informed of the variety of settings a student may live in and consider the impact of these environments on the student.

Below is a list of placement types in which a youth in foster care may live:

Placement Types:	Description:
Kinship Caregiver	A relative or fictive kin who provides care for a child. A relative is a member of the child’s biological family. A fictive kin is a person who has a longstanding and significant relationship with a child in DFPS conservatorship or with the child’s family.
Foster Home	A state-licensed home (usually temporary) for children in foster care. Caregivers known as “foster parents” receive a reimbursement for providing room, board, and transportation for children living in their home.
Emergency Shelter	A shelter facility that houses youth for up to 90 days while awaiting a longer-term foster placement.
Group Home	A licensed facility where multiple youth live. Staff oversee the facility and students live there 24/7.
Residential Treatment Centers (RTC)	Residential Treatment Centers are regulated by DFPS to provide placements and services to youth who require specialized services.



TIP: Schools can help with targeted foster parent recruiting.

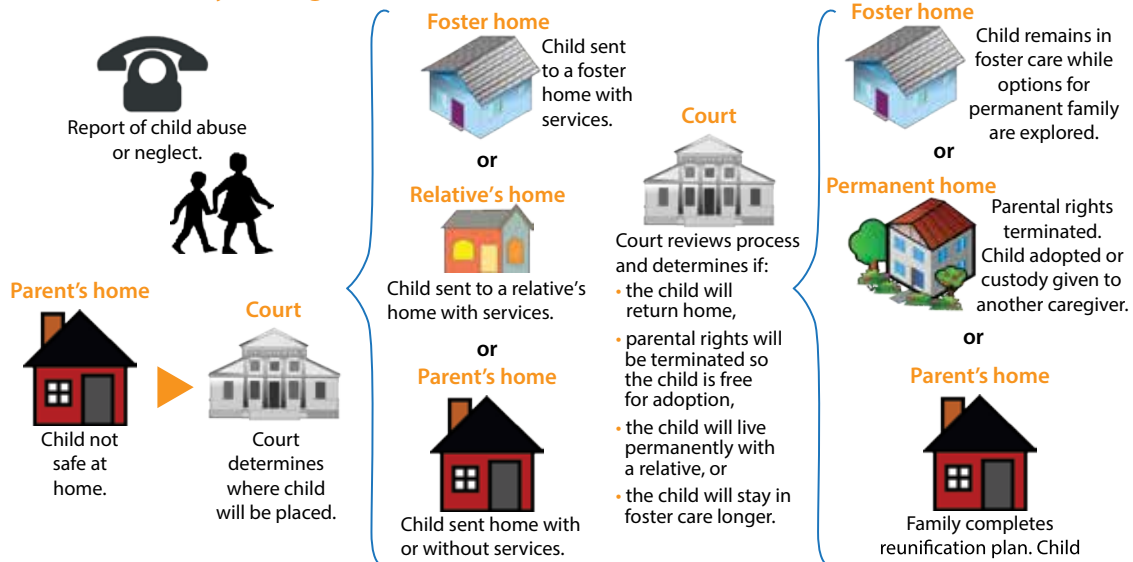
In partnership with DFPS, schools can play an active role in recruiting foster parents. Schools can specifically help increase the number of foster homes within school zones, especially in districts and school zones where there are a large number of children entering foster care. Maintaining children in their home school and/or district supports education stability. School personnel who are interested in becoming foster parents or know someone who might be should visit www.dfps.state.tx.us/Adoption_and_Foster_Care/Get_Started/default.asp or contact the regional DFPS office for more information.

WHAT IS A STUDENT’S JOURNEY THROUGH FOSTER CARE?

A student’s journey through foster care is more clearly understood through the CPS Stages of Service described below.

CPS Stages of Service:	Description:
Intake	DFPS administers a toll-free 24-hour hotline for reporting suspected abuse and neglect of children, the elderly, or people with disabilities.
Investigation	Intake reports are assigned and CPS workers interview children, parents, and others with knowledge of the family. The interviews help determine if abuse or neglect has occurred and evaluate child safety.
Family Based Safety Services (FBSS)	When it is safe to do so, CPS provides in-home services to help stabilize the family and reduce risk of future abuse or neglect. Most children and youth continue to live in their own homes or with relatives during this time. Parents maintain legal custody of the children.
Foster Care/Substitute Care/Conservatorship	When it is not safe for children or youth to live with their own families, CPS petitions the court to remove the children or youth from their homes. This process formally places a child in what is referred to as foster or substitute care.
Adoption	Once a child is available for adoption because parental rights have been terminated, the court may name other individuals as the child or youth’s legal parent. <i>(A lifetime college tuition and fee waiver is available for qualifying children who remain in foster care until age 18 and some of those who are adopted from DFPS) (see page 104-105 for eligibility requirements).²⁷</i>

A Child’s Journey Through Foster Care



This graphic is modified from *Educating Youth in State Care*, Initiative on Utah Children in Foster Care, May 2009, page 5.

See *Appendix D* for a more detailed flow chart describing the CPS process. Additionally, more information about the foster care system in Texas can be found on the DFPS website: www.dfps.state.tx.us/child_protection/

WHO ARE KEY PEOPLE INVOLVED IN THE LIFE OF A STUDENT IN FOSTER CARE?

When a child or youth is placed in foster care, there are many adults and service providers who play a critical role in meeting their physical and emotional needs. It is helpful for education professionals to have an understanding of the various people and systems that may work with a student in foster care.



Department of Family and Protective Services (DFPS):

School personnel may interact with DFPS staff and others involved in the life of a student (child or youth) in foster care, such as:

Caseworker:

The CPS caseworker is the primary DFPS staff responsible for the oversight of a child or youth's case and has multiple responsibilities. The caseworker is the direct link with the child or youth, caregiver, the court system, and multiple service providers. The caseworker is responsible for ensuring the child or youth's needs are met and that the child or youth receives all necessary and appropriate services while in foster care. The CPS caseworker visits with the child or youth at least once a month and supervises visits with siblings and family members. Caseworkers and caregivers are to be notified by school staff if they have concerns about a child or youth in DFPS conservatorship (*see page 68 for more information on education decision making and who to contact for school-related decisions*).

TIP: DFPS experiences high turnover rates of CPS staff and the caseworker for a particular child or youth may change without notice.

If you are unable to contact the child or youth's CPS caseworker, it is best to contact the CPS caseworker's supervisor. Contact information for both the caseworker and supervisor are listed on the Placement Authorization Form 2085 (*see page 50 and Appendix F*).



Caregiver:

The caregiver may be a relative, fictive kin, or a representative, such as a foster parent, affiliated with a child placing agency or CPS. Caregivers have responsibilities related to the student's education.

Regional Education Specialist:

Regional Education Specialists work for DFPS, specializing in education and school-related matters. They act as liaisons between DFPS and local schools and districts within their region. They advocate for educational and ancillary services that best meet the needs of children and youth in the school environment. Regional Education Specialists also serve as a primary resource for school staff on education matters involving students in foster care. Education Specialists also offer presentations on *Improving Educational Outcomes for Children and Youth in Foster Care*, *Trauma-Informed Care*, and *Intervention Strategies* to CPS staff and community stakeholders.



TIP: The DFPS Regional Education Specialist is an excellent contact to begin building partnerships with the local child welfare system.

The local DFPS Regional Education Specialist may help provide cross-system trainings and other information on services provided. For a list of DFPS Regional Education Specialists, visit www.tea.state.tx.us/index4.aspx?id=2147512296&menu_id=2147483761

Preparation for Adult Living Coordinator (PAL):

Preparation for Adult Living (PAL), in collaboration with public and private organizations, is a DFPS program that assists youth ages 16 and older in developing independent living skills. School personnel can support students by making sure they are informed about and enrolled in PAL services and further coordinating with the PAL provider to help students acquire job skills, academic records, and important life skills in preparation for exiting foster care and transitioning into college and career opportunities.



Visit DFPS's website for more information on PAL and the contact information for PAL in each region at: www.dfps.state.tx.us/Child_Protection/Youth_and_Young_Adults/Preparation_For_Adult_Living/default.asp (see Chapter 13 for more information on DFPS supports and resources available to assist students in transitioning to adulthood).

Family:

Alumni of foster care report concern and loss associated with being separated from family, which often influences students' learning processes and school experience. Each case is unique and students may or may not see their biological parents, siblings, or other family members. Sensitivity to visitation, court dates, and other circumstances, such as school assignments related to family, are important.

Community:

Students may be involved with community organizations such as after-school clubs, churches, mentoring organizations, and other community-based supports and services. Partnering with community-based organizations, sharing information about available resources, and involving these groups in supporting students is beneficial.

Therapy/Medical Providers:

Students may receive counseling, therapy, or other medical or mental health services. Schools are encouraged to coordinate with caregivers when possible to ensure that students' individual service needs are met and that regular school attendance is maintained.

Court/Judge:

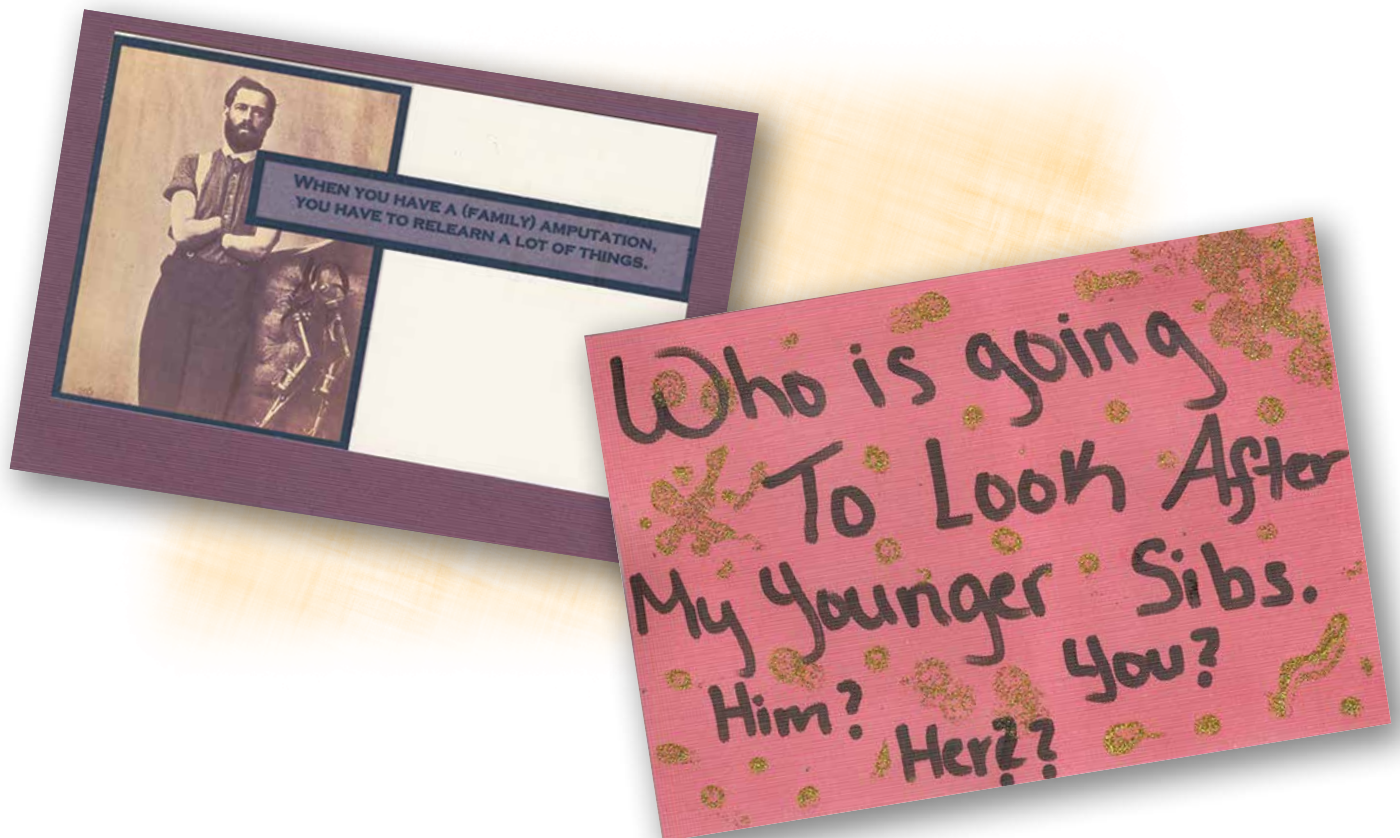
Courts play a critical role in child welfare cases. No child enters or leaves foster care without a court order. Every day, judges decide whether children return home, live with relatives, or become legally available for adoption. Understandably, court dates may cause a range of emotions for students. Caregivers may communicate with school staff about upcoming court dates and absences related to foster care hearings and other activities. Pursuant to state law, a school absence due to a court date is considered an *excused* absence.



TIP: Sometimes a student may have the option of participating in a court hearing via phone, which allows students to remain in school and not miss the entire school day due to traveling for a court date. Schools may assist by providing a phone and quiet, *private* space for students to use.

Once CPS determines that a child needs to live outside of his home due to abuse or neglect, CPS must file a lawsuit and ask a court to approve the child's living situation. Judges will continue to monitor the child's circumstances until the child resides in a safe, permanent home (*see page 21 for a timeline of required hearings*). At any court hearing required under Texas Family Code Chapters 262 and 263, the judge may ask, among other school-related questions, if:

- The child is attending school;
- The child is enrolled in a new school;
- The child's records have been transferred to the new school;
- The child's educational needs have been identified and addressed;
- An education decision-maker has been identified; or
- The child is appropriately placed in educational services.²⁸



Child's Attorney ad litem:

The Texas Family Code requires that an attorney ad litem (AAL) be appointed to represent the *legal interests* of a child when DFPS asks to be made the child's legal conservator or seeks to have the parents' rights to the child terminated.²⁹ Once a final order is entered, which could include granting Permanent Managing Conservatorship (PMC) to DFPS, the court may dismiss the attorney ad litem.



TIP: The attorney ad litem may contact the school for information regarding the child's education status and needs.

In an order appointing the attorney to represent the child, there should be language allowing the attorney to have immediate access to the child and any information relating to the child.³⁰ The attorney ad litem for the child is also entitled to records related to the child, including school records, without requiring a further order or release.³¹

Attorney for Parents and DFPS:

The attorney for a child's parents and the attorney for DFPS are other court-related representatives involved in a child's case. An attorney will represent DFPS in its legal proceedings. In some counties, DFPS will be represented by the local prosecutor's office — either the county or district attorney — or by a regional attorney who is an employee of DFPS. Parents' attorneys may be hired or appointed by the court, depending on the financial situation of the parents.³² The attorneys for parents may be lawyers in private practice or part of an office that specializes in representing parents in CPS cases, or the local public defender's office.

Guardian ad litem (GAL):

The Texas Family Code also requires that a guardian ad litem be appointed to represent a child's *best interests* when DFPS asks to be made the child's legal parent or seeks to have the parents' rights to the child terminated.³³ A guardian ad litem may be:

- A volunteer advocate, such as a Court Appointed Special Advocate (CASA);
- A professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;
- An adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or
- An attorney appointed to serve in the dual role of an attorney ad litem and guardian ad litem.³⁴

Similar to an attorney ad litem, a guardian ad litem is responsible for interviewing the child and each person who has knowledge of the case. Guardians ad litem take part in the court proceedings, including providing reports to the court.³⁵ Also, like attorneys ad litem, guardians ad litem are allowed access to the child and information regarding the child, including education information.³⁶

Court Appointed Special Advocates (CASA):

CASA volunteers serve as guardians ad litem (GALs) or volunteer advocates to represent the best interests of children in foster care. The CASA may contact the school in order to gather information, review school records, or interview school personnel in order to advocate for the child in court. As the child's guardian ad litem, a CASA is entitled to access relevant medical, psychological, educational and other information regarding the child.³⁷ In some instances, the student's CASA volunteer may play an active role in enrolling the child and advocating for his or her education needs. A CASA volunteer may be appointed to act as the surrogate parent for the child, unless a foster parent of the child is acting as the child's surrogate parent.³⁸ *Current and former educators make excellent CASA volunteers!* Local CASA nonprofit organizations recruit, train, and support CASA volunteers in most areas of the state. Consider becoming a CASA volunteer to advocate for the best interests of a child in court. Visit: www.texascasa.org.

WORKING WITH KEY PEOPLE IN A CPS CASE IN THE SCHOOL SETTING:

- ⇒ School personnel may be subpoenaed or requested to attend a court hearing regarding the CPS case.
- ⇒ Attorneys and guardians ad litem should be able to show a court order appointing them to represent the child in the CPS case. Most of these orders include language allowing the attorneys and guardians ad litem to have access to the child and to information regarding the child, including school records. These attorneys may attend “ARD” committee meetings (if invited by the person acting as the special education decision maker) or other school meetings for the child.

“ARD” stands for “admission, review, and dismissal.” The student’s ARD committee is responsible for developing, reviewing, and revising an individualized education program (IEP) for a child with a disability. The IEP details the special education services that the child is to receive.

- ⇒ Depending on the most recent court order in the CPS case, the birth parent may or may not have access to the student or to educational records. Check with the DFPS caseworker to find out who is responsible for education decisions and what access a birth parent may have to the child or the child’s records. Consult with the school’s attorney to determine the school district’s local policy for identifying who may have access to the student or to educational records (*see Chapter 9 for more information on Education Decision Making, FERPA & Information sharing*).
- ⇒ CASAs are sometimes appointed as surrogate parents for children who are receiving special education services (*see page 98*).
- ⇒ To help ensure the safety of people working on the student’s case, please do not make a copy for the student file of the caseworker, attorney ad litem, or CASA’s driver’s license. These may later be accessed by the student’s biological parent or other persons. It is acceptable to run information through the ISD Raptor system, but no photocopy should be made. The person working the case can also provide the school with contact information and an identification badge from the organization they represent.



It was hard to be a kid and focus at school when life had so many uncertainties.