



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

Serving Texas Schools Since 1949

Child Welfare Issues in Texas Public Schools

Published online in [TASB School Law eSource](#)

The following chart contains common questions and short answers about child welfare issues in public schools, including child abuse reporting, investigation, and foster care issues. More complete information can be found in the resources cited in the chart. School employees should consult legal counsel about these issues as needed.

This chart includes the following abbreviations:

CPS	Child Protective Services (a division of the Department of Family and Protective Services)
DFPS	Department of Family and Protective Services
ESSA	Every Student Succeeds Act
FERPA	Family Educational Rights and Privacy Act
ISD	Independent School District
PCSP	Parental Child Safety Placement
STI	Sexually Transmitted Infection
TAC	Texas Administrative Code
TDSHS	Texas Department of State Health Services
TEA	Texas Education Agency
TEC	Texas Education Code
TFC	Texas Family Code
THRC	Texas Human Resources Code
TPC	Texas Penal Code

Question	Short Answer	Citations	Other Resources
Required Training			
<p>1. Who must receive training on child abuse and neglect?</p>	<p>All school employees were to be trained by May 31, 2015. Each year, all new employees must be trained.</p> <p>All school board members must complete continuing education every two years on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.</p>	<p>Tex. Educ. Code §§ 11.159(c), 38.0041.</p> <p>19 Tex. Admin. Code §§ 61.1051(c)-(d), .1(b)(7).</p> <p>TASB Policy DMA(LEGAL).</p>	<p>TEA, Child Abuse Prevention an Overview</p>
<p>2. Who provides the training?</p>	<p>School districts and charter schools.</p> <p>Online resources are available through TEA, DFPS, Children’s Advocacy Centers, and others. Note, however, that in order to provide a training that covers all elements of Texas Education Code section 38.0041, a district may need to draw on multiple sources, as well as local organizations.</p>	<p>Tex. Educ. Code § 38.0041.</p>	<p>TASB’s Online Learning Center, Child Abuse Prevention: What Board Members Need to Know about Sexual Abuse, Sex Trafficking, and Other Maltreatment of Children</p> <p>Darkness to Light</p> <p>DFPS, FAQ About Reporting Abuse</p> <p>DFPS, Reporting Suspected Abuse or Neglect of a Child: A Guide for</p>

Question	Short Answer	Citations	Other Resources
			Professionals Children’s Advocacy Centers TEA, Child Abuse Prevention Mandatory Reporting, Training & Reminders
<p>3. What must be included in the training?</p>	<p>Factors indicating that a child is at risk for sexual abuse, sex trafficking, or other maltreatment; warning signs of sexual abuse, sex trafficking, or maltreatment; internal procedures for seeking assistance for a child who is at risk for sexual abuse, sex trafficking, or other maltreatment; techniques for reducing risk of sexual abuse, sex trafficking, or other maltreatment; and community organizations with relevant programs.</p>	<p>Tex. Educ. Code § 38.0041(c)(2). Tex. Hum. Res. Code § 42.002(23) (defining <i>maltreatment</i> as abuse or neglect under Texas Family Code section 261.001).</p>	
<p>4. How should a district keep a record of the training?</p>	<p>School districts and charter schools must maintain records of the training with the name of each attendee.</p>	<p>Tex. Educ. Code § 38.0041(d).</p>	
<p>5. What other notices are required?</p>	<p>Relevant policies must be reviewed and distributed to all staff annually. The policies must be in both the district improvement plan and the student handbook.</p>	<p>Tex. Educ. Code §§ 38.0041-.0042.</p>	Model Student Handbook TEA, Child Abuse Poster in English

Question	Short Answer	Citations	Other Resources
	Districts must also display a child abuse poster on each campus and “No Human Trafficking Signage” at locations designated by TEA rule.	19 Tex. Admin. Code § 61.1051(b), (e)-(f). 19 Tex. Admin. Code § 61.1053. TASB Policy FFG(LEGAL).	TEA, Child Abuse Poster in Spanish TEA, Human Trafficking of School-Aged Children
Reporting Abuse and Neglect			
1. Who is a <i>professional</i> for reporting purposes?	An individual, including a teacher or nurse, who is licensed or certified by the state and has direct contact with students in the normal course of duties for which the individual is licensed or certified.	Tex. Fam. Code § 261.101(b).	DFPS, When and How to Report Child Abuse DFPS, Guide for Reporting Abuse to CPS TASB, Reporting Child Abuse and Neglect
2. Who else has a duty to report?	Everyone. Every person, including every school employee, volunteer, contractor, parent, and attorney.	Tex. Fam. Code § 261.101(a)-(b).	
3. What triggers a report?	For all, having reasonable cause to believe a child has been adversely affected by abuse or neglect. For professionals, having reasonable cause to believe a child has been or may be	Tex. Fam. Code § 261.101(a)-(b). TASB Policy FFG(LEGAL).	DFPS, Recognize the Signs of Child Abuse

Question	Short Answer	Citations	Other Resources
	abused, neglected, or may have been a victim of indecency with a child.		
4. How is a report made?	Reports may be made by phone or online. Call 911 or local law enforcement if the situation is an emergency.		By Phone: 800-252-5400 Online: Texas Abuse Hotline
5. How quickly must a report be made?	Immediately. A professional must file the report within 48 hours after the professional first has reasonable cause to believe that the child has been abused, neglected, or was a victim of indecency with a child. District policy cannot require an employee to report first to a district administrator before reporting to DFPS or law enforcement.	Tex. Fam. Code § 261.101(a)-(b). 19 Tex. Admin. Code § 61.1051(b)(5).	
6. Who is a <i>child</i> ?	A person under 18 who is not and has not been married or who has not had the disabilities of minority removed.	40 Tex. Admin. Code § 707.605(a)(3).	
7. What is <i>abuse</i> ?	The lengthy statutory definition of abuse includes mental or emotional injury, physical injury, sexual conduct, trafficking, failure to prevent substantial harm or sexual abuse to a child, and drug use that harms a child by a person responsible for the child’s care.	Tex. Fam. Code § 261.001(1). 40 Tex. Admin. Code §§ 707.787 (emotional abuse), .789	

Question	Short Answer	Citations	Other Resources
		(physical abuse), .791 (sexual abuse), .793 (labor trafficking), .795 (sex trafficking).	
8. What is <i>neglect</i> ?	The lengthy statutory definition of neglect includes an act or failure to act with blatant disregard for the consequences that results in harm to the child or that creates an immediate danger to the child's physical health or safety. Neglect includes placing a child in a situation requiring judgment beyond the child's capacity, failing to provide medical care, failing to provide for a child's basic needs, exposing a child to child abuse, placing a child in or failing to remove a child from a situation in which the child would be exposed to an immediate danger of harmful sexual conduct, and failing to arrange for the necessary care of a child in certain circumstances.	Tex. Fam. Code § 261.001(4). 40 Tex. Admin. Code §§ 707.465 (abandonment), .467 (neglectful supervision), .469 (medical neglect), .471 (physical neglect), .473 (refusal to assume parental responsibility).	

Question	Short Answer	Citations	Other Resources
9. When is it mandatory to report suspected indecency with a child?	Professionals must report when they have reasonable cause to believe that a child is a victim of the offense of indecency with a child and the child has been abused.	Tex. Penal Code § 21.11. Tex. Fam. Code § 261.101(b).	
10. Can one person report on behalf of the school?	No. A professional may not delegate or rely on another person to make a report. Each professional school employee who suspects abuse or neglect must make a report.	Tex. Fam. Code § 261.101(b).	
11. Should a report be made to DFPS, law enforcement, or both?	Generally, a person can submit a required report of suspected abuse or neglect to either law enforcement or to DFPS. But if the report involves suspected abuse or neglect by an individual responsible for the care, custody or welfare of the child, such as a parent or a teacher, then the report must always be made to DFPS. Often, school district employees choose to report to both agencies to ensure a swift response. DFPS and law enforcement have mutual obligations to inform each other immediately about reports of abuse.	Tex. Fam. Code §§ 261.103, .105(a)-(b). 40 Tex. Admin. Code § 707.487.	

Question	Short Answer	Citations	Other Resources
12. Does a report to a school district peace officer satisfy the requirement?	No, if the report involves the abuse or neglect of a child by an individual responsible for the care, custody, or welfare of the child it must be reported to DFPS.	Tex. Fam. Code § 261.103(c).	
13. How should a school employee report child trafficking?	As with abuse and neglect, educators must report suspected trafficking of a child within 48 hours. Reports involving the trafficking of a child must be made to local or state law enforcement and DFPS. For purposes of human trafficking reporting, local law enforcement does not include a school district’s police department.	Tex. Fam. Code §§ 261.001(1)(L), .101(b), .103.	TEA, To the Administrator Addressed Letter Re: Child Abuse and Neglect, including Human Trafficking, Prevention and Awareness Reminders and Requirement, Oct. 28, 2021
14. Should school employees report peer harassment, abuse, or bullying?	Not to DFPS. DFPS investigates only individuals with responsibility for a child’s care, custody, or welfare. Unless a parent, caregiver, or school employee is causing or permitting the abuse, the issue will be referred to law enforcement.	Tex. Fam. Code § 261.001(5).	
15. In the absence of an allegation that a child was a victim of abuse or neglect by someone with responsibility for the child’s care, custody, or welfare, should school	Depending on the age of the child, a crime may have been committed or there may be a presumption of inadequate supervision of the child by the child’s parent or caretaker. As a general rule, report to law enforcement	Tex. Fam. Code § 261.001(5). Tex. Penal Code § 43.25.	

Question	Short Answer	Citations	Other Resources
<p>employees report when a child has been sexually active, such as when a child is pregnant or has an STI?</p>	<p>if the child is under 14 or the sexual partner is more than 3 years older than the child.</p> <p>Based on informal guidance, DFPS is likely to find that the following facts give rise to a duty to report suspected child abuse or neglect:</p> <ul style="list-style-type: none"> • the child is 12 or younger and is pregnant or has a sexually transmitted infection (STI) and the circumstances that caused the pregnancy or STI are unknown; • the child is 13 or under, is engaging in sexual activity, and a school employee believes the child’s parent is aware but is not taking steps to prevent the child from having sex; or • the child is 14 or older, is engaging in sex with a partner who is more than 3 years older, and the school employee believes the parent consents to the sexual contact. 		

Question	Short Answer	Citations	Other Resources
<p>16. Should school employees report to DFPS when children engage in sexual activity, or simulations of sexual activity, with each other?</p>	<p>Report to DFPS when there is reason to believe, based on the circumstances, that a child’s behavior may be the result of abuse or neglect by an adult. For example, overly sexualized behavior by young children could be an indication that a child has been subjected to sexual abuse or exposed to harmful sexual conduct.</p>	<p>Tex. Fam. Code § 261.001(1), (4)(A)(ii)(d).</p>	
<p>17. Should school employees report a child’s truancy or apparent lack of parental supervision?</p>	<p>The following, in and of themselves, are not cause for a report: truancy; running away from home; juvenile conduct indicating a need for supervision; school-age children unattended for a portion of the day (“latchkey kids”); and children who cause harm to self or others.</p> <p>Nevertheless, a report should be made if surrounding circumstances indicate possible abuse or neglect.</p>	<p>40 Tex. Admin. Code § 707.483.</p>	
<p>18. When should school employees report incidents of excessive force in physical discipline or improper restraint or seclusion at school?</p>	<p>Not every incident of excessive force or improper restraint or seclusion rises to the level of child abuse. Abuse and neglect share the same meaning in both school and family investigations. Abuse and neglect in a school setting do not include use of restraints or seclusion,</p>	<p>40 Tex. Admin. Code § 707.607.</p>	

Question	Short Answer	Citations	Other Resources
	actions believed to be immediately necessary to prevent imminent harm to the child or others, or reasonable discipline (even if the use of force, seclusion, or restraint might be considered improper by educational standards) if the actions do not meet the legal definitions of abuse or neglect.		
19. If a district receives a complaint, tip, or other information alleging abuse by a school employee, should the district confront the school employee before making a report?	As described below, DFPS and law enforcement strongly discourage notifying alleged perpetrators before DFPS can commence an investigation due to the high risk that valuable evidence (such as text messages, emails, etc.) will be destroyed before the investigation begins.	Tex. Fam. Code §§ 261.303, .406. 40 Tex. Admin. Code §§ 707.615, .619.	
20. Is a reporter’s identity confidential?	Yes, the identity of a reporter is confidential and is redacted from all records shared outside of DFPS or law enforcement. In addition, reporters have whistleblower protection and immunity from legal claims arising out of the report.	Tex. Fam. Code §§ 261.101(d), .106, .110, .201.	

Question	Short Answer	Citations	Other Resources
<p>21. What information should the reporter provide?</p>	<p>The reporter must identify, if known:</p> <ul style="list-style-type: none"> • the name and address of the child; • the name and address of the person responsible for the care, custody, or welfare of the child; • the facts that caused the reporter to believe the child has been abused or neglected and the source of the information; • the reporter’s name, telephone number, and home or business address; and • any other pertinent information concerning the alleged or suspected abuse or neglect. <p>Although anonymous reporting is not permitted, the identity of the reporter remains confidential (see above). DFPS may use the contact information provided to ask the reporter clarifying or additional questions. It’s important that the reporter provide contact information for after-hours.</p>	<p>Tex. Fam. Code § 261.104(a)</p>	

Question	Short Answer	Citations	Other Resources
Child Abuse Investigations			
1. When will a report be treated as a school investigation?	A report will be treated as a school investigation when the allegations would meet the legal definition of abuse or neglect, the alleged perpetrator meets the definition of <i>school personnel or volunteer</i> , the alleged victim was a child at the time, the abuse occurred in the current school year or there is a likelihood that sufficient evidence can be obtained, and the abuse happened in a <i>school setting</i> .	40 Tex. Admin. Code § 707.609 (referencing definitions in 40 Texas Administrative Code section 707.607).	
2. Will a district be notified when a school employee is being investigated regarding an allegation of abuse in the school?	<p>If DFPS determines that that alleged abuse involves an employee at the student’s school, DFPS must orally inform the superintendent.</p> <p>Before conducting an investigation of abuse in a school setting, DFPS must notify the school principal of the nature of the report and the time the investigator will visit the campus.</p>	<p>Tex. Fam. Code § 261.105(d).</p> <p>40 Tex. Admin. Code § 707.615(a).</p>	
3. May a superintendent tell an employee suspected of abuse that a DFPS investigation is starting?	A DFPS investigator beginning an investigation in a school setting must request that the principal not alert the alleged perpetrator or others regarding the report until the investigator has first	<p>40 Tex. Admin. Code § 707.615(c).</p> <p>See 40 Tex.</p>	

Question	Short Answer	Citations	Other Resources
	had an opportunity to interview the alleged perpetrator.	Admin. Code § 707.491(c) (indicating that initial interviews can be announced or unannounced at the option of the investigator).	
4. Should an employee accused of abuse be suspended from duties?	Depending on the circumstances, it may be appropriate to place an individual on administrative leave pending an investigation or otherwise take steps to separate the accused from children in the school setting. The timing of this leave should take into consideration the need for secrecy, if any, regarding the launch of a DFPS investigation.		
5. How soon will a DFPS investigator respond to a report of abuse or neglect?	DFPS is required to respond within 24 hours to priority one reports (defined as reports involving an immediate risk of death or serious harm) and within 72 hours to priority two reports (all other reports).	Tex. Fam. Code §§ 261.301(d), .406. 40 Tex. Admin. Code § 707.485.	DFPS, Child Protective Investigations (CPI)

Question	Short Answer	Citations	Other Resources
6. Must a DFPS investigator be permitted to interview students or staff at school?	Yes, and the investigator may determine the circumstances of the interview, including whether the interview is announced in advance and whether anyone (including a school employee) may attend.	<p>Tex. Fam. Code §§ 261.302-.303, .409.</p> <p>Tex. Att’y Gen. Op. No. DM-0476 (1998).</p> <p>TASB Policy GRA(LEGAL).</p>	
7. What kind of identification can be required for an investigator?	An investigator may be asked to show identification, such as a state-issued ID or a driver’s license.		
8. What if parents tell school employees not to let DFPS talk to their child without contacting the parents first?	The school may inform a DFPS investigator of the parents’ request, but the school may not refuse to grant access to the student in accordance with the investigator’s directives.	<p>Tex. Fam. Code §§ 261.302-.303, .409.</p> <p>Tex. Att’y Gen. Op. No. DM-0476 (1998).</p> <p>TASB Policy GRA(LEGAL).</p>	

Question	Short Answer	Citations	Other Resources
<p>9. What records can a district give DFPS during an investigation?</p>	<p>Generally, under FERPA, parental consent is required before a school district can release a student’s personally identifiable student record information, other than directory information. Three exceptions may permit a school district to share confidential records with a child abuse investigator without parental consent:</p> <ul style="list-style-type: none"> • Health and safety, if there is an “articulable and significant threat” to the health or safety of the student or of another individual. • CAPTA, the Child Abuse Prevention and Treatment Act, which requires school officials to report child abuse and release records related to suspected abuse or neglect. • A subpoena, and while normally the district must notify parents before complying with a subpoena, notice is not required if the issuing agency requires the content of the subpoena to remain confidential. 	<p>20 U.S.C. § 1232g, 34 C.F.R. Part 99.</p> <p>34 C.F.R. §§ 99.31(a)(9)-(10), .36.</p> <p>Tex. Fam. Code § 261.303.</p> <p>42 U.S.C. § 5106a(b)(1)(a).</p>	<p>See Family Policy Compliance Office letter, U.S. Dep’t of Educ. to MN Dep’t of Children, (Nov. 21, 2006)</p>

Question	Short Answer	Citations	Other Resources
<p>10. Will the district be told the result of the DFPS investigation?</p>	<p>After an investigation of abuse in a school, DFPS sends the completed report to TEA. On request, the report is also provided to SBEC, the school district board of trustees or governing body of the charter school, the superintendent, and the principal or director, unless the principal or director is alleged to have committed the abuse or neglect.</p>	<p>Tex. Fam. Code § 261.406(b).</p>	
<p>11. What if a school employee is investigated for the abuse or neglect of a child who is not a student (i.e. a non-school investigation), such as an allegation that the school employee abused or neglected the employee’s own child at home?</p>	<p>After an investigation report, DFPS shall release information regarding a person alleged to have committed abuse or neglect to TEA, SBEC, and the local district if DFPS determines that the accused poses a substantial and immediate risk to children outside his or her family and the release of information is necessary to protect other children.</p>	<p>Tex. Fam. Code § 261.308(d).</p>	
<p>12. What can district employees tell a child’s parents about a DFPS investigation involving the child?</p>	<p>School district employees should not release information to parents about ongoing investigations. After a child abuse investigation is complete, parents may seek information directly from DFPS.</p>	<p>Tex. Fam. Code § 261.406(b).</p>	

Question	Short Answer	Citations	Other Resources
<p>13. Does a school district have an obligation to complete its own investigation of alleged abuse of a student by a school employee? How should a district coordinate with DFPS and law enforcement?</p>	<p>Both state and federal law suggest that when a school employee is accused of abusing a student a school district should not rely solely on investigations by other entities but should conduct its own investigation. For the reasons explained herein, however, the district must carefully avoid interfering with a law enforcement or DFPS investigation. School employees should consult closely with legal counsel regarding this matter.</p>		
<p>14. Will information about a DFPS investigation be shared during SBEC proceedings?</p>	<p>Yes, in a contested case related to SBEC or other licensure, either party may request information for the administrative proceeding.</p> <p>In addition, SBEC will receive or can request investigation information from DFPS.</p> <p>This in no way alters superintendents' reporting obligation to SBEC.</p>	<p>Tex. Fam. Code § 261.201(b-1).</p> <p>Tex. Fam. Code §§ 261.308(d)-(e), .406(b).</p> <p>19 Tex. Admin. Code § 249.14.</p>	

Question	Short Answer	Citations	Other Resources
Alternative or Temporary Care Arrangements			
<p>1. Are all students living with relatives or other caregivers considered to be in foster care?</p>	<p>No, often a student living in a household without a parent is doing so through an informal arrangement, without formal documentation. (See power of attorney, below.) In addition, after completing an investigation, DFPS may permit temporary placement with extended family while changes are made to the home environment to avoid removal (See PCSP, below.) These arrangements are not considered foster care. If, however, a child is removed from home by DFPS under a court order and placed with a relative in Kinship Care, this is considered foster care, and the student will have a DFPS Placement Authorization Form 2085 (see below).</p>		
<p>2. What is a Parental Child Safety Placement (PCSP) agreement?</p>	<p>A PCSP agreement is when DFPS and a parent agree on a short-term, out-of-home placement for a child because CPS has determined that the child cannot safely live in the parent’s home due to certain factors. The purpose of a PCSP is to keep the child safe until the child can safely return to the parent.</p>	<p>Tex. Fam. Code ch. 264, subch. L.</p>	<p>DFPS, Parental Child Safety Placement (PCSP) Resource Guide</p>

Question	Short Answer	Citations	Other Resources
	<p>If a child is in a PCSP pursuant to a DFPS investigation, the parties may enter into an authorization agreement for a nonparent relative to allow the caregiver to make certain decisions on behalf of the child. The agreement gives the nonparent relative temporary authority to authorize medical care, enroll the child in school, and agree to extracurricular activities.</p>	<p>Tex. Fam. Code § 34.002.</p>	
<p>3. How should school employees respond if parents appear to be violating the terms of a PCSP?</p>	<p>School employees should give parents full rights and privileges, regardless of a PCSP agreement. A PCSP is voluntary by all parties, and parents can revoke at any time. Under the agreement, parents retain full parental rights.</p>	<p>Tex. Fam. Code §§ 34.003(b)(6), .007.</p>	
<p>4. What is Kinship Care?</p>	<p>Kinship Care is substitute care by a family member or <i>fictive kin</i> (nonrelatives with whom the child has a close, long-term relationship) after DFPS removes a child from his or her home. In these instances, DFPS is the managing conservator of the child, and placement with the caregiver is established by a court order.</p>		<p>DFPS, Kinship Care</p>

Question	Short Answer	Citations	Other Resources
5. How should school employees respond if parents appear to be violating a court order regarding Foster Care or Kinship Care?	Call the child’s DFPS caseworker (or law enforcement for emergency response).		
6. For students living with friends or extended family without a formal arrangement, can a school district require a power of attorney?	A school district may request a power of attorney, but a student who is residing in the district is likely to be eligible for admission regardless. A student who is not homeless, but is living separate from a parent or guardian, can be denied admission only if the district determines that the student is present for the purpose of extracurriculars or has had certain recent disciplinary issues.	Tex. Educ. Code § 25.001(b)(4)-(5), (d). TASB Policy FD(LEGAL).	
7. Is a student living with a relative or friend considered homeless?	Possibly. The answer depends on complicated factors such as the duration of the student’s expected stay at this location and the availability of a safe option to return home for the student.	Tex. Educ. Code § 25.001(b)(5). TASB Policy FDC(LEGAL), FDC(EXHIBIT).	Texas Education for Homeless Children and Youth (TEHCY) Program
Foster Care			
1. How does a school district know who is in foster care?	The individual who enrolls the student should present DFPS Placement Authorization Form 2085 or a court order naming DFPS the child’s managing conservator.	Tex. Educ. Code § 7.029.	TEA, Foster Care and Student Success Resource Guide, Chapter 7

Question	Short Answer	Citations	Other Resources
	<p>Upon receipt of this form, the student should be reported in PEIMS as being in foster care.</p> <p>Form 2085 is also the appropriate documentation for automatically enrolling the student in the Free and Reduced Lunch program.</p>		<p>TEA, PEIMS DATA Collection Resources</p> <p>Tex. Dep't of Agric., National School Lunch Policy</p>
<p>2. What is the role of a foster care liaison?</p>	<p>Each school district must appoint an employee to serve as a liaison to assist in the enrollment or transfer of students in foster care. The name of the employee must be reported to TEA through AskTED.</p>	<p>Tex. Educ. Code § 33.904.</p>	<p>TEA, Foster Care Points of Contact</p> <p>TEA, Foster Care and Student Success Resource Guide, Chapter 5</p>
<p>3. Where is a student in foster care entitled to enroll?</p>	<ul style="list-style-type: none"> • The campus in the attendance area of the foster parents’ residence. • The public school the child attended before entering foster care, until the child completes the highest grade level offered by the school, even if the child exits foster care. • Any other public school where the child has been enrolled prior to or during foster care, until the child successfully completes the highest grade level offered by the school, 	<p>Tex. Educ. Code § 25.001(f)-(g-1).</p>	<p>TEA, Foster Care and Student Success Resource Guide, Chapter 6</p> <p>U.S. Dep’t of Educ., Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care</p>

Question	Short Answer	Citations	Other Resources
	<p>even if the child moves outside the attendance area or exits foster care.</p>		
<p>4. If a student in foster care wants to attend the student’s school of origin, who provides the transportation?</p>	<p>ESSA required each school district to develop a written plan with DFPS to coordinate transportation by Dec. 10, 2016. Although ESSA states that school districts “may agree” to pay for or provide transportation, proposed ESSA regulations and non-regulatory guidance indicate that if agreement is not reached regarding which agency will pay any additional costs of transportation, the affected school districts must nevertheless provide the transportation until agreement is reached.</p>	<p>20 U.S.C. § 6312(c).</p>	<p>U.S. Dep’t of Educ., Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care</p> <p>Child Welfare Information Gateway, Educational Stability and ESSA</p> <p>TEA, Foster Care and Student Success Resource Guide, Chapter 8</p>
<p>5. If it is in the best interest of a child in foster care to change schools, how quickly must the child be enrolled?</p>	<p>If DFPS removes a child from school, he or she must be returned to school not later than the third school day after the date on which the child is taken into conservatorship, unless a physical or mental condition of the child makes attendance impossible. The receiving school must immediately enroll the child.</p> <p>DFPS policy and provider contracts require the child’s enrollment or return to school in two days’ time.</p>	<p>Tex. Fam. Code § 264.115.</p>	<p>TEA, Foster Care and Student Success Resource Guide, Chapter 6</p>

Question	Short Answer	Citations	Other Resources
6. What if school records are incomplete?	A student is entitled to immediate enrollment, with or without school records. Records must be transferred within 10 working days.	Tex. Educ. Code §§ 25.002(g), .007(b)(1).	TEA, Foster Care and Student Success - Education Laws and Guidance TEA, Foster Care and Student Success Resource Guide, Chapter 6
7. What should a district do to assist a student in foster care with the transition to a new school?	Students in foster care often experience disruption in their education and home lives. Districts are required by law to have certain systems in place to ease transitions. For example, the Texas Administrative Code requires districts to facilitate transfer of student records, develop systems on the award of credit, placement in programs and courses, access to extracurricular activities, and more. In addition, districts must hold an enrollment conference for the student within the first two weeks of school or as soon as feasible.	19 Tex. Admin. Code ch. 89, subch. FF TASB Policy FFC (Legal)	TEA, Foster Care Information and Resources
8. What if a student’s immunization records are incomplete?	First, have the school nurse check whether the records are available in ImmTrac2.	Tex. Educ. Code §§ 25.002(g), 38.001(e).	Texas Department of State Health Services, Texas School & Child-Care Facility Immunization

Question	Short Answer	Citations	Other Resources
	<p>If not, DFPS is permitted 30 days to provide the records. TDSHS, however, does not permit provisional enrollment unless the child has begun the required immunizations and is proceeding as promptly as medically feasible.</p>	<p>Tex. Att’y Gen. Op. No. GA-0178 (2004).</p>	<p>Texas Department of State Health Services, ImmTrac2 FAQs</p> <p>TEA, Foster Care and Student Success Resource Guide, Chapter 6</p>
<p>9. Who in the school setting should be aware that a student is in foster care?</p>	<p>The fact that a student is in foster care is confidential under both FERPA and other law. Only educators and other personnel with a need to know should be informed about the student’s status.</p> <p>Texas law requires DFPS to notify the school regarding who is authorized to make education decisions for the child in foster care. DFPS uses Form 2085 E Notice of Education Decision-Maker for this notice to the school.</p>	<p>20 U.S.C. § 1232g(b).</p> <p>Tex. Fam. Code § 263.004.</p>	<p>U.S. Dep’t of Educ., Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care</p> <p>TEA, Foster Care and Student Success Resource Guide, Chapter 7</p> <p>DFPS, Designation of Education Decision-Maker</p>
<p>10. Who should the school communicate with about school matters for a student in foster care?</p>	<p>Form 2085 E identifies the student’s education decision maker, which is generally the child’s daily caregiver. All routine decisions and communications are to this individual. The form also names the student’s DFPS case worker, who should be informed of major educational developments, as listed on the form. If the surrogate parent is</p>	<p>Tex. Educ. Code § 25.007(b)(10).</p>	<p>TEA, Foster Care and Student Success Resource Guide, Chapter 9</p> <p>DFPS, Designation of Education Decision-Maker</p>

Question	Short Answer	Citations	Other Resources
	known, that information will also be included on the form.		
11. What if a school has questions or concerns about a child in foster care that cannot be answered or solved with the foster parent or caseworker?	DFPS has regional education specialists who are trained to assist in such instances.		TEA, Foster Care and Student Success Resource Guide, Chapters 4 & 8
12. Who can see the education records of a student in foster care?	The child’s education decision maker and case worker certainly have access to the child’s education records. Others may also have access when named by a court, including the child’s attorney, residential treatment center, biological parent, or court appointed special advocate (CASA).	20 U.S.C. § 1232g(b)(2)(B).	U.S. Dep’t of Educ., Uninterrupted Scholars Act Guidance U.S. Dep’t of Educ., Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care
13. Who should serve as the “parent” for purposes of special education?	If known, DFPS will include the name of any surrogate parent the school or the court has named to make special education decisions on the Form 2085 E. If one is not already named, the school district must appoint a surrogate parent if the student is eligible for special education services. State law expresses a preference for the foster parent to serve, but the child's caseworker should also be consulted.	20 U.S.C. § 1415(b)(2)(A)(i). 34 C.F.R. § 300.30(b). Tex. Fam. Code § 263.0025. Tex. Educ. Code §§ 29.001(10),	U.S. Dep’t of Educ., Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care TEA, Foster Care and Student Success Resource Guide, Chapter 12

Question	Short Answer	Citations	Other Resources
		.015. 19 Tex. Admin. Code § 89.1047.	
14. Why are students in foster care away from school so often?	While case workers and foster parents are encouraged to minimize disruptions to the school day, children in foster care often attend not only court hearings, but also visitation, court-mandated therapy, and other services that are exclusively available during school hours. These are considered excused absences.	Tex. Educ. Code § 25.087(b)(1)(F).	TEA, Foster Care and Student Success Resource Guide, Chapter 6
15. How does ESSA address accountability for the academic performance of students in foster care?	The state report card required by federal accountability laws must include a clear and concise description of aggregated and disaggregated data regarding student achievement on academic assessments and high school graduation rates for students in foster care.	20 U.S.C. § 6311(h)(1)(C)(ii), (C)(iii)(II).	

This document is provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.

Originally published May 2018. Updated October 2023.