



# Information Sharing Between Child Welfare and Schools:

Maintaining Privacy and  
Promoting Educational Success





# TABLE OF CONTENTS

Background .....	1
Child Abuse and Neglect Reporting Basics .....	2
Family Educational Rights and Privacy Act (FERPA) Basics .....	3
Child Welfare - Key Confidentiality Provisions .....	4
Sharing CPS-Related Information in the Education Setting .....	4
Sharing Education-Related Information with Child Welfare Partners .....	7
Conclusion.....	10
Commonly Used Terms .....	11
Appendix A: Additional Resources .....	12
Appendix B: DFPS Form 2085-E.....	13
Acknowledgements.....	17
Endnotes.....	18

This document was created by Supreme Court of Texas Children’s Commission Foster Care & Education Confidentiality Workgroup on April 3, 2017. All information is accurate as of the date this guide is released.



## Background



Children and youth in foster care often face significant challenges to educational success, including adjustments to living in a different home with new caregivers, a history of traumatic experiences due to abuse and neglect, and sometimes missed school days for family visits, court hearings, and required appointments. Additionally, children and youth in foster care can experience multiple residential and school moves that can result in the loss of course credit, school records, and connections to family, teachers, and friends. Education is a lifeline for many students in foster care and the opportunities for success are much greater when the child welfare and education systems work together.

The education and child welfare systems each have complex and extensive confidentiality laws. Privacy is important for students in foster care who do not want to feel stigmatized or labelled by their foster care status. However, in some instances information sharing within the school system and across systems is absolutely critical to support a student's educational success.

This document is intended to clarify complicated confidentiality laws and provide guidance on exchanging information about students in foster care between child welfare and education partners. Ultimately, decisions about the amount or type of information to share in any specific situation must be evaluated on a case-by-case basis. These decisions should be carefully re-evaluated any time circumstances change.

### WHY DO SCHOOLS NEED TO IDENTIFY STUDENTS IN FOSTER CARE?



Some important considerations include:

- Improving education outcomes for this student population, pursuant to the Every Student Succeeds Act (ESSA)<sup>1</sup> of 2015, the Fostering Connections to Success and Increasing Adoptions Act of 2008<sup>2</sup>, and Texas state law.
- Collaborating with the child welfare agency to develop transportation plans for students in accordance with ESSA.
- Ensuring that students can remain in their schools of origin, unless it is not in their best interest, under federal and state law.
- Providing assistance for students transitioning from one school to another, such as:
  - Providing supportive services to ease transitions for students during the first two weeks of enrollment in a new school;
  - Ensuring records are transferred to a new school within 10 working days;
  - Ensuring that the school awards credit for coursework, including partial credit and credit for electives, if appropriate;

- Promoting practices that facilitate access to extracurricular programs, summer programs, credit transfer services, electronic courses, and after-school tutoring programs at a nominal fee or no cost; and
- Implementing local procedures to lessen the adverse impact to the student of moving to a new school.<sup>3</sup>
- To implement other supportive educational services available to students in foster care, such as compensatory instructional services, tutoring, and credit recovery to assist with high school completion.
- To provide additional counseling for students who are truant, in accordance with state law.<sup>4</sup>
- To enroll students in the National School Lunch Program and the School Breakfast Program.
- To establish proof of legal authority of the caregiver and of CPS for enrollment and education decision-making.

## Child Abuse and Neglect Reporting Basics



Educators are often the first to recognize signs of child abuse or neglect and, as professionals, they are mandated by law to report the abuse or neglect.<sup>5</sup> If there is a suspicion of either abuse or neglect, the educator must report the suspected abuse or neglect within 48 hours or less after learning of facts giving rise to the suspicion of abuse or neglect. The written or oral report must be made by the educator to a local or state law enforcement agency, the Texas Department of Family and Protective Services, a local office of Child Protective Services, or the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.<sup>6</sup> The professional may not delegate to or rely on another person to make the report.

The current hotline information is: **1-800-252-5400** or

<https://www.txabusehotline.org>.

If known, the person making the report of alleged abuse or neglect must identify the name and address of the child, the name and address of the person responsible for the care, custody, or welfare of the child (generally the child's parent), and any other pertinent information concerning the alleged or suspected abuse or neglect.<sup>7</sup>

## Family Educational Rights and Privacy Act (FERPA) Basics



The federal Family Educational Rights and Privacy Act (FERPA) requires educational agencies and institutions that receive federal funds under any program administered by the United States Department of Education to protect a student's personally identifiable information in education records. FERPA grants parents the rights to:

- Inspect and review the education records of their child;
- Challenge and require the school to amend any portion of the education records concerning the student that are inaccurate, misleading, or otherwise in violation of the student's privacy rights; and
- Require written consent prior to the disclosure of personally identifiable information, except in those instances specifically noted in statute.<sup>8</sup>

FERPA defines "parent" of a student as a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.<sup>9</sup>

Because of the lack of clarity about whether a child welfare agency might have access to the school records of students in foster care, the Uninterrupted Scholars Act amended FERPA to specifically permit educational agencies and institutions to release a student's education records to an agency caseworker or other representative of a state or local child welfare agency who has the right to access a student's case plan when such agency or organization is legally responsible for the care and protection of the student.<sup>10</sup> When a child is in foster care, the Texas Department of Family and Protective Services (DFPS) is appointed as temporary or permanent managing conservator of the child and becomes legally responsible for the care and protection of the student. Thus, DFPS may access education records for the child.

In situations where DFPS does not have legal responsibility for the child, FERPA permits school districts to release records in compliance with a court order or subpoena.<sup>11</sup> For example, when DFPS provides Family Based Safety Services while the child remains in the home and the child is not in the conservatorship of the state, there must be a court order or subpoena to release the records to DFPS.

For all students, including students in foster care, FERPA permits student records to be released without parental consent 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.<sup>12</sup>

## Child Welfare - Key Confidentiality Provisions



Confidentiality of child abuse and neglect records and information (including records and information relating to reports, investigations, legal actions, and the provision of services to children and families) is governed by a combination of federal and state laws and regulations.

The primary controlling federal laws include Section 106 of the Child Abuse Prevention and Treatment Act<sup>13</sup> and Section 471 of Title IV-E of the Social Security Act<sup>14</sup> and related federal rules.<sup>15</sup> State law has incorporated these two federal laws into state law and rules as follows: Texas Family Code § 261.201, Human Resources Code § 40.005, and related DFPS rules.<sup>16</sup> These laws provide the statutory basis for policies regarding confidentiality and the sharing of child welfare information.

In Texas, DFPS is the umbrella agency over Child Protective Services (CPS or child welfare agency). Conservatorship is sometimes referred to as "custody," "substitute care," or "foster care." Conservatorship can include a child placed by CPS in the care of a relative or "fictive kin" (a person who is not a relative but with whom the child has a pre-existing relationship).<sup>17</sup>

Both federal and state law allow CPS to share selected confidential information about a child in the state's conservatorship with those responsible for the child's protection, diagnosis, care, treatment, supervision, or education when necessary to meet a child's needs.

### Sharing CPS-Related Information in the Education Setting

**CPS** → **Schools** Decisions to share confidential information about a child in the state's conservatorship must be made on a case-by-case basis, sharing only the minimum information necessary and only to individuals who need to know the information to support the child's education and well-being.

It is important to remember that most children and youth in foster care do not want the fact that they are in foster care shared with others and this is generally information they do not share. Please keep this in mind when developing protocols and when discussing matters involving a child in foster care. Note, these principles will apply regardless of the child's school setting. For example, even if a school is associated with a Residential Treatment Center and all the enrolled children are in foster care, each child's privacy should nonetheless be respected and safeguarded.

## WHAT INFORMATION IS GENERALLY APPROPRIATE FOR CPS TO SHARE WITH SCHOOL PERSONNEL?



DFPS Form 2085 Placement Authorization and DFPS Form 2085-E Designation of Education Decision-Maker.

- CPS caseworker and supervisor contact information.
- The fact that the student is in DFPS conservatorship and living in a foster home or in a relative or fictive kin placement.
- The student's birth certificate, immunization records, names of previous schools attended, transcripts and report cards, Individual Education Programs, Section 504 Plans, and other documents relating to special education and related services, and other educational records.
- Vision & hearing evaluations.
- Information regarding medications for the student that are administered by the school nurse during the school day, with doctor's written orders.
- Medicaid eligibility or number, if necessary for School Health and Related Services.
- Relevant information from the CPS Transition Plan as it relates to older youth receiving special education services.

## WHAT INFORMATION MAY BE SHARED ON A CASE-BY-CASE BASIS ONLY?



The following information may be shared if it relates to the child's care and needs in the educational setting:

- The DFPS 2085 Forms should serve as proof that the child is in the conservatorship of the state. A CPS caseworker may also provide the court order that granted the agency conservatorship of the child to the school upon request. If a court order is provided, non-relevant or unnecessary information should be redacted by CPS staff. The only information that should be shared in the order will be language establishing DFPS as the child's managing conservator.
- Relevant medical, disability, or health information, including mental or behavioral health issues, services, and medications that are not administered at school.
- The effects of trauma and potential triggering events that may cause a behavioral response in the school setting.
- Information in psychological evaluations, if relevant to the child's care and needs in the educational setting. Information from mental health and psychological evaluations not directly related to assisting the school in meeting the child's needs should be redacted.
- Effective behavior supports used by the caregiver to encourage consistency in the school and home environments.

- Although CPS is under no obligation to share information that a child or youth has been arrested, CPS may share this information as appropriate.
- Specific details about the abuse or neglect history. Information about the impact of the abuse or neglect history and how it may affect the child in school can be shared when appropriate.

#### WHAT INFORMATION MAY NEVER BE SHARED BY CPS?



- The name of the person who reported the abuse or neglect.
- The fact that the child was adopted; this may be sensitive information to the child and adoptive family.
- Alcohol or substance abuse history and treatment of the student, **unless** clearly relevant and only if the release is specifically consented to by the student.
- Biological or foster family income.

## Sharing Education-Related Information with Child Welfare Partners

When a child or youth enters foster care, there are many adult partners who become involved in the child's life.



The child's caseworker must have access to all information for a child in the state's custody. A child's attorney ad litem, guardian ad litem, or Court Appointed Special Advocate (CASA) may also receive school-related information if the person provides a copy of the court order to the school. Others are entitled to information as described below.

### WHO MAKES EDUCATION-RELATED DECISIONS FOR STUDENTS IN FOSTER CARE?

**Schools** → **CPS** Unless limited by court order, DFPS has authority to make education decisions for a child in the state's conservatorship.<sup>18</sup> CPS generally designates an individual, such as the child's foster parent or relative caregiver, to make the day-to-day educational decisions for each child. This individual is called the "Education Decision-Maker" and state law requires DFPS to provide their name and contact information to the court with jurisdiction over the CPS case and the child's school. DFPS uses DFPS FORM 2085-E *Designation of Education Decision-Maker* to provide this information to the school. The 2085-E may also include information about any rights to be involved in the child's education retained by the child's biological family,

as specified by court order. If the child in foster care is eligible for special education services, a Surrogate Parent may be appointed by the school or the judge in the child's case. If CPS is aware of the Surrogate Parent appointment, that information will also be included in Form 2085-E.

For a child placed in a foster home or with a relative or "fictive kin" caregiver, the Education Decision-Maker will most likely be the foster parent or relative with whom the child resides. In some cases, especially for children living in residential facilities, the child's caseworker may be designated as the Education Decision-Maker.

Form 2085-E includes all the rights and responsibilities of the Education Decision-Maker and the child's caseworker, including who should be contacted in certain kinds of situations and who can have access to information about the child. For example, the Education Decision-Maker is responsible for signing the annual directive to the school prohibiting the use of corporal punishment for the child and providing a copy to the caseworker for the child's case file. The duty of the caseworker is then to ensure that the directive is on file with the school and placed in the child's case file. The caseworker is responsible for informing the school within five days of a change in the designation of the Education Decision-Maker or Surrogate Parent.<sup>19</sup>

## HOW DOES CONFIDENTIALITY IMPACT STUDENTS RECEIVING SPECIAL EDUCATION SERVICES?



A parent for purposes of the Individuals with Disabilities Education Act (IDEA) is defined as:

- A biological or adoptive parent;
- A foster parent unless prohibited by state law;
- A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child;
- An individual acting in the place of a biological or adoptive parent with whom the child lives, including other relatives, or an individual legally responsible for the child's welfare; or
- The Surrogate Parent.<sup>20</sup>

Under Texas law, a foster parent may act as a parent under IDEA if DFPS is appointed as the temporary or permanent managing conservator of the child, the child has been placed with the foster parent for at least 60 days, the foster parent agrees to participate in making educational decisions on the child's behalf, the foster parent agrees to complete a training program for Surrogate Parents, and the foster parent has no interest that conflicts with the child's interests.<sup>21</sup> If serving the role of a Surrogate Parent or parent for special educational purposes, foster parents or caregivers may request an independent educational evaluation if they disagree with the findings of the evaluation conducted by the school. Additionally,

they are to be notified about and included in the ARD Committee process and should be included in the development of any Individualized Education Program (IEP).<sup>22</sup>

Notably, the Uninterrupted Scholars Act clarified FERPA and IDEA Parts B and C regarding access to special education information.<sup>23</sup> As a result, information related to special education may be shared with a child welfare agency employee who is legally responsible for the care and protection of the student as well as any individual acting as the child's IDEA parent as defined above.

## WHAT INFORMATION MUST SCHOOL PERSONNEL SHARE WITH CPS PARTNERS?



School districts, campuses, and open-enrollment charter schools are legally required to provide notice to the Educational Decision-Maker *and* caseworker of a child in foster care regarding events that may significantly impact the education of the child.<sup>24</sup> Under Texas law, events that may significantly impact the education of the child include:

- Requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973<sup>25</sup> or special education services under Texas Education Code § 29.003;
- Admission, Review, and Dismissal (ARD) committee meetings;
- Manifestation Determination Reviews required by Texas Education Code § 37.004(b);
- Any disciplinary actions under Texas Education Code Chapter 37 for which parental notice is required;
- Citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;
- Reports of restraint and seclusion required by Texas Education Code § 37.0021; and
- Use of corporal punishment as provided by Texas Education Code § 37.0011.<sup>26</sup>

## WHAT INFORMATION MAY BE APPROPRIATE FOR SCHOOL PERSONNEL TO SHARE WITH CPS PARTNERS?



Education information about a child in foster care can always be shared with the child's caseworker and the Education Decision-Maker. Depending on the circumstances, information may also be shared with the child's foster parent, caregiver, or Surrogate Parent. School personnel may reference DFPS FORM 2085-E for questions about who to contact.

Some examples of appropriate information to share with the child's caregiver, Education Decision-Maker, Surrogate Parent, and/or caseworker include:

- Notice when a child is injured or becomes sick at a school activity on or off school grounds.
- Report cards, permission slips, and other routine school correspondence, including receiving homework assignments on behalf of the child if necessary.
- The Child's IEP, including information about transition planning for youth age 14 and older.

Unless otherwise indicated in DFPS Form 2085-E, the daily caregiver with whom the child lives (foster parent, relative caregiver, or facility staff) may be involved in and notified of activities and decisions listed above which have a clear impact on the child's home life. For example, the caregiver is generally responsible for decisions about participation in extracurricular activities, sporting activities and events, dances, clubs, etc., regardless of whether the caregiver is also the child's designated Education Decision-Maker or Surrogate Parent.

Please note, the Education Decision-Maker may be instructed by the caseworker to notify or consult with the DFPS caseworker or supervisor on any of these matters before communicating a decision to the school.

If there are concerns about the decisions the Education Decision-Maker is making for the child, school personnel should contact the DFPS caseworker or supervisor listed on DFPS Form 2085-E.

## Conclusion



Education is a critical component of any child's transition to a successful and productive adulthood. The challenges of when and how to share information will ultimately depend on the circumstances in each student's life. This is no different for students in foster care. For students in foster care there is a balance between maintaining privacy and sharing information that will promote their educational success. Personnel in both the CPS and education systems can coordinate and collaborate to address questions and concerns as they arise and ultimately make the child's school experience positive and enriching.

## Commonly Used Terms

**Child Protective Services (CPS):** A division of Texas DFPS that investigates reports of abuse and neglect of children. It also: provides services to children and families in their own homes; places children in foster care; provides services to help youth in foster care make the transition to adulthood; and places children in adoptive homes.

**Conservatorship (CVS):** Legal care, custody, and control of a child given by court order. If the court appoints managing conservatorship to DFPS, the state acts as the child's parent, regardless of the placement setting (foster home, group home, kinship home (which includes relatives or "fictive kin), residential facility, etc.)

**Court Appointed Special Advocate (CASA):** A specially screened and trained volunteer, appointed by the court, who conducts an independent investigation of child abuse, neglect, or other dependency matters and submits a formal report proffering advisory recommendations as to the best interests of a child. In some jurisdictions, CASAs are appointed to represent abused and neglected children as the child's Guardian ad litem.

**Department of Family and Protective Services (DFPS):** A state agency that is charged with protecting children, adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes.

**Education Decision-Maker:** An individual designated by CPS to make educational decisions on behalf of children and youth in foster care. Typically, the caregiver and the Education Decision-Maker are the same person. If the child receives special education services, a Surrogate Parent may be appointed to make decisions related to special education. The identity and contact information for this individual is included on DFPS Form 2085-E Designation of Education Decision-Maker.

**Surrogate Parent (SP):** The individual assigned by the school district or court to act as a surrogate for the parents whenever the parents are not known, cannot, after reasonable efforts, be located, or when the student is a ward of the state to ensure that the rights of a student with a disability are protected. The Surrogate Parent must not be an employee of the Texas Education Agency (TEA), the school district, DFPS, or any other agency that is involved in the education or care of the child. The district must assign a Surrogate Parent within 30 days of determining the need unless the court has appointed one.



## Appendix A: Additional Resources

### Administration of Children and Families

- Confidentiality Toolkit - [https://www.acf.hhs.gov/sites/default/files/assets/acf\\_confidentiality\\_toolkit\\_final\\_o8\\_12\\_2014.pdf](https://www.acf.hhs.gov/sites/default/files/assets/acf_confidentiality_toolkit_final_o8_12_2014.pdf)

### Child Welfare Information Gateway

- Ethics and Confidentiality - <https://www.childwelfare.gov/topics/management/ethical/confidentiality/>

### Department of Education

- IDEA and FERPA Confidentiality Provisions - <http://www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf>
- Guidance on Uninterrupted Scholars Act - <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>

### Legal Center for Foster Care & Education

- Information Database - <http://www.fostercareandeducation.org/Database.aspx>

### National Childhood Traumatic Stress Network

- Child Trauma Toolkit For Educators – <http://www.nctsn.org/resources/audiences/school-personnel/trauma-toolkit>

### Texas Court Appointed Special Advocates

- Educational Advocacy Toolkit - <http://texascasa.org/learning-center/resources/educational-advocacy-toolkit/>

### Texas Education Agency

- Foster Care & Student Success Resource Guide - <http://tea.texas.gov/FosterCareStudentSuccess/resource-guide.pdf>

### Texas Department of Family & Protective Services

- Child Protective Services Handbook, Confidentiality - [http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_1450.asp#CPS\\_1450](http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_1450.asp#CPS_1450)



# Appendix B: DFPS Form 2085-E

Form K-908-2085-E  
Revised September 2015



## DESIGNATION OF EDUCATION DECISION-MAKER CHILD PROTECTIVE SERVICES (CPS) - PERMANENCY

**Purpose:** DFPS must ensure that this form is provided to the court and the child's school under Texas Family Code §263.004 within five days of the Adversary Hearing. DFPS must inform the court of any changes in the Education Decision-Maker or Surrogate Parent, if applicable, in the next permanency hearing report. DFPS must provide the updated information to the school no later than five days after any changes in the Education Decision-Maker or Surrogate Parent, if applicable.

**Directions:** To complete this form, fill in all applicable fields. For additional questions, contact your Regional Education Specialist. DFPS staff may not appoint a surrogate parent. DFPS staff may only list the name of the surrogate parent appointed by the court or the school.

### SECTION 1: AUTHORITY TO MAKE EDUCATION DECISIONS

The Texas Department of Family and Protective Services (DFPS) is authorized by court order as provided in the Texas Family Code §153.371 to make education decisions on behalf of the following child currently in the conservatorship of DFPS.

Child's Full Name:	Child's DFPS IMPACT Person ID:	Child's Medicaid Number:
--------------------	--------------------------------	--------------------------

Date of Birth:	County:	Court Number:	Cause Number:
----------------	---------	---------------	---------------

DFPS delegates to the following individual(s) (hereinafter referred to as the Education Decision-Maker) the education decision-making responsibilities on behalf of the child as described in this form. **Note: A representative of DFPS may be named as a primary and and/or backup Education Decision-Maker.**

Designated primary Education Decision-Maker (and spouse, if applicable):	Date of designation:
--	----------------------

Email:	Telephone Number(s):
--------	----------------------

Backup Education Decision-Maker:	Date of designation:
----------------------------------	----------------------

Surrogate Education Decision-Maker for special education decisions:	Date of designation:	Designated by: <input type="checkbox"/> Court <input type="checkbox"/> ISD
---	----------------------	--

Email:	Telephone Number(s):
--------	----------------------

### SECTION 2: SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES – IF APPLICABLE

Federal and state law authorize the individual who is acting in the role of the child's parent or who is appointed by the school or the court to be the "surrogate parent" for the child to exercise the rights and responsibilities as outlined by the Individuals with Disabilities Education Act and state law and rule. The individual is usually the foster parent or daily caregiver, but may be a Court Appointed Special Advocate or other individual with knowledge of the child. In some cases the biological parent may retain the right to make certain special education decisions.

The law does not allow a DFPS staff person, school district staff, or anyone employed to provide care or treatment for the child to act as the parent or surrogate for special education decision-making. A foster parent is not considered a person employed to provide care for the child.

At age 18, the rights of the parent to make education decisions are transferred to the child, except for the child with a disability who has been determined to be incapacitated under state law.

### SECTION 3: EDUCATION DECISION-MAKER RIGHTS AND RESPONSIBILITIES

Unless otherwise indicated by provisions in this form, the Education Decision-Maker has the right and responsibility to:

- Enroll a child in the school chosen by DFPS, including providing identity or immunization information needed for enrollment.
- Determine, in conjunction with the child, if appropriate, course selection and participation in academic electives and activities.
- Determine whether the child should participate in special programs such as compensatory programs, bilingual education, Gifted and Talented, after-school tutoring, etc.
- Attend routine activities such as "Parent's Night," parent-teacher conferences, PTA meetings, and similar activities that involve parents.
- Approve child's participation in routine or non-routine school activities such as track and field, museum or field trips, etc.
- Be notified of injury or illness at a school activity on or off school grounds.
- Sign the Student Code of Conduct, and, if applicable, assist youth with understanding the Code of Conduct.
- Sign the annual directive to the school prohibiting the use of corporal punishment for the child and provide a copy to the caseworker for the child's case file.
- 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.
- Be notified of and take action regarding disciplinary or attendance matters.
- Determine when a referral for a special education evaluation is necessary or make a referral for an evaluation.

The Education Decision-Maker has the following additional responsibilities:

- Meet with the child before making education decisions to ensure that the child's educational goals are appropriate and in the least restrictive environment.
- Review the child's Education Portfolio and pertinent educational records.
- Provide regular updates about the child's education to the DFPS caseworker, including copies of significant forms, records, and communication from the school.
- Inform the DFPS caseworker of any notification from the school regarding the child's disciplinary hearings, manifestation determination reviews, use of physical restraints and/or seclusion, truancy, suspension, expulsion, or removal to a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP). Inform the caseworker of notices for all education-related activities which involve Section 504 of the Rehabilitation Act or notices of special education Admission, Review, and Dismissal (ARD) committee meetings received.
- Ensure a copy of this Form 2085E has been provided to the child's school within five days of being named Education Decision-Maker.

Notes:

The Education Decision-Maker may be instructed by the caseworker to notify or consult with the caseworker or supervisor on any of these matters before communicating a decision to the school.

Unless otherwise indicated in Section 1 or Section 4, the daily caregiver with whom the child lives (foster parent, relative caregiver, or facility staff) may be involved in and notified regarding activities and decisions listed above which have a clear impact on the child's home life. For example, the caregiver is generally responsible for decisions about participation in extracurricular activities, sporting activities and events, dances, clubs, etc., regardless of whether the caregiver is also the child's designated Education Decision-Maker.

If school personnel have concerns about the decisions the Education Decision-Maker is making for the child, they should contact the DFPS caseworker or supervisor listed on page 4 of this form.

**SECTION 4: BIOLOGICAL FAMILY RIGHTS AND RESPONSIBILITIES, IF APPLICABLE**

A biological parent of a child in DFPS Managing Conservatorship retains only the educational decision-making rights expressly ordered by the court. For the child named in this form, the following rights have been retained by or granted to the biological parents:

**SECTION 5: CASEWORKER RIGHTS AND RESPONSIBILITIES**

The DFPS caseworker has the right to:

- Access education records regarding the child.
- Select the appropriate school for the child.
- Receive notification regarding disciplinary hearings, manifestation determination reviews, use of physical restraints and/or seclusion, truancy, suspension, expulsion, Class C misdemeanor tickets, or removal to a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP).
- Receive notifications for all education-related activities which involve Section 504 of the Rehabilitation Act or special education Admission, Review, and Dismissal committee meetings.

The caseworker is responsible for:

- Informing the child's attorney ad litem, guardian ad litem, CASA volunteer, caregiver, and education decision-maker of any notification from the school regarding the child's disciplinary hearings, manifestation determination reviews, use of physical restraints and/or seclusion, truancy, suspension, expulsion, or removal to a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP).
- Informing the education decision-maker designee, the caregiver, or the surrogate parent, as applicable, of any education-related activities which involve Section 504 of the Rehabilitation Act and or special education Admission, Review, and Dismissal committee meetings, if known.
- Informing the school of any changes in naming the Education Decision-Maker or Surrogate Parent, if applicable, within five days of the change.
- Ensuring that the annual directive to the school prohibiting the use of corporal punishment for the child is on file with the school and placed in the child's case file.
- Updating the Education Portfolio.

**The DFPS caseworker must ensure that this form is provided to the court and the child's school under Texas Family Code, Section 263.004 within five days of the Adversary Hearing. The caseworker must inform the court of changes in naming the Education Decision-Maker (or Surrogate Parent, if applicable) in the next permanent progress report.**

**SECTION 6: SCHOOL RESPONSIBILITIES**

- Keep this 2085 E form confidential with the student's other privacy-protected education records.
- Ensure records are transferred within ten days if a student changes schools.
- Notify the DFPS caseworker and/or the Education Decision-Maker of significant school events as required by law or this Form.

**SECTION 7: PRIVACY STATEMENT**

DFPS values your privacy. For more information, read our [privacy policy](#).  
**NOTE: THIS DOCUMENT CONTAINS SENSITIVE DATA.**

**SECTION 8: ACKNOWLEDGMENT, AGREEMENT, AND SIGNATURES**

As the Education Decision-Maker, I acknowledge and agree that:

- I have no professional interests that conflict with the interest of the child I represent.
- I will comply with the Education Decision-Maker Rights and Responsibilities as described in SECTION 3.
- I understand that failure to cooperate with DFPS may be the basis for revoking this designation.

Education Decision-Maker signature: <b>X</b>		Date Signed:	
Backup Signature: <b>X</b>		Date Signed:	
DFPS Caseworker (print name): <b>X</b> Email Address:	Phone Number:	Alternate Phone Number:	
DFPS Supervisor (print name): <b>X</b> Email Address:	Phone Number:	Alternate Phone Number:	
Child's daily caregiver or facility staff (if different from Education Decision-Maker) (print name): <b>X</b> Email Address:	Phone Number:	Alternate Phone Number:	

## Acknowledgements

**Kim Ayres**

Court Appointed Special Advocate

**Pam Bell, Ph.D.**

Program Director  
Meadows Center for Preventing  
Educational Risk

**Jamie Bernstein, J.D.**

Staff Attorney  
Children's Commission

**Denise Brady, J.D.**

Senior CPS Policy Attorney  
TX Dept. of Family & Protective Services

**Sarah Crockett, M.S.W.**

Public Policy Coordinator  
Texas CASA

**Carol Huntley**

Transition Specialist  
Round Rock ISD

**Kristen Jones, Ph.D.**

Developmental Disability Program  
Specialist  
TX Dept. of Family & Protective Services

**Michele McKinley**

Director of Special Education  
Connally ISD

**Montgomery Meitler, J.D.**

Senior Counsel/Confidentiality Officer  
Texas Education Agency

**Kristine Mohajer**

State Education Program Specialist  
TX Dept. of Family & Protective Services

**Wanda Peña**

Senior Director – Field Office  
Casey Family Programs

**Heather Reisman, J.D.**

Assistant Counsel  
Texas Education Agency

**Beverly Rowden**

Education Specialist, Region 3  
TX Dept. of Family and Protective Services

**Don Schmidt**

Assistant Superintendent for Student,  
Family & Community Services  
Northside ISD

**Ian Spechler, J.D.**

Managing Attorney  
Disability Rights Texas

**Keith Swink**

Manager of Dispute Resolution  
Texas Education Agency

**Andrea Vicencio**

Administrative Assistant  
Children's Commission

**Julie Wayman**

Director of Dropout Prevention and At-  
Risk Programs  
Texas Education Agency



## Endnotes

---

<sup>1</sup> 20 U.S.C. § 6301 et seq.

<sup>2</sup> 42 U.S.C. § 675.

<sup>3</sup> Tex. Educ. Code § 25.007

<sup>4</sup> Tex. Educ. Code § 25.0915(a-3).

<sup>5</sup> Texas Fam. Code § 261.101

<sup>6</sup> 19 Tex. Admin. Code § 61.1051.

<sup>7</sup> Texas Fam. Code § 261.104

<sup>8</sup> 20 U.S.C. § 1232g.

<sup>9</sup> 34 C.F.R. § 99.3.

<sup>10</sup> 20 U.S.C. § 1232g(b)(1)(L), (2)(B).

<sup>11</sup> 34 C.F.R. § 99.31(a)(9).

<sup>12</sup> 34 C.F.R. § 99.31(a)(2).

<sup>13</sup> 42 U.S.C. § 5106a.

<sup>14</sup> 42 U.S.C. § 671(a)(8).

<sup>15</sup> 45 CFR § 1355.30, 45 CFR § 205.50.

<sup>16</sup> 40 Tex. Admin. Code §§700.201-700.209, 40 Tex. Admin. Code §§702.301-702.317.

<sup>17</sup> See Tex. Fam. Code §264.751.

<sup>18</sup> Tex. Fam. Code § 153.371(10).

<sup>19</sup> Tex. Fam. Code § 263.004.

<sup>20</sup> 34 C.F.R. § 300.30(a).

<sup>21</sup> Tex. Educ. Code § 29.015(b).

<sup>22</sup> 34 C.F.R. §§ 300.300(a)(2), 300.322.

<sup>23</sup> 20 U.S.C. §§ 1400 et seq.

<sup>24</sup> Tex. Educ. Code § 25.007(b)(9). Note, this notice requirement is different than the notice required under the Individuals with Disabilities in Education Act (IDEA) and 19 Texas. Admin. Code §89.1050.

<sup>25</sup> 29 U.S.C. § 794.

<sup>26</sup> Tex. Educ. Code § 25.007(b)(9)(A)-(G).