

CHAPTER

9



EDUCATION DECISION MAKING, FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA), & SHARING EDUCATION INFORMATION WITH CHILD WELFARE STAKEHOLDERS

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CHAPTER 9

Education Decision Making, Family Educational Rights and Privacy Act (FERPA), & Sharing Education Information with Child Welfare Stakeholders

WHO IS RESPONSIBLE FOR EDUCATION DECISIONS?

When a court order places a child in DFPS conservatorship, state law provides that DFPS is authorized to assume roles usually assumed by parents, including the responsibility to make educational decisions on the child's behalf.⁹⁴ DFPS generally delegates certain day-to-day education decision making responsibilities to the child's caregiver.

DFPS uses *Placement Authorization Form 2085* as its primary way of designating to whom it has delegated education decision making authority. An individual holding a *Form 2085* naming him or her as primary caregiver for the child is operating under the authority of DFPS to make education decisions or to take actions to carry out DFPS decisions about the child's education. This person does not need to show any further proof to the school that he or she has that authority. A court order may also be submitted to the school (see page 50–51).



LAW: As result of the 83rd Texas Legislature, DFPS is required to notify the school (along with the court and other individuals, such as a CASA volunteer) as soon as possible after the child is taken into the state's care regarding who is designated to be the child's education decision maker.⁹⁵

Note: As discussed in Chapter 12, children 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 CPS or facility caseworker from being the special education decision maker of a student in foster care, they may be authorized to make other, non-special education-related decisions, and should work in collaboration with the special education decision maker or surrogate parent to ensure the child's special education needs are being met.





CAREGIVER & CASEWORKER GENERAL EDUCATION DECISION MAKING RESPONSIBILITIES:

Caregiver Responsibilities — Unless the DFPS caseworker 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 child in school, including providing identity or immunization information needed for enrollment.
- Determine, in conjunction with the child if appropriate, course selection and participation in extra-curricular activities.
- Attend routine school activities such as “Parent’s Night,” parent-teacher conferences, PTA meetings, and similar activities that involve parents.
- Approve the child’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 youth with understanding the Code of Conduct.
- Receive report cards, permission slips, and other routine school correspondence, including receiving homework assignments on behalf of the child if necessary.
- Have access to education records and the Education Portfolio. (DFPS is responsible to ensure that the education-decision maker has access to the child’s Education Portfolio⁹⁶)
- Be notified of and take action regarding disciplinary or attendance matters, as required by Texas Education Code § 25.007.
- Determine whether the child 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 the CPS caseworker 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 CPS caseworker makes the following education-related decisions, takes the following types of actions, or is contacted for the following purposes:

- Selects the school placement.
- Receives notification regarding truancy, suspension, expulsion, or removal to a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP) as required by Texas Education Code § 25.007.
- Signs and submits the form prohibiting on using corporal punishment on the child or ensures the caregiver signs and submits the form.
- Ensures records transfer from previously-attended schools.
- Consults with the education decision maker, regarding retaining a child in a grade.

Note: See also Notice to Court Regarding Education Decision Making under Texas Family Code § 263.004.⁹⁷



TIP: In many circumstances, the child’s parent may also participate in school-related activities and may be able to see his or her child’s records. Check with the DFPS caseworker about how much involvement a parent may have in school-related activities and decisions.

WHO DECIDES WHERE A STUDENT ATTENDS SCHOOL?

DFPS is responsible for deciding where a student will attend school. Federal law and CPS policy require DFPS to consider the appropriateness of the current education setting and the proximity to the school in which the child is enrolled at the time of removal when making foster care placement decisions.⁹⁸ DFPS is also responsible to ensure that every child in foster care has an educational stability plan.⁹⁹ Federal law requires DFPS to coordinate with the local education agency to ensure that the child remains enrolled in the school the child attended at the time of placement into foster care, unless remaining in that school is not in the child’s best interests. The law further requires that DFPS coordinate with the local education agency to maintain the child in his or her most recent school if there is a subsequent change in placement.¹⁰⁰ Therefore, in many cases, students should continue to attend the same school they were attending at the time they were removed from their home, even if the caregiver with whom they are now living does not reside in that school district’s attendance zone (*see page 62*).

When a child does have to be transferred to a new school due to safety or best interest concerns, the student will generally attend the school that is in the attendance zone of the caregiver’s residence.



For a checklist and information on best interest decision making, read: Legal Center for Foster Care and Education & National Center for Homeless Education, “Best Practices in Homeless Education, School Selection for Students in Out-of-Home Care”: center.serve.org/nche/downloads/briefs/school_sel_in_care.pdf

ARE BIOLOGICAL PARENTS STILL INVOLVED WHEN A CHILD IS IN FOSTER CARE? WHAT IS THE NATURE OF THEIR INVOLVEMENT? ARE THEY INVOLVED WITH THE CHILD’S SCHOOL?

The short answer is — it depends. Each case has different dynamics and decisions are made on a case-by-case basis. When a child is in the managing conservatorship of DFPS, DFPS is authorized to make education and other important decisions for the child 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 scholastic issues and/or allowing contact with the student, they should contact the caseworker for more information.

WHAT IMPACT DOES THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) HAVE ON MY ABILITY TO SHARE EDUCATION INFORMATION ABOUT STUDENTS IN FOSTER CARE?

Information sharing between child welfare and education is an important element in supporting the academic success of students in foster care. FERPA requires schools to protect the confidentiality of a student’s education records. FERPA is sometimes identified as a barrier to information sharing between child welfare and education agencies. However, FERPA’s confidentiality protections should not be an obstacle to providing records and information for students in foster care.¹⁰¹

- ⇒ Recent amendments to FERPA further clarify information sharing for students in foster care. The federal *Uninterrupted Scholars Act* allows education agencies to release education records to child welfare case workers or other representatives of a state or local child welfare agency.¹⁰²
- ⇒ According to FERPA, the caregiver or other person authorized by the child’s legal guardian should have access to education records.¹⁰³
- ⇒ FERPA regulations define a parent to include natural parent, guardian, or an individual acting as a parent in the absence of a natural parent or guardian.¹⁰⁴
- ⇒ FERPA permits school districts to release records in compliance with a court order or subpoena.¹⁰⁵
- ⇒ FERPA exceptions allow student records to be released by a school district to another school district where the student seeks or intends to enroll or where the student is already enrolled so long as the disclosure is for purposes related to the student’s enrollment or transfer, even if parental consent was not received.¹⁰⁶



LAW: In addition to federal provisions that promote information sharing between education and child welfare, state law also supports it. Amendments to Texas law, passed by the 83rd Texas Legislature, require school districts to notify the child’s educational decision-maker and caseworker regarding events that may significantly impact the education of a child (see page 91 for a comprehensive list of events where notification is required).¹⁰⁷

So what is the school’s responsibility when individuals call the school wanting information about a student?

It depends on who is calling. School staff should follow FERPA regulations when releasing school-related information. DFPS staff, the child’s caregiver, attorney ad litem, CASA, and others identified in the court order may access education information according to FERPA. **When in doubt, one can always ask to see either the court order or the DFPS Placement Authorization Form 2085.**



RESOURCES: FERPA and Information Sharing

The Uninterrupted Scholars Act:

Read a Joint Letter from the U.S. Department of Education and the Department of Health and Human Services addressing the *Uninterrupted Scholars Act*: ptac.ed.gov/sites/default/files/Joint_FERPA_Letter_with_ED_OESE_HHS_ACF_4_24_2013.pdf

View a Legal Center for Foster Care and Education video about the *Uninterrupted Scholars Act*: www.youtube.com/watch?v=4IkflR_Xx6Y&feature=player_embedded#

Read “*The Uninterrupted Scholars Act: How do Recent Changes to FERPA Help Child Welfare Agencies Get Access to School Records?*”: www.fostercareandeducation.org/portals/0/dmx/2013/02/file_20130211_145758_xjnFqt_0.pdf

The Legal Center for Foster Care and Education has additional guidance addressing FERPA and information sharing:

“Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care”: www.americanbar.org/content/dam/aba/migrated/child/education/publications/mythbusting2.authcheckdam.pdf

“Solving the Data Puzzle — A How-to Guide on Collecting and Sharing Information”: www.americanbar.org/content/dam/aba/migrated/child/education/publications/solvingthedata puzzle.authcheckdam.pdf

