



**To:** Texas Judges Who Hear CPS Cases

**From:** The Honorable Robin Sage, Jurist in Residence, Office of Court Administration

**Date:** February 4, 2014

**RE:** Education Decision-Making in CPS Cases and the New Form 2085-E

As a result of recent legislation, you may begin seeing a new DFPS form in your court files. This form, the *2085-E Designation of Education Decision-Maker*, is designed to let everyone involved with a foster child enrolled in school know who to contact if school issues arise. In fact, schools' confusion about who to contact about a foster student's schooling is one of the reasons the legislation was filed in the first place.

**Q: What is in Form 2085-E and how will it impact my judicial decision-making in a case?**

A: Once DFPS is appointed as temporary or permanent managing conservator (MC) of a child, DFPS has all rights and duties of a non-parent managing conservator pursuant to Texas Family Code §153.371, including the right to make education decisions for that child. (In some rare instances, a court may order those rights to a person rather than the agency).

In turn, DFPS delegates certain education decisions to the child's caregiver or another person, such as a CASA volunteer. These education decisions usually center on day-to-day school related activities, rather than deciding where the child will go to school. Some of the education decisions delegated may include the ability to enroll a child in school or authorize the child's participation in extracurricular activities. To help schools, DFPS will begin using Form 2085-E to indicate when someone other than DFPS has the authority to make certain education decisions and how to contact that person.

**Q: When is Form 2085-E supposed to be filed and who receives copies of it?**

A: In all cases where DFPS has delegated education-related decisions to an individual, such as a caregiver or a CASA, the caseworker should complete Form 2085-E. The form must be filed within five days of the designation and DFPS must provide a copy to all persons entitled to notice of permanency and placement review hearings and to the child's school.

The 2085-E may be found at:

- [http://www.dfps.state.tx.us/site\\_map/forms.asp](http://www.dfps.state.tx.us/site_map/forms.asp)
- [http://www.dfps.state.tx.us/PCS/Residential\\_Contracts/contract\\_forms.asp](http://www.dfps.state.tx.us/PCS/Residential_Contracts/contract_forms.asp).

**Q: How does the education decision-maker in Form 2085-E differ from a surrogate parent appointed for a child who is receiving special education services?**

A: The person designated by DFPS in Form 2085-E will have the authority to make basic education decisions, such as enrolling the child in school, receiving report cards, signing permission slips, approving participation in school related activities, and similar routine education decisions as outlined on the Form. This person will usually be the caregiver with whom the child lives, such as a foster parent or kinship caregiver. For a child in a residential facility, DFPS may name the caseworker as the education decision-maker.

A surrogate parent, on the other hand, is a person who is required by federal and state law to be appointed to make decisions regarding *special* education services for an eligible child with a disability who does not have a parent available to make such decisions. This may include developing the Individualized Education Plan (IEP) and participating in the Admission, Review, and Dismissal (ARD) committee meetings. The surrogate parent may be appointed by the school or by the court, and, in most cases, the surrogate can be the same person as the education decision-maker. However, the law prohibits a person who is an employee of a child welfare agency, a school, or an agency or facility that provides care for the child from being appointed as a surrogate parent; therefore, for a child or youth living in a residential or staffed facility, someone other than a caseworker or facility staff must be named to make special education decisions.