



# IDENTIFYING STUDENTS & MAINTAINING CONFIDENTIALITY



## IN THIS CHAPTER

- REASONS WHY SCHOOLS MUST IDENTIFY STUDENTS IN FOSTER CARE
- ACCEPTABLE DOCUMENTS FOR IDENTIFYING STUDENTS AT ENROLLMENT
- FOSTER CARE AND PEIMS CODING
- FERPA AND INFORMATION SHARING FOR STUDENTS IN FOSTER CARE
- PRACTICES TO IDENTIFY STUDENTS AND ENSURE CONFIDENTIALITY
- COMMUNICATING "NEED-TO-KNOW" INFORMATION

**POSTCARD:** Provided by Foster Care Alumni of America - "I keep it a secret so people wouldn't judge me."



# CHAPTER 7

## Identifying Students & Maintaining Confidentiality

### REASONS WHY SCHOOLS MUST IDENTIFY STUDENTS IN FOSTER CARE

Schools need to be informed when a student in the LEA is in DFPS conservatorship for a number of reasons, but must maintain the confidentiality of that information and share it only for the purpose of supporting the child's education and well-being. Identification is necessary for:

- ✓ Improving education outcomes for this student population, pursuant to the Every Student Succeeds Act (ESSA) of 2015, the Fostering Connections to Success and Increasing Adoptions Act of 2008, 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 school 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.
- ✓ Implementing 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.
- ✓ Providing additional counseling for students who are truant, in accordance with state law.
- ✓ Enrolling students in the National School Lunch Program and the School Breakfast Program.
- ✓ Establishing proof of legal authority of the caregiver and of CPS for enrollment and education decision-making.
- ✓ Informing students in the 11th and 12th grade about the higher education tuition and fees waiver and other resources available to support students with post-secondary education.



LEAs must maintain the confidentiality of information shared and use it only for the purpose of supporting the child's education and well-being.



**TIP:** When identifying students in foster care, schools must take steps to maintain confidentiality and protect the dignity and privacy of students!



## ACCEPTABLE DOCUMENTS FOR IDENTIFYING STUDENTS AT ENROLLMENT

DFPS or a Community Based Care agency operating as an agent of DFPS can provide three different documents to the school to confirm that the student is in foster care and that the caregiver has the authority to enroll the student:

1. DFPS Placement Authorization *Form 2085*,
2. DFPS Designation of Education Decision Maker *Form 2085-E*, or
3. A court order (see below for details).

Regardless of which of these documents is provided to the school, **documents containing information regarding the student's status as a youth in foster care are confidential.**

They should be kept in a secure area, such as a locked file cabinet, and only shared with other school personnel on a "need-to-know" basis (See *Confidentiality and Information Sharing*, on page 86).



### 1. PLACEMENT AUTHORIZATION FORM

DFPS uses [Placement Authorization Form 2085](#) to delegate its court-ordered authority to make day-to-day decisions regarding a child to an individual, usually a caregiver such as a foster parent or residential facility. The *Form 2085* is proof of the agency's legal authority and is preferred by DFPS as evidence of DFPS conservatorship over a court order because it is more likely that a foster parent or facility staff member will have a copy of the form rather than the court order.

When a caregiver seeks to enroll a student, the school may ask for a copy of the *Placement Authorization Form 2085* to confirm that the person presenting the form has the authority to enroll (See *Appendix E*, on page 163.)

### 2. DFPS DESIGNATION OF EDUCATION DECISION-MAKER FORM 2085-E

This form is also proof of the agency's legal authority and contains more detail regarding which individuals are authorized to make different types of education decisions on behalf the student. DFPS is required by law to ensure the school receives this information. Education decision-makers must be notified in instances when the school takes an action that will impact the student's education. (See *Appendix F*, page 164, for a sample of this form.)

### 3. COURT ORDER

If the caregiver does not provide the *2085* or *2085-E* forms, a school official may request a copy of the court order. This document names DFPS as the temporary managing conservator (TMC) or permanent managing conservator (PMC) of the student. Schools can use the court order to confirm that DFPS or its appointed caregiver has the authority to enroll and make education decisions for the student.



#### Court Orders and Confidentiality

Court orders have private and confidential information related to a student's family and the reasons for their placement in foster care. Sometimes schools request court orders or other documents related to the DFPS case unaware these may contain very personal details related to a student's abuse or neglect history.

Information may be redacted from the court order before a copy is given to the school if it is not related to identifying DFPS as the managing conservator or not needed to meet a student's educational needs.



**TIP:** If the school has questions or concerns about a student's identity, the school official may request the Placement Authorization *Form 2085*, DFPS Designated Education Decision-Maker *Form 2085-E*, the court order, or may call the DFPS or Community-Based Care caseworker listed on the paperwork for clarification. DFPS regional education specialists can assist when the caseworker cannot be identified.



**Other forms at enrollment:** Schools may be given other DFPS forms at the time of enrollment. For example, Texas law allows a parent/guardian to execute an Authorization Agreement for Voluntary Adult Caregiver form with which the parent/guardian can authorize a relative or other adult to temporarily take certain actions and obtain services for the student, such as enroll the student in school or get medical care for the student.



**Note:** Although some families involved with DFPS services may use such an Authorization Agreement, only the Placement Authorization Form 2085, DFPS Designated Education Decision-Maker 2085-E Form, or court order confirms a student is in the state's legal conservatorship and eligible for the foster care-related resources discussed in this guide.



## FOSTER CARE AND PEIMS CODING

### IDENTIFYING STUDENTS IN FOSTER CARE IN PEIMS

Federal and State law require TEA to collect and report data on students in foster care in Texas public schools. This data is reported to TEA by local education agencies (LEAs) through the Public Education Information Management System (PEIMS).<sup>93</sup> A school must enter a Foster Care Indicator Code in PEIMS for students who are currently in the conservatorship of DFPS (for Pre-kindergarten students, a student will also be coded if they were previously in DFPS conservatorship).

Identification helps TEA and LEAs collect and report academic achievement and graduation rates of students in foster care as required by the Every Student Succeeds Act (ESSA). Accurate identification and reporting of students in foster care is essential. LEAs must properly identify students so that students receive all of the supports and services for which they are eligible. LEAs are encouraged to analyze and review their data and use it to monitor and track student progress.

**LEAs must properly identify students so that students receive all of the supports and services for which they are eligible.**



See the following guidance provided by TEA: [Foster Care PEIMS Guidance.pdf](#). See [TEA's PEIMS Data Standards](#) for more information on foster care coding.

### IF A STUDENT LEAVES FOSTER CARE WITHIN THE SCHOOL YEAR, DO THEY REMAIN CODED FOR THE REMAINDER OF THE YEAR IN PEIMS?

Yes. When a student receives the Foster Care PEIMS Indicator Code, the student remains coded the full school year and summer months even if the student leaves foster care within the school year.

### IF A STUDENT REMAINS IN FOSTER CARE, DOES THE FOSTER CARE INDICATOR CARRY OVER FROM YEAR-TO-YEAR?

No. The Foster Care Indicator code does not carry over from year to year. A student's time in DFPS Managing Conservatorship is temporary. The student must be re-identified in PEIMS at the beginning of each school year.

### IDENTIFYING STUDENTS IN FOSTER CARE FOR COMPENSATORY EDUCATION:

A student in DFPS Conservatorship is considered at risk of dropping out of school for the purposes of TEC § 29.081. Students enrolled with documentation that indicates they are in foster care must be coded with PEIMS at-risk indicator code #11. In some circumstances, students in foster care or who were previously in foster care are coded under code #13 (see code descriptions below for more information).

- **At-Risk Indicator Code #11:** The student is in the custody or care of the Department of Family and Protective Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official.
- **At-Risk Indicator Code #13:** The student resided in the preceding school year or resides in the current school year in a residential placement facility in a district. Such facilities include: a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized childcare home, or general residential operation.

Identify all at-risk indicators applicable to any student in foster care (e.g., pregnant, incarcerated, residential treatment placement, etc.) and ensure compensatory funding is accessed to support the student.



For more information visit [TEA's Compensatory Education FAQ](#).



## FERPA AND INFORMATION SHARING FOR STUDENTS IN FOSTER CARE

Information sharing between the education and child welfare systems is an important element in supporting the academic success of students in foster care. The federal Family Educational Rights and Privacy Act (FERPA) is the privacy law governing an educational agency or institution that receives federal funds under any program administered by the Secretary of Education. FERPA is not a barrier to information sharing between child welfare and educational agencies.



### What is the school's responsibility when individuals call the school wanting information about a student?

It depends on who is calling. School staff should follow their district's FERPA guidance when releasing school-related information. DFPS staff, Community-Based Care caseworkers, the child's caregiver, attorney ad litem, guardian ad litem, CASA, surrogate parent, and others identified in the court order or DFPS forms may generally access educational information. When in doubt, school personnel can always ask to see either the court order, call and verify the person's credentials with DFPS, or review the DFPS Placement Authorization Form 2085 and Designation of Education Decision-Maker Form 2085-E.

For additional commonly asked questions regarding information sharing and documentation for students in foster care, see *Appendix K, on page 169*.

FERPA generally requires parental consent before a school can share personally identifiable information in education records about a student, with some exceptions. FERPA regulations define a "parent of a student" to include a natural parent, guardian, or an individual acting as a parent in the absence of a natural parent or guardian.<sup>94</sup> For students in foster care, however, FERPA allows the school to share information with the student's state or local child welfare caseworkers without requiring permission of or notice to the student's legal parents.

FERPA also permits school districts to release records in compliance with a court order or subpoena.<sup>95</sup> The law includes exceptions that allow student records to be released 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. Such a release is permitted without parental consent.<sup>96</sup> If you have questions, ask your district FERPA compliance officer.



**LAW:** In addition to federal provisions that promote information sharing between education and child welfare, state law also supports it. Texas law requires school districts and local campuses to notify the student's educational decision-maker and caseworker regarding events that may significantly impact the education of a student in foster care.<sup>97</sup> For example, written notification to DFPS from the school district and campus is promptly required when the district assigns a surrogate parent to make special education decisions on behalf of a student in foster care.



### RESOURCES: FERPA and Information Sharing

TEA, DFPS, Children's Commission, "[Information Sharing Between Childwelfare and Schools](#)" Guide 2017.

[U.S. Department of Education Letter addressing the Uninterrupted Scholars Act.](#)

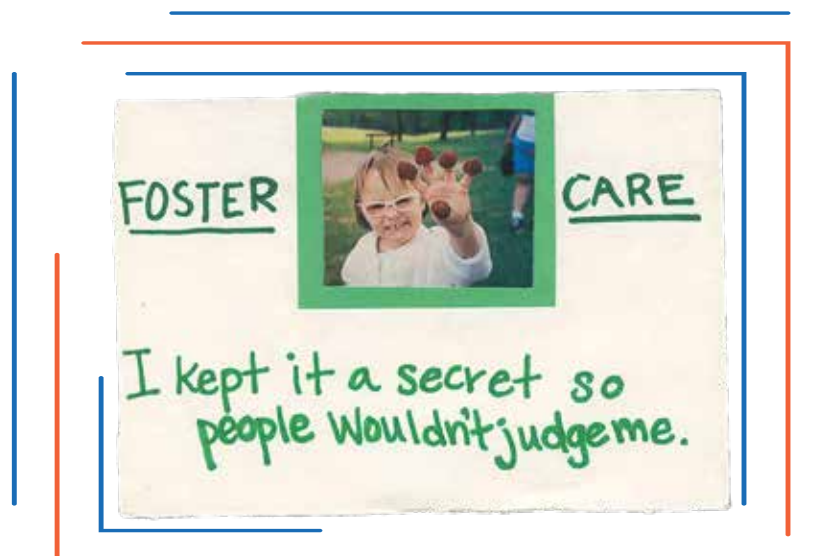
[Legal Center for Foster Care and Education, Uninterrupted Scholars Act video.](#)

Legal Center for Foster Care and Education, "[The Uninterrupted Scholars Act: How do Recent Changes to FERPA Help Child Welfare Agencies Get Access to School Records?](#)"

[The Legal Center for Foster Care and Education, "Solving the Data Puzzle — A How-to Guide on Collecting and Sharing Information."](#)

## PRACTICES TO IDENTIFY STUDENTS AND ENSURE CONFIDENTIALITY

While each LEA will develop its own system to identify, enroll, and support students in foster care, always be mindful of the need for confidentiality. Students currently or formerly in foster care generally express a desire to have their foster care status kept private from school staff and peers who do not have a need-to-know or with whom they do not have a relationship. It is important for adults to be aware of a student's right to privacy and understand the potential negative impact of revealing students' personal information. File all forms, tracking logs, notebooks, and data safely out of view of other students. Keep records secure from individuals who do not need to know the student is in foster care. All written information with student names should be password protected or in locked files in order to avoid confidentiality violations, as well as to avoid potential harm to a student. Protecting a student's privacy applies to oral and written communications.





Each of the examples below provides an opportunity to think through how one would promote or maintain confidentiality, while still identifying students as being in foster care for PEIMS or eligibility purposes.

- ▷ Develop training and increase awareness with school registrars and front office staff on how to effectively identify and enroll students and inform the LEA Foster Care Liaison about the student. Training should include sensitivity and awareness, confidentiality, safe and secure storing of records, and effective practices that streamline enrollment.
- ▷ Add a question to the LEA's existing Student Residency Questionnaire (SRQ) that asks if the student is in foster care. Have the person enrolling the student verify their response by providing a DFPS Placement Authorization Form 2085 or Designation of Education Decision-Maker Form 2085-E. This leverages an existing form and process already used by many LEAs. If implemented, processing and handling of these forms must be confidential and sensitive, including all written and oral communication about the student.
- ▷ Add a question to the school enrollment form that discreetly identifies students—similar to using the SRQ as described above—but use language other than “foster care” to maintain student privacy. For example, ask on the form if a student has a Form 2085, but do not ask if the student is in “foster care.” Once again, it is important that identifying information on this form be kept confidential and secure.
- ▷ In addition to the student's caregiver information, document the caseworker's name and contact information in the student's records in case further information or follow-up is needed.
- ▷ Develop an identification code in the LEA database system for tracking and monitoring student progress for each campus in the LEA.
- ▷ Streamline the process with the LEA child nutrition coordinator to ensure students are immediately enrolled in and receive free school meal programs without further application.<sup>98</sup>



## COMMUNICATING “NEED-TO-KNOW” INFORMATION

### CONFIDENTIALITY & INFORMATION SHARING WITHIN A SCHOOL DISTRICT

**Schools need to know when a student is in foster care and are responsible for protecting the confidentiality of the information.**

Schools need to be informed when a student is in DFPS conservatorship for several reasons but must maintain the confidentiality of that information and share it only for the purpose of supporting the student’s education and well-being. Other school personnel, such as the principal, school counselor, special education staff, or teachers, may also be informed if necessary to meet the student’s educational needs. Schools should always be sensitive to the youth’s desire for privacy and should not share the information with any parties who do not have a need to know.



#### SCHOOL PERSONNEL WHO MIGHT HAVE A NEED TO KNOW ADDITIONAL INFORMATION ABOUT A STUDENT IN FOSTER CARE INCLUDE:

- Superintendent, principal, or administrative staff: If necessary for enrollment, administrative, or educational purposes.
- Teacher(s): If necessary for education or other relevant classroom purposes.
- School counselor, school nurse: If necessary for educational, physical, or mental health purposes.
- Special education personnel: If student is or may be eligible for special education services.
- Coaches: If necessary or relevant to some aspect of the activity.
- Bus driver: May need to know a student’s address for transportation purposes, but may not need to know the student is in foster care.
- Front office staff and volunteers: May need to know who will pick the student up from school, but may not necessarily need to know the student is in foster care.
- Cafeteria staff: May need to know a student is eligible for school meal programs, but does not need to know on what eligibility grounds.

Decisions to share confidential information 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 student’s education and well-being.

#### IT IS GENERALLY APPROPRIATE FOR DFPS TO SHARE THE FOLLOWING TYPES OF INFORMATION WITH RELEVANT SCHOOL PERSONNEL:

- DFPS Placement Authorization Form 2085, DFPS Designation of Education Decision-Maker Form 2085-E, or relevant portion of court order appointing DFPS managing conservator.
- DFPS or Community-Based Care caseworker and supervisor contact information.



- The fact that the student is in DFPS conservatorship and living in a foster home or in a relative/kinship care placement.
- The student's birth certificate, immunization records, names of previous schools attended, transcripts and report cards, Individual Education Programs, Section 504 Plans, 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 (SHARS).



*Student Mental Health, & Discipline, on page 101).*

### BASED ON A CASE-BY-CASE DETERMINATION

The following information may be shared with relevant school personnel if it relates to the student's care and needs in the educational setting:

- 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. (*See Chapter 10: Trauma-Informed School Supports, Student Mental Health, & Discipline, on page 101).*

- Information from psychological evaluations, if relevant to the student'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 student's needs should be redacted.
- Effective behavior supports used by the caregiver to encourage consistency in the school and home environments.
- Whether the student has been arrested. This information may be provided by DFPS, although there is no requirement for doing so.



For more guidance on appropriate information sharing, view "[Maintaining Privacy and Promoting Educational Success](#)" developed by TEA, the Children's Commission, and DFPS.

### IT IS NEVER APPROPRIATE TO SHARE WITH SCHOOL PERSONNEL:



- Abuse/neglect history.
- Name of the person who reported the abuse or neglect, if known.
- Details of the DFPS abuse or neglect investigation.
- 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.
- Foster family income.
- Fact that student was adopted.