

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS)

1  Children in foster care should participate in decisions about where and how they receive education.

2  School attendance should be prioritized, to the extent possible, when scheduling services and appointments required by court order or the service plan.

3  Judges, lawyers, and advocates must discuss whether the child's educational needs and goals have been identified and addressed at every permanency hearing.

4  Federal and State law require children in foster care remain in their school of origin unless it is not in the child's best interest.

5  When a change in schools occurs, the law requires enrollment within three school days and records transfer within 10 working days.

6  Children in foster care should receive services in the least restrictive setting.

7  RTCs must notify the local school district within three days of a child's placement in their facility, unless there is an on-campus charter at the facility.

8  Schools have a legal duty to identify, locate, and evaluate children with disabilities who may need special education services.

9  The local school district must appoint a surrogate parent for children who receive special education services within 30 days of realizing there is a need.

10  For children placed in RTCs who receive special education services, the child's Admission, Review, and Dismissal Committee develops and implements the child's Individualized Education Program.

FOSTER CARE AND EDUCATION RESOURCES

Various agencies, advocates, and child welfare organizations offer resources and programs to assist students in foster care, including the Department of Family and Protective Services, the Texas Education Agency, every local education agency (schools districts and open-enrollment charter schools), the Texas Higher Education Coordinating Board, Texas public institutions of higher education, and Disability Rights Texas, the federally designated protection and advocacy agency for people with disabilities. Contact information and extensive foster care and education resources and tools are available through the non-exhaustive list of websites below:

[Children's Commission on Foster Care and Education](#)

[Disability Rights Texas - Education Resources](#)

[Texas Court Appointed Special Advocates - Educational Advocacy Guidebook](#)

[Texas Department of Family & Protective Services - Education](#)

[Texas Education Agency - Foster Care and Student Success](#)

[Texas Higher Education Coordinating Board - College for All Texans](#)

[Texas Workforce Commission - Foster Care Programs](#)



The materials in this report should not be construed as an advisory or ruling issued by the Supreme Court of Texas or any other court on specific cases or legal issues. Contributions to this guide are solely intended to address the improvement of the law, the legal system, and the administration of justice related to child welfare cases. This Top Ten List was developed by a multi-disciplinary workgroup with members representing the education, legal, and provider communities and is designed to be used as a guide to assist with considerations for the education of children in foster care who reside in a Residential Treatment Center. For a detailed document addressing the topics highlighted in this Top Ten List please visit [TexasChildrensCommission.gov](https://www.texaschildrenscommission.gov).

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS)

There are three documents in this Top 10 series: one for legal professionals, one for educators, and one for providers. Each document is designed for a specific audience to encourage improved educational outcomes for children in foster care and complement the information in the other documents in the series. This resource was developed by a multi-disciplinary workgroup with members representing the legal, education, and provider communities. It is intended to raise awareness and provide a basic introduction to several educational considerations for children residing in residential treatment centers.



1

Children in foster care should participate in decisions about where and how they receive education.

Stakeholders in the child protection system, including judges, lawyers, providers, advocates, caregivers, and others, recognize the importance of the voices of youth, parents, and family. Encouraging children in foster care¹ to participate in the decisions about where and how they receive education can build trust and improve engagement. Youth voice is important in valuing and respecting the child and encourages meaningful involvement and control that is psychologically and emotionally beneficial for them. The school setting² offers children in foster care opportunities to develop positive connections with peers and supportive adults, as well as build skills for success, social-emotional learning, and resilience. Asking children about their interests can also help develop post-secondary pathways.

Children should be allowed to meaningfully participate in the decision-making process regarding their education and service plans, including their enrollment conference,³ if developmentally and age appropriate. Educators, judges, attorneys, child welfare advocates, and providers should discuss the child's educational needs in terms that are clear and age appropriate and encourage the child's participation during these meetings. For children with disabilities, the Individuals with Disabilities Education Act (IDEA) requires that children age 16 and older be invited to attend or provide feedback with regard to their Individualized Education Program (IEP)⁴. When the child turns 18, the child will become a member of their own Admission, Review, and Dismissal (ARD) Committee and will have decision-making power with regard to their IEP and other special education decisions.⁵

In addition to education and service planning meetings, children in foster care are required to attend each permanency hearing regarding their child welfare case unless they are specifically excused by the court.⁶ This provides the child with an opportunity to address the court regarding their individual needs and educational goals. When a child cannot attend in person, caseworkers and legal advocates should coordinate with RTC staff to set up communication by telephone or video conferencing as an alternative means of participation.

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

2



School attendance should be prioritized, to the extent possible, when scheduling services and appointments required by court order or the service plan.

Students in foster care⁷ are excused from school for activities related to a court order or service plan, including court appearances and parent-child visits.⁸ However, missed school often puts children at risk of falling behind or losing credit. To the extent practicable, services, visits, and other appointments required by court order or the service plan should occur outside of school hours. It is also important to take the child's educational needs and goals into consideration when scheduling these events, and special attention should be given to important dates including testing schedules and school breaks. Although scheduling outside school hours may create practical challenges, judges, lawyers, and advocates should collaborate with the Department of Family and Protective Services (DFPS) and education partners to identify creative solutions to overcome these concerns.

3



Judges, attorneys, and advocates must discuss whether the child's educational needs and goals have been identified and addressed at every permanency hearing.

Education is a key well-being factor and is critical for children in foster care who are placed in residential treatment facilities (RTCs). Attorneys and Guardians ad litem in child welfare cases have many duties to their child clients, including the requirements to obtain and review relevant records and determine whether the child's educational needs and goals have been identified and addressed.⁹ The lawyers and advocates should discuss these issues with the child and persons with significant knowledge of the child's history and condition, including educators, service providers, and caregivers.¹⁰

Judges must address education at all permanency hearings, both before and after the final order.¹¹ The court must make findings as to whether an education decision-maker has been identified, whether the child's educational needs and goals have been identified and addressed, and whether there have been major changes in the child's school performance or if there have been any serious disciplinary events.¹²

Disciplinary action that leads to a removal of a child in care from their instructional classroom can cause the child to fall further behind in school. The child's status in DFPS conservatorship is a factor to be considered in each decision concerning school discipline.¹³ Also, under the Individuals with Disabilities Education Act (IDEA), if a child with a disability is removed from class for disciplinary reasons, certain procedures apply (See #10 below).

In addition to questions about the child's progress in school and disciplinary action, the court could inquire at permanency hearings about normalcy by asking about the child's favorite and least favorite classes, friends, upcoming school functions, and involvement in extra-curricular activities.

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED

4



Federal and State law require children in foster care remain in their school of origin unless it is not in the child's best interest.

Under federal and state law, children in foster care have the right to remain enrolled in their school of origin regardless any residential placement changes. The school of origin can be the same school that the child was attending upon removal or the school that the child is attending at the time of any subsequent change to their residential placement while in foster care. A child in foster care should continue in their school of origin unless it is not in the child's best interest.¹⁴ If a school change is necessary, prompt enrollment in the new school and records transfer is required.

Determining where a child in foster care will attend school while at an RTC is an important step in the placement process. If the child can continue at their school of origin, then that should be considered; however, if that is not possible, early coordination between the sending and receiving schools is critical. Because each situation is unique, including timeframes for transition, it is important that education stability and transition be discussed early in the placement process. Judges, lawyers, and advocates should encourage coordination between the sending and receiving schools during these transitions.

5



When a change in schools occurs, the law requires enrollment within three school days and records transfer within 10 working days.

Placement changes and school moves negatively impact academic growth, which is exacerbated when placement and school instability occur simultaneously.¹⁵ When a child changes schools, failure to promptly transfer records presents a challenge because the receiving school may be delayed in determining the educational needs of the child due to lack of access to their current coursework, grades, or educational progress. To alleviate this issue, if a school transfer is needed, the law requires enrollment within three school days.¹⁶ Additionally, schools must ensure records, including any special education records or plans, are transferred within 10 working days of the date a student in foster care begins enrollment at the receiving school.¹⁷ Schools must allow a child in foster care to enroll even without the documents otherwise required for enrollment, and DFPS must ensure these documents are submitted to the school within 30 days of enrollment.¹⁸

Beyond records transfer, communication and collaboration between education, child welfare, and legal professionals can support educational continuity, expedited enrollment and withdrawals, and streamlined transitions in the event of a school move. Judges, lawyers, and advocates can encourage school personnel at the sending and receiving schools to call and/or email each other about the child so the transition is as smooth as possible.

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED



6

Children in foster care should receive services in the least restrictive setting.

Federal and state child welfare law require that a child in foster care be placed in the least restrictive, most appropriate, family-like, residential setting possible. RTCs and other congregate care facilities are not considered least restrictive placements and are not intended to be long-term. They are meant to address intensive needs that cannot be met in a traditional home setting. Once a child achieves their treatment goals, the child should transition out of the RTC and back into the most family-like, residential setting possible, consistent with the child's needs.

Many RTCs choose to have an on-campus charter school to provide consistency in the therapeutic or treatment approach. Per DFPS policy, children placed at an RTC receiving special education services can attend the school on the RTC campus if the school meets the child's needs and is the least restrictive environment.¹⁹ Children placed in RTCs should not be segregated from the general school population as a standard procedure or excluded from normal school activities unless such activities are discussed and determined to be prohibitive for appropriate reasons other than location of residence. Children residing in RTCs and attending local, off-campus public or charter schools should have as typical a school experience as their needs and behaviors allow.

For children with disabilities, the school placement must conform with an approved Individualized Education Program (IEP). (See #10 below). Lawyers and advocates should ensure that children in foster care who receive special education services prior to being placed at the RTC continue to receive the same protections under IDEA or that a referral for an evaluation is made if a disability is suspected.

7



RTCs must notify the local school district within three days of a child's placement in their facility, unless there is an on-campus charter at the facility.

Texas state law and rules require a residential facility to notify the school district in which the facility is located not later than the third day after a child in foster care aged three to 22 years is placed in the facility.²⁰ The provider must send written notice to the school district where the facility is located, unless the facility operates their own open enrollment charter school.²¹ School districts and RTCs should develop agreements about providing education services to children placed in RTCs who will be receiving education services on the RTC campus pursuant to Texas Education Agency (TEA) and DFPS rules.²²

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS), CONTINUED



Schools have a legal duty to identify, locate, and evaluate children with disabilities who need of special education services.

Public schools are required to identify, locate, and evaluate a child if the school has reason to suspect the child has a disability and may need special education and related services.²³ National research shows that approximately 33-50% of children in foster care receive special education services; although more of these children may qualify for and benefit from special education services if given the opportunity to be evaluated.²⁴ IDEA requires states to maintain policies and procedures for the provision of a Free and Appropriate Public Education (FAPE) to every child with a disability in need of special education services between the ages of three and 21.²⁵ Texas requires that FAPE be provided from birth for children with auditory and visual impairments.²⁶ This includes children in licensed residential settings within school district boundaries unless those services are provided through a charter school, approved non-public school, or a facility-operated private school (with exceptions).²⁷ In addition, the school district must contact the facility annually to offer services to eligible children with disabilities.²⁸ If a child in care is struggling academically or behaviorally in school, parties should consider asking the school in writing to evaluate the child for special education and related services.



The local school district must appoint a surrogate parent for children who receive special education services within 30 days of realizing there is a need.

Every child in foster care has an education decision-maker selected by DFPS to make day to day education decisions on the child's behalf.²⁹ In addition, children who receive special education services who do not have a parent who has retained education decision-making rights or a caregiver willing or able to act as a special education decision-maker need a surrogate parent to advocate on their behalf regarding their special education needs. Federal and state law require schools to appoint a surrogate parent for children who receive special education services within 30 days of realizing there is a need.³⁰

A surrogate parent may also be appointed by the judge to ensure the child's special education rights are protected.³¹ In doing so, courts can ensure the child in foster care placed in an RTC continues to have an informed and engaged surrogate parent who is familiar with their background, educational needs and goals and is well-trained in the child welfare system as well as the impact of trauma on children. The surrogate parent may be a Court Appointed Special Advocate, a community member, a retired educator, or any other qualified person, and they must complete required training.³² However, the surrogate parent may not be the child's caseworker or any other employee of any public agency that is involved in the child's education or care.³³ The surrogate parent must consult with the child's attorney ad litem, guardian ad litem, foster parent, caregivers, teachers, caseworkers, and other court-appointed volunteers and is an included member of the child's ARD Committee.³⁴

If the court appoints a surrogate parent and the school district determines that the surrogate parent is not properly performing their duties, the school district must consult with DFPS about the issue, and DFPS will notify the court of any agreement to review the appointment of the surrogate parent.³⁵ Regardless of whether the surrogate parent is appointed by the school or the court, the surrogate parent fulfills a critical role of being a voice for the child for any decisions related to special education.

TOP 10 THINGS JUDGES, LAWYERS, AND ADVOCATES NEED TO KNOW ABOUT EDUCATION FOR CHILDREN IN FOSTER CARE IN RESIDENTIAL TREATMENT CENTERS (RTCS)

10



For children placed in RTCs who receive special education services, the child's Admission, Review, and Dismissal Committee develops and implements the child's Individualized Education Program.

By law, schools must provide an IEP for all children receiving special education services. When a child who receives special education services transfers to a new school during the school year, the receiving school must, in consultation with the child's special education decision maker, provide a FAPE to the child, including services comparable to those described in the child's existing IEP until the receiving school district either adopts the child's current IEP or develops, adopts, and implements a new one that meets the applicable requirements.³⁶ The receiving school must hold an Admission, Review and Dismissal (ARD) Committee meeting within 30 school days of receiving verification from a parent or the previous school district that the child was receiving special education services in the previous school district.³⁷ For children who move into a school's geographic jurisdiction during the summer, the school district must ensure that the child has an IEP in place on the first day of school and must implement that IEP in full until a new IEP is developed.³⁸

Public schools must provide a written IEP designed specifically for each child receiving special education services. The IEP is developed by an ARD Committee, which consists of members designated by law.³⁹ The manner in which the school district will provide a FAPE to the child, including where the child will attend school and what positive appropriate behavioral interventions will be used, is outlined in the child's IEP. Among other instances, the IEP must be revised at least once a year or upon request by a member of the ARD Committee.⁴⁰

Under IDEA, if a child with a disability is removed from class for disciplinary reasons, special procedures apply. The removal of a child receiving special education services from their regular classroom or school in excess of 10 school days, including consecutive school days or parts of days, or nonconsecutive days if they form a pattern, constitutes a school removal.⁴¹ The school, the parent, and relevant members of the child's ARD Committee must have a Manifestation Determination Review (MDR)⁴² within 10 school days of any decision to change the placement of a child with a disability due to a violation of the student code of conduct.⁴³ The school district must provide notice of the MDR to the child's educational decision-maker, DFPS or its representative, and parent or surrogate parent at least five school days prior to the scheduled MDR.⁴⁴

Texas law requires that transition services be included in the IEP no later than when the child reaches the age of 14.⁴⁵ While these transition services focus on post-secondary activities that tend to be different from the transition services provided through a Preparation for Adult Living (PAL) specialist, including the PAL specialist in the planning process is recommended to coordinate services. According to federal regulations, beginning no later than the first IEP to be in effect when the child turns 16 years of age, or younger if determined appropriate by the ARD committee, the IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services, including courses of study, needed to assist the child in reaching the postsecondary goals.⁴⁶

REFERENCES

1. The term “child in foster care” includes all children, youth, and young adults in DFPS managing conservatorship. Where appropriate, the terms “child,” “youth,” or “young adult” are also used.
2. The term “school” in this document refers only to a public school, also known as a Local Education Agency (LEA), including school district campuses and open enrollment charter schools.
3. Each school district and open-enrollment charter school must develop systems to ease the transition of a child in foster care during the first two weeks of enrollment at a new school. An enrollment conference must also occur within this timeframe. See Tex. Admin. Code § 89.1605; Tex. Educ. Code § 25.007.
4. Public schools must provide a written IEP designed specifically for each child receiving special education services which is developed by an Admission, Review, and Dismissal (ARD) Committee outlining the manner in which the school district will provide a Free and Appropriate Public Education (FAPE) to the child, including where they will attend school and what positive and appropriate behavioral interventions will be used. See 34 CFR, §300.322 (b)(2).
5. A child’s ARD Committee consists of members designated by law who meet to determine eligibility for special education services, to develop an IEP for a child, if applicable, and to make most of the major decisions about a child’s special education program. When a child with a disability turns 18, the child becomes their own education decision-maker and joins their ARD Committee in place of their parents. See 20 U.S.C. § 1414(d)(1)(B); Tex. Educ. Code § 29.005; 19 Tex. Admin. Code § 39.1050; 34 C.F.R. §§ 300.320(c) and 300.520; Tex. Admin. Code § 89.1049; Tex. Educ. Code § 29.017.
6. Tex. Fam. Code § 263.302.
7. The term “student in foster care,” when used in this document, includes all school age children, youth, and young adults in DFPS managing conservatorship. Where appropriate, the terms “child,” “youth,” or “young adult” are also used.
8. Tex. Educ. Code § 25.087(b)(1)(F).
9. Tex. Fam. Code §§ 107.002(a)(2), 107.002(i), 107.003(1)(E), 107.004(d-2).
10. *Id.*
11. Tex. Fam. Code §§ 263.306(a-1)(5)(G), 263.5031(4)(J).
12. *Id.*
13. Tex. Educ. Code § 37.001(a)(4).
14. 42 U.S.C. § 675(1)(G); 20 U.S.C. § 6311(g)(1).
15. Children and Youth Services Review 87. (2018). The effect of placement and school stability on academic growth trajectories of students in foster care. Available online at: <https://www.unco.edu/cebs/foster-care-research/pdf/Academic-Growth-Trajectories.pdf>.
16. Tex. Fam. Code § 264.115(a); DFPS policy requires enrollment within two days. See CPS Policy Handbook Section 15310 Time Frame for Completing the Child’s Enrollment. Available online at http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15310.
17. Tex. Educ. Code § 25.007(b)(1).
18. Tex. Educ. Code § 25.002(g).
19. CPS Policy Handbook Section 15231 Choosing a Public School or Residential Treatment Center (RTC) Program. Available online at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp.
20. Tex. Educ. Code § 29.012.
21. *Id.*
22. Tex. Educ. Code § 29.012; 19 Tex. Admin. Code § 89.1115 and 40 Tex. Admin. Code § 702.417.
23. 20 U.S.C. §1412 (a)(3).
24. National Working Group on Foster Care & Education. (April 2018). National Factsheet on the Educational Outcomes of Children in Foster Care. Available online at <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>.

25. 20 U.S.C. §1412 (a)(1)(A).
26. Tex. Educ. Code § 29.003(b)(1); 19 Tex. Admin. Code § 89.1035(b).
27. 19 Tex. Admin. Code §89.1001(c).
28. *Id.*
29. Tex. Fam. Code § 263.004; CPS Policy Handbook Section 15371 Designating an Education Decision-Maker. Available online at http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15371.
30. 20 U.S.C. § 1415(b)(2); Tex. Educ. Code § 29.0151.
31. 20 U.S.C. § 1415(b)(2); Tex. Fam. Code § 263.0025.
32. Tex. Admin. Code § 89.1047(c)(1); Tex. Educ. Code § 29.0151(e); Tex. Fam. Code § 263.0025(e).
33. Tex. Educ. Code § 29.0151(c); Tex. Fam. Code § 263.0025(d).
34. Tex. Educ. Code 29.0151(d)(7).
35. Tex. Educ. Code § 29.0151(f)-(g).
36. 34 CFR § 300.323(e). This requirement is applicable to children who transfer from one school district to another within the state of Texas. For children who transfer into a Texas school district from out of state during the school year, see requirements at 34 CFR §300.323(f) and 19 TAC §89.1050(j)(2).
37. 19 Tex. Admin. Code § 89.1050(j)(1).
38. 34 CFR § 300.323.
39. 20 U.S.C. § 1414(d)(1)(B); Tex. Educ. Code § 29.005; 19 Tex. Admin. Code § 89.1050.
40. 34 C.F.R. § 300.324; 19 Tex. Admin. Code § 89.1050.
41. Under IDEA, removal means the child is not allowed to attend their regularly scheduled classes. Also, if a child is sent home at any point during the school day, the child is considered removed from the school for that full day. See 20 U.S.C. § 1415 (k).
42. 34 C.F.R. § 300.530 (e).
43. The purpose of the MDR is to determine whether the conduct that led to the child's removal was caused by or had a direct and substantial relationship to the child's disability or was the direct result of the school's failure to implement the child's IEP. If either is true, the child cannot be removed from the child's educational placement, subject to exceptions. If neither is true, the child can be disciplined like any other child without disabilities.
44. Tex. Educ. Code § 25.007(b)(10); Tex. Admin. Code § 89.1617; CPS Policy Handbook Section 15373 Required Notification of School-Related Information. Available online at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15373.
45. Tex. Educ. Code §29.0111; 19 Tex. Admin. Code § 89.1055(h).
46. 38 CFR §300.320(b); 19 TAC 89.1055(l); Tex. Educ. Code § 29.011.