



TEXAS CENTER  
FOR THE JUDICIARY

### 2018 Child Welfare Judges Conference

Education of Children Placed in RTCs Round Table Report  
Judge Rob Hofmann, 452nd District Court  
Jamie Bernstein, Children's Commission  
November 13, 2018

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### Session Overview

- Why Are We Here?
- The ABCs of Special Education
- Education Decision-Making
- Round Table Discussion



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### Why Are We Here?



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## The ABCs of Special Education

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- **IDEA** – Individuals with Disabilities Education Act
- **Child Find**
- **FAPE** – Free Appropriate Public Education
- **ARD** – Admission, Review, and Dismissal Committee
- **IEP** – Individualized Education Program
- **LRE** – Least Restrictive Environment

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## Individuals with Disabilities Education Act (IDEA)

- Eligibility = disability + need special education and related services
- These disabilities include:
  - Intellectual disability,
  - Hearing impairments, including deafness,
  - Speech or language impairments,
  - Visual impairments, including blindness,
  - Emotional disturbance,
  - Orthopedic impairments,
  - Autism,
  - Traumatic brain injury,
  - Other health impairments, or
  - Specific learning disabilities.

20 U.S.C. § 1401(3)



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### Child Find

- IDEA’s “child find” mandate imposes an affirmative duty on every school district to identify, locate, and refer for evaluation.

20 U.S.C. § 1412(a)(3)

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### Free Appropriate Public Education (“FAPE”)

- Standard:
  - An appropriately ambitious educational program that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

*Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988*
- Applies to:
  - All eligible students, including during suspension/expulsion, and
  - All public schools, including open-enrollment charter schools.

20 U.S.C. §§ 1412(a)(1) and 1413(a)(5)

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### Admission, Review, and Dismissal (ARD) Meeting

- Members of student’s ARD Committee include the “parent” and the student when appropriate.
- 20 U.S.C. § 1414(d)(1)(B);  
19 Tex. Admin. Code § 89.1050

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### Individualized Education Program (IEP)

- The IEP is the written statement developed by the ARD committee of the student’s education program that contains certain components, including:
  - Statement of goals,
  - Method of measuring progress,
  - Special education and related services,
  - Participation in general education class and activities,
  - Time, place, and duration of services, and
  - Transition services.

20 U.S.C. § 1414(d)(1)(A);  
Tex. Educ. Code § 29.005



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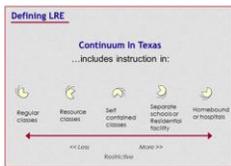
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### Least Restrictive Environment (LRE)

- Under IDEA, public schools must ensure that students with disabilities, including students in public or private institutions or other care facilities, are educated with their peers who are not disabled to the maximum extent appropriate.

20 U.S.C. § 1412(a)(5)



Texas Project First



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### IEP and School Transfer

- If a student with an IEP transfers to a new school district in Texas within the same school year, the new district must provide FAPE to the student until the new district:
  - Adopts the child’s IEP from the previous school district; or
  - Develops, adopts, and implements a new IEP that meets the applicable federal requirements.

20 U.S.C. § 1414(d)(2)(C)



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## Education Decision-Making



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## Education Decision-Maker

- Makes day to day education decisions (ex: field trip).
- Required for all children and youth in DFPS conservatorship.
- Using Form 2085-E, DFPS must name and include contact information for Education Decision-Maker, Surrogate Parent (if applicable), Caseworker, and Supervisor.
- DFPS must file Notice of EDM with the court within 5 days of the Adversary Hearing.
- Form 2085-E must be provided to the school within 5 days of any change.

*Tex. Fam. Code § 263.004*



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## Who is Considered a "Parent" under IDEA?

- Biological or adoptive parent,
- Foster parent unless prohibited by state law,
- Legal guardian (not the state),
- Person acting in place of a parent and who the child lives with (can be non-relative),
- Person legally responsible for the child, or
- Surrogate parent (Ex: a child is in hospital/RTC/jail/ juvenile detention).

*20 U.S.C. § 1401(23)*



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### Surrogate Parent Duties

- A surrogate parent must:
  - Complete a training program for surrogate parents,
  - Visit the child and the child's school,
  - Consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardian ad litem, attorney ad litem, foster parents, and caretakers,
  - Review the child's educational records,
  - Attend the child's ARD committee meetings,
  - Exercise independent judgment in pursuing the child's interests, and
  - Exercise the child's due process rights under state and federal special education law.

Tex. Educ. Code § 29.001(10)



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### CASA as a Surrogate Parent?

- Under Texas law, a CASA volunteer may serve as surrogate parent if:
  - The child is under the conservatorship of DFPS,
  - CASA volunteer is the child's guardian ad litem, and
  - The foster parent is not acting as the child's parent under Tex. Educ. Code § 29.015.

Tex. Fam. Code § 107.031(c)



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### Duties on Residential Facilities

- If a child age three or older is placed in a residential facility, the facility must notify to the school district in which the facility is located, unless the facility is an open enrollment charter school.
- The notice must be sent not later than the third calendar day after the date the child is placed in the facility.

Tex. Educ. Code § 29.012(a)



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### Round Table Discussion



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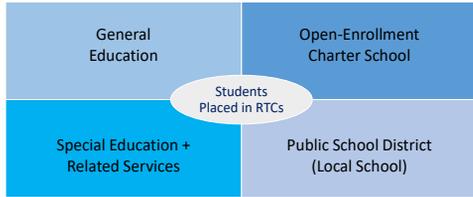
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### One Size Does Not Fit All



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### Themes from the Round Table

- Individualization
- Basic Needs
- Timely Records
- Assessment Planning
- Highly Trained Teachers
- Youth Voice
- Normalcy
- Cross-system Partnerships
- School Climate
- Education Advocacy
- Efficiency
- Teamwork



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### Developing a Plan to Address Education

- Relationships between RTCs and local schools or open-enrollment charter schools
- Information sharing
  - School records (Texas Records Exchange, cumulative folder)
  - Education Portfolio
- Cross-system collaboration
  - Sharing relevant portions of planning documents
  - Regular staffings
  - Building rapport and trust



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### Education Decision-Making

- CPS caseworker
- Education decision-maker
- Surrogate parent
- Youth voice



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### Provision of Special Education

- Initial evaluation
- Student transfer
- Specificity in the IEP
- Awareness about on-campus charter
- Behavior-related challenges



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### Transition Planning

- Supportive strategies discussed to address school transfers:
  - Early planning
  - Timing for transitions
  - Scheduling a tour
  - Peer support
  - Schoolwide support
  - Leverage existing systems of care
  - Youth engagement
- Graduation/Postsecondary
  - Developing college and career pathways




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### Recommendations

- Develop a tool, guide, and/or training with input from the Foster Care and Education Committee's Special Education Workgroup and experts on general education, residential treatment, charter schools, youth engagement, and other identified areas.
- Identify additional training opportunities to inform judges, attorneys, and child advocates about the roles of education decision-maker and surrogate parent.
- Update the Texas Administrative Code section related to inter-agency coordination.




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### Top 3 Things to Remember



Addressing education at hearings



Planning for school transitions



Surrogate parent appointments




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## Questions?



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*Thank you for addressing the educational  
needs and goals of children and youth in  
DFPS managing conservatorship!*



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