

Child Welfare Issues in Texas Public Schools

Texas Association of School Boards

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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			
1. Who must receive training on child abuse and neglect?	All school employees were to be trained by May 31, 2015. Each year, all new employees must be trained.	Tex. Educ. Code § 38.0041. 19 Tex. Admin. Code § 61.1051(c)-(d). TASB Policy DMA(LEGAL).	TEA: tea.texas.gov/Texas_Schools/Safe_and_Healthy_Schools/Child_Abuse_Prevention/Child_Abuse_Prevention_Overview/
2. Who provides the training?	School districts and charter schools. 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, an ISD may need to draw on multiple sources, as well as local organizations.	Tex. Educ. Code § 38.0041.	Darkness to Light: https://www.d2l.org DFPS videos and resources: www.dfps.state.tx.us/training/reporting/ www.dfps.state.tx.us/Contact_Us/report_abuse_faqs.asp Children’s Advocacy Centers: cactx.org
3. What has to be included in the training?	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	Tex. Educ. Code § 38.0041. Tex. Hum. Res. Code § 42.002	

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	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.	(defining <i>maltreatment</i> as abuse or neglect under Texas Family Code section 261.001).	
4. How should a district keep a record of the training?	ISDs and charter schools must maintain records of the training with the name of each attendee.	Tex. Educ. Code § 38.0041.	
5. What other notices are required?	Relevant policies must be reviewed and distributed to all staff annually. Additionally, a poster must be displayed on each campus, and policies must be in both the district improvement plan and the student handbook.	Tex. Educ. Code § 38.0041. 19 Tex. Admin. Code § 61.1051(a)-(b), (e)-(f). TASB Policy FFG(LEGAL).	Model Student Handbook: tasb.org/Services/Policy-Service/Resources/Model-Student-Handbook.aspx Poster: https://www.onewithcourage.org/take-action/for-educators/
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).	www.dfps.state.tx.us/Child Protection/Child Safety/reporting abuse.asp
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).	

Question	Short Answer	Citations	Other Resources
3. What triggers a report?	For all, having cause to believe a child has been adversely affected by abuse or neglect. For professionals, having cause to believe a child has or may be abused, neglected, or may have been a victim of indecency with a child.	Tex. Fam. Code § 261.101(a)-(b). TASB Policy FFG(LEGAL).	www.dfps.state.tx.us/Child Protection/Child Safety/recognize abuse.asp
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 txabusehotline.org
5. How quickly must a report be made?	Immediately. Professionals must file the report within 48 hours after suspicion arises that the child has been abused, neglected, or was a victim of indecency with a child. ISD policy cannot require an employee to report first to an ISD administrator before reporting to DFPS or law enforcement.	Tex. Fam. Code § 261.101(a)-(b). 19 Tex. Admin. Code § 61.1051(a).	
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 § 700.402(b).	
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	Tex. Fam. Code § 261.001(1). 40 Tex. Admin. Code § 700.453	

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	drug use that harms a child by a person responsible for the child's care.	(emotional abuse), .455 (physical abuse), .457 (sexual abuse), .459 (labor trafficking), .461 (sex trafficking).	
8. What is <i>neglect</i> ?	The lengthy statutory definition of 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 a substantial risk of abuse, placing a child in or failing to remove a child from a situation in which the child would be exposed to a substantial risk 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 §§ 700.463 (abandonment), .465 (neglectful supervision), .467 (medical neglect), .469 (physical neglect), .471 (refusal to assume parental responsibility).	
9. When is it mandatory to report suspected indecency with a child?	Professionals must report when they have 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.	
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.	Tex. Fam. Code § 261.101(b).	

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	Each professional school employee who suspects abuse or neglect must make a report.		
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, 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(a)-(c), 105(a)-(b). 40 Tex. Admin. Code § 700.506.	
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. 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). 40 Tex. Admin. Code § 700.512.	

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<p>14. 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 employees report when a child has been sexually active, such as when a child is pregnant or has an STI?</p>	<p>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 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 	<p>Tex. Fam. Code § 261.001(5).</p> <p>40 Tex. Admin. Code § 700.512.</p> <p>Tex. Penal Code § 43.25.</p>	

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	employee believes the parent consents to the sexual contact.		
15. Should school employees report to DFPS when children engage in sexual activity, or simulations of sexual activity, with each other?	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.	Tex. Fam. Code § 261.001(1), (4)(A)(ii)(d).	
16. Should school employees report a child’s truancy or apparent lack of parental supervision?	<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), 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>	40 Tex. Admin. Code § 700.481.	
17. When should school employees report incidents of excessive force in physical discipline or improper restraint or seclusion at school?	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,	40 Tex. Admin. Code § 700.403.	

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	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.		
18. If an ISD receives a complaint, tip, or other information alleging abuse by a school employee, should the ISD confront the school employee before making a report?	As described below, DFPS and law enforcement strongly discourage tipping off alleged perpetrators before DFPS can commence an investigation due to the high risk that valuable evidence (such as text messages, diary entries, etc.) will be destroyed before the investigation begins.	Tex. Fam. Code §§ 261.303, .406. 40 Tex. Admin. Code §§ 700.407, .409.	
19. 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.	
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</i>	40 Tex. Admin. Code § 700.404 (referencing definitions in 40 Tex. Admin. Code	

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	<p><i>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>.</p>	<p>§ 700.402).</p>	
<p>2. Will an ISD be notified when a school employee is being investigated regarding an allegation of abuse in the school?</p>	<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 § 700.407.</p>	
<p>3. May a superintendent tell an employee suspected of abuse that a DFPS investigation is starting?</p>	<p>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 had an opportunity to interview the alleged perpetrator.</p>	<p>40 Tex. Admin. Code § 700.407.</p> <p>See 40 Tex. Admin. Code § 700.508 (indicating that initial interviews can be announced or unannounced at the option of the investigator).</p>	

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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 §§ 261.406, .301(d). 40 Tex. Admin. Code § 700.505.	www.dfps.state.tx.us/Investigations/
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.	Tex. Fam. Code §§ 261.302, .303, .409. Op. Tex. Att’y Gen. No. DM-476 (1998). TASB Policy GRA(LEGAL).	
7. What kind of identification can be required for an investigator?	An investigator may be asked to show identification, but a school employee should not make or keep a photocopy of the ID.		TEA letter Oct. 2012: tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA Letters/Identification Requ

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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>Op. Tex. Att'y Gen. No. DM-476 (1998).</p> <p>TASB Policy GRA(LEGAL).</p>	<p>Requirements for Child Protective Services Investigators/</p>
9. What records can an ISD give DFPS during an investigation?	<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 	<p>20 U.S.C. § 1232g, 34 C.F.R. Part 99.</p> <p>34 C.F.R. § 99.31, .36.</p> <p>Tex. Fam. Code § 261.303.</p>	<p>See Family Policy Compliance Office letter, U.S. Dep't of Educ. to Univ. of NM, (Nov. 29, 2004), ed.gov/policy/gen/guid/fpcO/ferpa/library/baiseunmslc.html.</p>

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	<p>and release records related to suspected abuse or neglect.</p> <ul style="list-style-type: none"> • 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. 	42 U.S.C. § 5106a(b)(1)(a).	
10. Will the ISD be told the result of the DFPS investigation?	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.	Tex. Fam. Code § 261.406.	
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?	After an investigation report, DFPS shall release information regarding a person alleged to have committed abuse or neglect to TEA, SBEC, and the local ISD 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.	Tex. Fam. Code § 261.308(d).	
12. What can an ISD tell a child's parents about a DFPS	School district employees should not release information to parents about ongoing investigations. After a child	Tex. Fam. Code § 261.406.	

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investigation involving the child?	abuse investigation is complete, parents may seek information directly from DFPS.		
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 an ISD coordinate with DFPS and law enforcement?	Both state and federal law suggest that a school district should not rely solely on other entities' investigations, but should conduct its own investigation when a school employee is accused of abusing a student. 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.		
14. Will information about a DFPS investigation be shared during SBEC proceedings?	<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.</p> <p>19 Tex. Admin. Code § 249.14.</p>	
Alternative or Temporary Care			

Question	Short Answer	Citations	Other Resources
Arrangements			
1. Are all students living with relatives or other caregivers considered to be in foster care?	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, sometimes after a DFPS investigation, DFPS permits 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).		
2. What is a Parental Child Safety Placement (PCSP) agreement?	<p>A PCSP agreement is an option when DFPS determines that a child may not currently be safe at home, but could be if certain changes were made.</p> <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</p>	<p>Tex. Fam. Code Chapter 264, Subchapter L.</p> <p>Tex, Fam. Code §§ 34.001, .002.</p>	<p>www.dfps.state.tx.us/handbooks/cps/Resource_Guides/PCSP_Resource_Guide.pdf</p>

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	nonparent relative temporary authority to authorize medical care, enroll the child in school, and agree to extracurricular activities.		
3. How should school employees respond if parents appear to be violating the terms of a PCSP?	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.	Tex. Fam. Code §§ 34.003(b)(6), .007.	
4. How is Kinship Care different?	Kinship Care is substitute care by a family member or fictive kin (nonrelatives with whom the child has a close, long term relationship) <i>after</i> 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.		Kinship Care: www.dfps.state.tx.us/Adoption_and_Foster_Care/Kinship_Care/
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	A school district may request a power of attorney, but a student who is residing in the district is likely to eligible for admission regardless. A student who is not homeless, but is living separate from	Tex. Educ. Code § 25.001(b)(4), (b)(5), (d). TASB Policy	TEA letter: tea.texas.gov/interiorpage_wide.aspx?id=25769822543

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district require a power of attorney?	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.	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).	TEA letter: tea.texas.gov/interiorpage_wide.aspx?id=25769822543 Texas Homeless Education Office: theotx.org/resource_type/enrollment-school-selection/
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. Upon receipt of this form, the student should be reported in PEIMS as being in foster care. Form 2085 is also the appropriate documentation for automatically enrolling the student in the Free and Reduced Lunch program.	Tex. Educ. Code § 7.029.	TEA Resource Guide: tea.texas.gov/FosterCareStudentSuccess/ Chapter 7: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf PEIMS: tea.texas.gov/Reports and Data/Data Submission/PEIMS/PEIMS Data Standards/ Square Meals:

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			squaremeals.org/Programs/NationalSchoolLunchProgram/NSLPPolicyandARM.aspx
2. What is the role of a foster care liaison?	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.	Tex. Educ. Code § 33.904.	TEA liaisons: tea.texas.gov/FosterCareStudentSuccess/liaisons/ Chapter 5: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf
3. Where is a student in foster care entitled to enroll?	<ul style="list-style-type: none"> • The campus closest to 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, until the child successfully completes the highest grade level offered by the school, even if the child moves outside the attendance area or exits foster care. 	Tex. Educ. Code § 25.001(f)-(g).	Chapter 7: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf Federal guidance: www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf
4. If a student in foster care wants to attend his or her school of origin, who provides the transportation?	Under ESSA, each school district had 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	20 U.S.C. § 6312 (c). Dep’t of Educ., 81 Fed. Reg. 104	Federal guidance: www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf

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	<p>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>(May 31, 2016) (proposing a rule that would require SEAs to assure that “. . . an LEA receiving funds under title I, part A of the Act” will provide transportation “even if the LEA and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation.”).</p>	<p>www2.ed.gov/policy/elsec/leg/essa/edhseffectivedatesdcl.pdf</p> <p>childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/</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>Tex. Fam. Code § 264.115.</p>	<p>Chapters 7 and 8: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf</p>

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	DFPS policy and provider contracts require the child's enrollment or return to school in two days' time.		
6. What if school records are incomplete? What if the student is missing credits?	<p>A student is entitled to immediate enrollment, with or without school records. Records must be transferred within 10 working days.</p> <p>Be aware that students in foster care are a highly mobile population who have often experienced disruption in their education and home lives. State and federal law require efforts to ease transitions.</p>	Tex. Educ. Code §§ 25.002(g), .007.	<p>tea.texas.gov/FosterCareStudentSuccess/laws/</p> <p>Chapters 7 and 8: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf</p>
7. What if immunization records are incomplete?	<p>First, have the school nurse check whether the records are available in ImmTrac2.</p> <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. Educ. Code §§ 25.002(g), 38.001(e).</p> <p>Op. Tex. Att'y Gen. No. GA-178 (2004).</p>	<p>www.dshs.texas.gov/immunize/school/</p> <p>www.dshs.texas.gov/immunize/immtrac/FAQs.shtm</p> <p>Chapters 7 and 8: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf</p>
8. Who in the school setting should be aware that a student is in foster care?	The fact that a student is in foster care is confidential under both FERPA and other law. Only educators and other personnel	20 U.S.C. § 1232g(b).	Federal guidance: www2.ed.gov/policy/elsec/leg/esa/edhhsfostercarenonregulatorg

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	<p>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>Tex. Fam. Code § 263.004.</p>	<p>uide.pdf</p> <p>Chapter 9: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf</p> <p>Designation of Education Decision-Maker: www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=K-908-2085-E.pdf</p>
<p>9. 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 known, that information will also be included on the form.</p>	<p>Tex. Educ. Code § 25.007(b)(9).</p>	<p>Chapter 9: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf</p> <p>Designation of Education Decision-Maker: www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=K-908-2085-E.pdf</p>
<p>10. 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?</p>	<p>DFPS has regional education specialists who are trained to assist in such instances.</p>		<p>tea.texas.gov/FosterCareStudentSuccess/CPS/</p>

Question	Short Answer	Citations	Other Resources
11. 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).	<p>FERPA Uninterrupted Scholars Act: www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf</p> <p>Federal guidance: www2.ed.gov/policy/elsec/leg/esa/edhhsfostercarenonregulatorguide.pdf</p>
12. 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.	<p>20 U.S.C. § 1415(b)(2)(A)(i).</p> <p>34 C.F.R. § 300.30(b).</p> <p>Tex. Fam. Code § 263.0025.</p> <p>Tex. Educ. Code §§ 29.001(10), .015.</p> <p>19 Tex. Admin. Code § 89.1047.</p>	<p>Federal guidance: www2.ed.gov/policy/elsec/leg/esa/edhhsfostercarenonregulatorguide.pdf</p> <p>Chapter 12: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf</p>
13. Why are students in foster care away from school so often?	While case workers and foster parents are asked to minimize disruptions to the school day, children in foster care often attend not only court hearings, but also	Tex. Educ. Code § 25.087.	Chapter 10: tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf

Question	Short Answer	Citations	Other Resources
	visitation, court-mandated therapy, and other services that are exclusively available during school hours. These are to be considered excused absences.		
14. 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 continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/child-welfare-issues-chart.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawsource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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