

**Education Advocacy for Foster Children:  
A Texas Legislative Update and Practical Implications for Child  
Advocates**

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# Education Advocacy for Foster Children: A Texas Legislative Update and Practical Implications for Child Advocates

## I. Introduction

On March 31, 2012, the Texas Supreme Court Children's Commission published the Final Report of its Education Committee: *The Texas Blueprint: Transforming Education Outcomes for Children & Youth in Foster Care*.<sup>1</sup> The *Texas Blueprint* made numerous recommendations for improving educational outcomes for foster children. Among those were recommendations for legislative change.

Since the publication of the *Texas Blueprint*, the Texas legislature has met for two regular sessions: the 83rd regular session in 2013, and the 84th regular session in 2015. Both of these legislative sessions have brought with them multiple changes to Texas laws relating to foster children and their education. This paper addresses legislation related to foster child education that has been enacted as a result of these two legislative sessions. In doing so, this paper looks to provide practical guidance for both attorney and non-attorney child advocates involved in child welfare cases. Additionally, the paper attempts to place the legislative efforts in their broader context in light of both the *Texas Blueprint* and the portions of Texas code where they have been codified. This paper is not intended to be treated as a comprehensive guide on education advocacy for foster children. For resources with this broader perspective, advocates are encouraged to consult the *Foster Care & Student Success Resource Guide* published by the Texas Education Agency.<sup>2</sup>

As stated above, this paper focuses on changes made by the Texas Legislature during the 83rd and 84th regular legislative sessions, which occurred in 2013 and 2015. Eleven bills that relate to

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<sup>1</sup> EDUC. COMM., SUP. CT. OF TEX. PERMANENT JUDICIAL COMM'N FOR CHILDREN, YOUTH AND FAMILIES, THE TEXAS BLUEPRINT: TRANSFORMING EDUCATION OUTCOMES FOR CHILDREN & YOUTH IN FOSTER CARE (2012) [hereinafter *Texas Blueprint*], available at <http://texaschildrenscommission.gov/media/23044/TheTexasBlueprint.pdf>.

<sup>2</sup> TEX. EDUC. AGENCY, FOSTER CARE & STUDENT SUCCESS (2013), available at <http://tea.texas.gov/FosterCareStudentSuccess/>.

education of foster children and other children in the conservatorship of the Texas Department of Family and Protective Services (“DFPS”) have been identified from these two legislative sessions: six from the 84th legislative session, and five from the 83rd.<sup>3</sup>

The *Texas Blueprint* identified seven core focus areas in which it made recommendations for legislative, policy, and practice changes for the courts, child welfare, and education systems in Texas: Judicial Practices, Data and Information Sharing, Multi-Disciplinary Training, School Readiness, School Stability and Transitions, School Experience, and Post-Secondary Education.<sup>4</sup> In addressing the bills identified, and their respective impacts, this paper adopts these core focus areas identified in the *Texas Blueprint* as a roadmap for its organization. Each core focus area will be addressed in the order found in the *Texas Blueprint*. This includes a discussion of any legislative changes relevant to the focus area, as well as how these changes might be relevant to an advocate. This paper also adds an additional eighth category, Other Considerations, to address relevant items that fall outside of the areas found in the *Texas Blueprint*. Due to the nature of the legislation covered, some bills are discussed in multiple parts of the paper due to their impacts on multiple core focus areas.

## II. Judicial Practices

### *Recent Legislative Activity*

#### S.B. 206 § 29

Section 29 of S.B. 206, amends Family Code section 263.004, which deals with providing notice to the court regarding education decision-making. S.B. 206 simplifies some reporting requirements for DFPS regarding a child’s appointed education decision maker. Under the updated section 263.004, DFPS’s previous reporting duty is now satisfied by filing the name and contact information of each person who has been designated by the department to make educational decisions

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<sup>3</sup> 84th Regular Legislative Session: H.B. 1309, H.B. 1804, H.B. 3748, S.B. 206, S.B. 830, S.B. 1407. 83rd Regular Legislative Session: H.B. 2619, S.B. 430, S.B. 832, S.B. 833, S.B. 1404.

<sup>4</sup> See *Texas Blueprint*, *supra* note 1 at 12; Foster Care & Student Success, *supra* note 2 at 20.

on behalf of the child or assigned to serve as the child’s surrogate parent for purposes of decision-making regarding special education services.<sup>5</sup> This information is also required to be provided to the school that the child attends.<sup>6</sup> However, the previous requirement that DFPS provide a copy of its report to each person entitled to notice of a permanency hearing under section 263.301 has now been removed.<sup>7</sup> Further, when a person other than one previously identified to the court, is designated to make educational decisions, or assigned to serve as a surrogate parent, his information must be included by DFPS in a permanency progress report filed under Family Code section 263.303 or 263.502.<sup>8</sup>

S.B. 206 §§ 34, 44

Family Code sections 263.303 and 263.502 were each also affected by S.B. 206 sections 34 and 44, respectively. Family Code section 263.303, which previously dealt with the progress report required before each permanency hearing other than the first permanency hearing, now focuses on permanency hearings held before a final order is rendered.<sup>9</sup> Under the updated statute, the permanency progress report for each permanency hearing that takes place before a final order is rendered must contain any information necessary for the court to conduct the permanency hearing and make findings and determinations under section 263.306.<sup>10</sup> The report must also contain information on significant events<sup>11</sup>, which includes major changes in school performance or serious disciplinary events that occurred at school.<sup>12</sup> Additionally, section 263.303 allows for the report to contain “any additional

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<sup>5</sup> Tex. Fam. Code § 263.004.

<sup>6</sup> *Id.*

<sup>7</sup> Tex. S.B. 206, 84th Leg., R.S. § 29 (2015).

<sup>8</sup> Tex. Fam. Code § 263.004.

<sup>9</sup> Tex. S.B. 206, 84th Leg., R.S. § 34 (2015).

<sup>10</sup> Tex. Fam. Code § 263.303.

<sup>11</sup> *Id.*

<sup>12</sup> *See* Tex. Fam. Code § 264.018(a)(5).

information the department determines is appropriate or that is requested by the court and relevant to the court's findings and determinations under section 263.306."<sup>13</sup>

The changes made by section 44 of S.B. 206 to Family Code section 263.502 are largely the same as those made by section 34 of S.B. 206 to Family Code section 263.303.<sup>14</sup> In contrast to the updated section 263.303, which deals with permanency hearings held before a final order is rendered, the updated version of section 263.502 deals with permanency progress reports made after a final order has been rendered.<sup>15</sup> The updated section 263.502 adopts the same requirements regarding the content of a permanency progress report, requiring the report to contain information necessary for the court to conduct the permanency hearing and make findings and determinations, information on significant events, and "any additional information the department determines is appropriate or that is requested by the court and relevant to the court's findings and determinations under section 263.5031."<sup>16</sup> The only substantial difference between the two updated sections is that under 263.502, a court can, for good cause shown, order a different deadline for the filing of the permanency progress report, or waive the reporting requirement for a specific hearing.<sup>17</sup>

S.B. 206 §§ 36, 45

Along with the changes to the requirements of permanency progress reports both before and after a final order is rendered, sections 36 and 45 of S.B. 206 also made changes regarding the actions to be taken by the court at pre-final order and post-final order permanency hearings, respectively.<sup>18</sup> Particularly relevant to advocates, courts are required to determine "whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and

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<sup>13</sup> Tex. Fam. Code § 263.303.

<sup>14</sup> Tex. S.B. 206, 84th Leg., R.S. § 34, 44 (2015).

<sup>15</sup> Tex. Fam. Code § 263.502.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Tex. S.B. 206, 84th Leg., R.S. § 36, 45 (2015). Pre-final order hearings are governed by Family Code § 263.306, while Family Code § 263.5031 deals with post-final order hearings



addressed, and there have been major changes in the child’s school performance or there have been serious disciplinary events.”<sup>19</sup> When a child is fourteen years of age or older, the court must also determine, “whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child’s community.”<sup>20</sup>

S.B. 1407 §§ 2, 3

Family Code sections 263.306 and 263.503 were also modified by S.B. 1407, to include a new requirement that the court review DFPS’ efforts to ensure that a child in the conservatorship of the department “has regular, ongoing opportunities to engage in age-appropriate normalcy activities<sup>21</sup>, including activities not listed in the child’s service plan.”<sup>22</sup>

***Ideas for Advocates***

The changes to judicial practices brought by S.B. 206 and S.B. 1407 do not have a large direct effect on the work of an advocate. However there are a few areas in which an advocate can take advantage of these changes. First, an advocate should ensure that the various provisions are being followed by the court. While issues regarding education, transition, or normalcy activities can often be solved by working directly with the relevant stakeholders, such as DFPS, school employees, or foster parents, some situations may require an advocate to raise the issues at a permanency hearing in order to best serve the child.

Additionally, the language in updated Family Code sections 263.303 and 263.502, which requires a permanency progress report to contain “any additional information the department determines is appropriate. . .” offers an opportunity for an advocate, in coordination with the

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<sup>19</sup> Tex. Fam. Code § 263.306(a-1)(4)(F); Tex. Fam. Code § 263.5031(3)(I).

<sup>20</sup> Tex. Fam. Code § 263.306(a-1)(4)(G); Tex. Fam. Code § 263.5031(3)(F).

<sup>21</sup> See *infra* pp. 20-21 for broader discussion of S.B. 1407, including the definition of age-appropriate normalcy activities.

<sup>22</sup> Tex. S.B. 1407, 84th Leg., R.S. § 2, 3(2015); Tex. Fam. Code § 263.306(c); Tex. Fam. Code § 263.503(c).

department, to put relevant information before both the court and the other parties in written form prior to a hearing.

### III. Data and Information Sharing

#### *Recent Legislative Activity*

##### H.B. 1309 § 1 and S.B. 206 § 48

Section 1 of House Bill 1309, passed by the 84th legislature, codifies a list of required notifications that DFPS must make concerning certain events related to children in foster care of the managing conservatorship of DFPS.<sup>23</sup> Section 48 of Senate Bill 206, also passed by the 84th legislature, contains almost entirely identical language.<sup>24</sup> While the two bills do have a few minor variations in language, there is no actual substantive difference in their effect.<sup>25</sup>

The list of required notifications includes the requirement that DFPS give notice no more than 10 days after the department becomes aware of a significant event affecting a child in DFPS' conservatorship.<sup>26</sup> The definition of a "significant event" for required notification purposes includes "a major change in school performance or a serious disciplinary event at school," as well as any other event "determined to be significant under department rule."<sup>27</sup>

Significantly, the notice required must be provided "in a manner that would provide actual notice" and must be given to the child's parent; the assigned attorney ad litem, guardian ad litem, and volunteer advocate; the licensed administrator of the child-placing agency responsible for placing the child, or their designee; a foster parent, prospective adoptive parent, relative of the child providing care to the child, or the director of the group home or general residential operation where the child is

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<sup>23</sup> Tex. Fam. Code § 264.018.

<sup>24</sup> See generally Tex. H.B. 1309, 84th Leg., R.S. § 1 (2015); Tex. S.B. 206, 84th Leg., R.S. § 48 (2015).

<sup>25</sup> The only differences between the text enacted as Family Code § 264.018 by H.B. 1309 and S.B. 206 are that the text found in § 264.018(a)(2) and (a)(3) are swapped in S.B. 206, and that H.B. 1309 omits the explicit reference to section 263.0021 as one of the "other notice requirements provided by law" to which § 264.018's notification requirements are specified as "in addition to" as found in § 264.018(b).

<sup>26</sup> Tex. Fam. Code § 264.018.

<sup>27</sup> *Id.*

residing; and any other person determined by a court to have an interest in the child's welfare.<sup>28</sup> Further, where a hearing regarding the child is conducted at any time during the 10-day notice period following DFPS becoming aware of a significant event, DFPS must provide notice of the event at the hearing, regardless of how far into the 10-day period the hearing is held.<sup>29</sup>

Additionally, it is important to note that it is the responsibility of a person entitled to notice under section 264.018 to provide DFPS with current contact information including an e-mail address and telephone number, and to keep DFPS up-to-date when this information changes.<sup>30</sup> Under the statute, DFPS is not responsible for failing to provide notice to someone if the person did not provide or update their contact information.<sup>31</sup>

#### H.B. 1804

House Bill 1804, passed during the 84th legislative session, brought minor changes to the Education Code's requirement that school districts provide notice regarding events that might significantly impact the education of a child in substitute care who is transitioning from one school to another to the child's educational decision-maker and caseworker.<sup>32</sup> The updates made by H.B. 1804, extend this requirement to now apply not only to school districts, but also to school campuses and open-enrollment charter schools.<sup>33</sup>

#### S.B. 206 §§ 14, 15

Section 14 of Senate Bill 206 amends the Family Code to allow DFPS to modify the form and contents of the health, social, educational, and genetic history for a child as DFPS determines to be appropriate.<sup>34</sup> In making a determination as to whether and how to modify the report, DFPS is to

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Ted. Educ. Code § 25.007(b).

<sup>33</sup> Tex. H.B. 1804, 84th Leg., R.S. (2015).

<sup>34</sup> Tex. Fam. Code § 162.007.

consider the relationship between the prospective adoptive parents and the child or the child's birth family, the provision of the child's case record to the prospective adoptive parents, or any other factors specified by department rules.<sup>35</sup>

Section 15 of Senate Bill 206 makes related changes, redesignating subsections (a) and (a-1) of section 162.006 as section 162.0062.<sup>36</sup> In addition to redesignating those sections of the Family Code, which deal with the rights of a prospective adoptive parent to examine records and other information relating to the history of the child, the bill also added language requiring DFPS to provide a child's case record to a prospective adoptive parent upon request, as well as language that gives DFPS discretionary authorization to allow prospective adoptive parents to examine a child's records and other information relating to the child's history where the prospective adoptive parents have reviewed the health, social, educational, and genetic history report for the child and indicated that they want to proceed with the adoption and have not requested the child's case record.<sup>37</sup> Section 15 also transfers the previous text of Family Code section 162.018, which deals with access to information and records for adoptive parents, as opposed to prospective adoptive parents, and adopted children who are adults, and redesignates that section as Subsections (d), (e), and (f) of section 162.0062.<sup>38</sup>

#### S.B. 206 § 22

Section 22 of Senate Bill 206 amends the requirements regarding to whom DFPS is required to send a copy of its report when the department completes investigation into a report of alleged or

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<sup>35</sup> *Id.*

<sup>36</sup> Tex. S.B. 206, 84th Leg., R.S. § 15 (2015).

<sup>37</sup> See Tex. Fam. Code § 162.0062. What, if any, difference exists between "the records and other information relating to the history of the child" referred to by § 162.0062(a) and "the child's case record" referred to by § 162.0062(c) is unclear. While 162.0062(b) does specify that the records "described by Subsection (a) must include any records relating to an investigation of abuse in which the child was an alleged or confirmed victim of sexual abuse while residing in a foster home or other residential child-care facility," this does not seem to differ from the information that the Department's Child Protective Services Handbook indicates is contained in the child's case record, which includes, but is not limited to: "identifying information about the client, the basis for determining the client's eligibility for service, the services provided, the goals and objectives of the services, the results of the services, the providers of service, and other agencies or professionals involved in the case." TEX. DEPT OF FAMILY AND PROTECTIVE SERVS., CHILD PROTECTIVE SERVICES HANDBOOK 1420 (2016), available at [https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_1420.asp#CPS\\_1421](https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_1420.asp#CPS_1421).

<sup>38</sup> Tex. S.B. 206, 84th Leg., R.S. § 15 (2015).

suspected abuse or neglect of a child in a public or private school under the jurisdiction of the Texas Education Agency.<sup>39</sup> Previously, DFPS was mandated to send copies of such a report to the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director, unless the principal or director was alleged to have committed the abuse or neglect.<sup>40</sup> This requirement has been replaced with one that no longer mandates DFPS to provide each of the listed entities a copy of the report by default—with the exception of the Texas Education Agency, which is still automatically sent a copy.<sup>41</sup> Instead the other entities that previously received a copy of the report by default must now request a copy of the report in order to receive it.<sup>42</sup>

S.B. 833

Senate Bill 833 made a minor modification to the Education Code intended to help facilitate data collection regarding students in foster care.<sup>43</sup> While DFPS and the Texas Education Agency have for several years been required to exchange information as appropriate to facilitate the department's evaluation of educational outcomes of students in foster care, these efforts had been partially hindered because the Public Education Information Management System (PEIMS), which school districts are required to use to track and compile aggregated data about students was not configured to track information about the foster care status of students.<sup>44</sup> As a result of S.B. 833, the Texas Education Agency is now explicitly required to collect data on the foster care status of students through PEIMS.<sup>45</sup>

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<sup>39</sup> Tex. Fam. Code § 261.406(b).

<sup>40</sup> Tex. S.B. 206, 84th Leg., R.S. § 22 (2015).

<sup>41</sup> Tex. Fam. Code § 261.406(b).

<sup>42</sup> *Id.*

<sup>43</sup> Tex. Educ. Code § 7.029.

<sup>44</sup> Senate Research Ctr., Bill Analysis, Tex. S.B. 833, 83rd Leg., R.S. (2013).

<sup>45</sup> Tex. S.B. 833, 83rd Leg., R.S. (2013).

### *Ideas for Advocates*

The most important take-away for an advocate regarding data and information sharing should be the importance of providing DFPS with your contact information and ensuring that it is kept up-to-date. Failure to ensure that DFPS has your current contact information can result in not receiving the notice to which one would be otherwise entitled regarding major changes in school performance, serious disciplinary events at school, or other problems that arise for the child. An advocate cannot be truly effective if he is out of the loop about what is happening in the child's life. If an advocate hears about a significant event from a source other than DFPS or otherwise believes he has not been properly notified in a timely manner, he should attempt to uncover where the breakdown in communication has occurred.

When dealing with prospective adoptive parents, an advocate should ensure that the prospective parents are aware of their rights regarding the child's records. This may include making the prospective parents aware of the fact that DFPS has some discretion to modify the form and content of the child's health, social, educational, and genetic history report, the circumstances under which this might occur, or the considerations DFPS would undertake in making such a decision.

When an advocate is aware that there has been a report of alleged or suspected abuse or neglect at a school under the jurisdiction of the Texas Education Agency, an advocate should consider whether it might be beneficial to encourage a relevant entity to request a copy of DFPS's report. While such a situation is unlikely to arise, it is conceivable that an advocate might find a situation where it is in the child's best interest to ensure that a school board or superintendent is made aware of a report that might not otherwise have been brought to their attention.

## IV. Multi-Disciplinary Training

### *Recent Legislative Activity*

#### S.B. 1407

There have been no recent bills directly addressing the multi-disciplinary training suggested by the *Texas Blueprint*. However, Senate Bill 1407, primarily discussed elsewhere in this paper, does include a mandate that DFPS require licensed child placing agency personnel, residential child care licensing staff, conservatorship caseworkers, and other persons who DFPS determines would benefit from the training, to complete a course of training regarding: (1) the importance of a child's participation in age-appropriate normalcy activities and the benefits of such activities to a child's well-being, mental health, and social, emotional, and developmental growth; and (2) substitute caregiver decision-making under the standard of care of a reasonable and prudent parent.<sup>46</sup>

### *Ideas for Advocates*

While the legislature has not had reason to address the multi-disciplinary training recommendations of the commission, it does not mean advocates are left with nothing to do. Advocates should specifically seek out training from the department regarding age-appropriate normalcy activities described by Family Code section 264.125(d). Advocates should also pro-actively seek out other training opportunities through DFPS, local bar associations, non-profit organizations, or other community groups. Training events or other resources may only reach a small portion of their potential audience for any number of reasons. A little pro-active legwork can often lead to resources and training that an advocate might not otherwise be aware of.

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<sup>46</sup> Tex. S.B. 1407, 84th Leg., R.S. § 7 (2015).

## V. School Readiness

### *Recent Legislative Activity*

#### H.B. 2619 §§ 1-3

Sections 1 through 3 of House Bill 2619, make several changes aimed at establishing procedures for determining and addressing the educational needs of a child in DFPS conservatorship.<sup>47</sup> Sections 1 and 2 of H.B. 2619 modified the duties of guardian and attorney ad litem to include a duty for each to determine whether the child's educational needs and goals have been identified and addressed prior to each hearing held under Chapter 263.<sup>48</sup> Section 3 of H.B. 2619 deals with the appointment of a surrogate parent for the purposes of allowing the child to participate in a school district's special education programs.<sup>49</sup> In making such an appointment, the court is required to give preference first to the child's foster parent, and then to either a relative or other designated caregiver, or to a court-appointed volunteer advocate who has been appointed to serve as the child's guardian ad litem.<sup>50</sup> Section 3 also includes specific prohibitions against appointing DFPS, the Texas Education Agency, a school or school district, or any other agency involved in the education or care of the child, as the child's surrogate parent.<sup>51</sup>

#### S.B. 430

Another bill, Senate Bill 430, deals with the provision of day care services for foster children. The bill made changes to the Family Code which require DFPS to verify whether a foster parent, relative, or designated caregiver seeking monetary assistance for day care from DFPS has first attempted to find available community services, such as Head Start programs, prekindergarten classes,

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<sup>47</sup> Tex. H.B. 2619, 83rd Leg., R.S. § 1-3 (2013)

<sup>48</sup> See Tex. Fam. Code § 107.002; Tex. Fam. Code § 107.004.

<sup>49</sup> Tex. Fam. Code § 263.0025.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



or early education programs offered by public schools.<sup>52</sup> Unless the foster parent, relative, or designated caregiver is able to verify that he has unsuccessfully sought other potentially available services, DFPS is prohibited from providing monetary assistance for day care.<sup>53</sup>

### ***Ideas for Advocates***

As a guardian or attorney ad litem, an advocate has the duty, prior to each hearing held under Chapter 263, to determine whether the child's educational needs and goals have been identified and whether those needs and goals are being properly addressed. An advocate should take the opportunity given by each Chapter 263 hearing to report to the court regarding any issues with the child's educational needs or goals. Further, where a child does not have a foster parent appointed as a surrogate parent, a court-appointed volunteer advocate who has been appointed to serve as the child's guardian ad litem should consider whether to push to be appointed as such. In making such a decision, an advocate should consider what relative or other designated caregiver the court might alternatively appoint and whether the advocate believes those potential surrogate parents would be well-suited to the responsibilities that come with being appointed as a surrogate parent for a foster child in need of special education services.

Advocates should also attempt to help foster parents, relatives, or designated caregivers in seeking out available community services that can provide day care for the child. While community services are not available in every situation, an advocate can benefit the child by providing assistance in researching community programs that might be available and the relevant procedures for taking advantage of them.

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<sup>52</sup> Tex. Fam. Code § 264.124 (relating to foster parents); Tex. Fam. Code § 264.755(d), (e) (relating to relatives and designated caregivers)

<sup>53</sup> *Id.*

## VI. School Stability and Transitions

### *Recent Legislative Activity*

#### S.B. 206 § 1

Section 1 of Senate Bill 206 revises the Education Code to provide additional school stability for students in DFPS conservatorship.<sup>54</sup> The changes to the Education Code ensure that a student enrolled in any public school before the student enters DFPS conservatorship may continue to attend the school he was enrolled in until he completes the highest grade level offered by the school, regardless of the location of the residence where the student is placed while in DFPS conservatorship.<sup>55</sup> A student covered by this provision is entitled to remain at his original school without payment of tuition, and may continue to attend the school regardless of whether he remains in DFPS conservatorship for the duration of his enrollment in the school.<sup>56</sup>

Similarly, the bill also added a subsection to Education Code which entitles a student in DFPS conservatorship who is enrolled in a school other than the school he was enrolled in when he was placed into DFPS conservatorship to continue attending that school until he successfully complete the highest grade level offered by the school.<sup>57</sup> As is the case with the previously discussed subsection, an eligible student is entitled to remain at his school without payment of tuition, and may remain at his school regardless of whether their placement is changed to a residence outside the school's attendance area or school district, or whether the student remains in DFPS conservatorship for the duration of his enrollment.<sup>58</sup>

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<sup>54</sup> Tex. S.B. 206, 84th Leg., § 1 (2015).

<sup>55</sup> Tex. Educ. Code § 25.001(g).

<sup>56</sup> *Id.*

<sup>57</sup> Tex. Educ. Code § 25.001(g-1).

<sup>58</sup> *Id.*

S.B. 206 § 2

Section 2 of Senate Bill 206 modifies the Education Code's list of excused absences.<sup>59</sup> While section 25.087(b) previously required schools to excuse a student in DFPS conservatorship from attending school in order to attend a mental health appointment, a therapy appointment, or a family visitation as ordered by a court under Family Code Chapters 262 or 263, the updated version of section 25.087(b) expands the list of excused absences to instead cover any absence ordered by a court under Family Code Chapters 262 or 263 that is not practicable to schedule outside of school hours, as well as for any absence required under a service plan ordered under Family Code Chapter 263, Subchapter B.<sup>60</sup>

H.B. 2619 §§ 7, 8, 10

Section 7 of House Bill 2619 requires that DFPS develop an educational stability plan for each foster child that complies with federal law.<sup>61</sup>

Section 8 revises Family Code to expand the list of people to whom DFPS is required to grant access to a foster child's education passport to include any person authorized by law to make educational decisions for the foster child.<sup>62</sup>

Section 10 revises the list of actions the Texas Education Agency is required to take to assist the transition of substitute care students from one school to another.<sup>63</sup> H.B. 2619 modifies the amount of time for the school records of a student in substitute care to be transferred to the student's new

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<sup>59</sup> Tex. Educ. Code § 25.087(b).

<sup>60</sup> *Id.*

<sup>61</sup> *See* Tex. Fam. Code § 264.1072. The relevant federal law, 42 U.S.C. § 675(1)(G), defines the content of such an educational stability plan to include: "(i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and (ii) (I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or (II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school."

<sup>62</sup> Tex. Fam. Code § 266.008(c).

<sup>63</sup> Tex. Educ. Code § 25.007(b).

school from 14 days to 10 working days.<sup>64</sup> H.B. 2619 also requires school districts to provide notice to the child’s educational decision-maker and caseworker regarding events that may significantly impact the education of a child, and provides a non-exclusive list of such events.<sup>65</sup>

S.B. 832

Senate Bill 832, passed during the 83rd legislative session, expanded the Education Code’s requirement that each school district appoint a liaison officer—who are appointed for the purpose of facilitating the enrollment or transfer of a child in DFPS conservatorship—to also apply to open-enrollment charter schools.<sup>66</sup> S.B. 832 also added requirements for the school district or charter school to provide the Texas Education Agency with the name and contact information of the liaison, and for TEA to provide assistance to the liaisons in facilitating the enrollment or transfer of children in DFPS conservatorship.<sup>67</sup>

S.B. 1404 § 1, 4

Section 1 of Senate Bill 1404 makes revisions to the list of actions that the Texas Education Agency is required to take in order to assist the transition of substitute care students from one school to another.<sup>68</sup> Specifically, S.B. 1404 makes four changes to this list: First, S.B. 1404 requires the Texas Education Agency to develop procedures for awarding partial credit in appropriate situations for coursework completed by the student while enrolled at another school.<sup>69</sup> S.B. 1404 also requires the Texas Education Agency to develop procedures for allowing a student in substitute care the

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<sup>64</sup> *Id.*

<sup>65</sup> According to Education Code § 25.007(b)(9), events which may significantly impact the education of a child include: “(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003; (B) admission, review, and dismissal committee meetings; (C) manifestation determination reviews required by Section 37.004(b); (D) any disciplinary actions under Chapter 37 for which parental notice is required; (E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities; (F) reports of restraint and seclusion required by Section 37.0021; and (G) use of corporal punishment as provided by Section 37.0011.”

<sup>66</sup> Tex. Educ. Code § 33.904.

<sup>67</sup> *Id.*

<sup>68</sup> Tex. Educ. Code § 25.007(b).

<sup>69</sup> Tex. Educ. Code § 25.007(b)(3).

opportunity to complete a course required for graduation in which the student was previously enrolled.<sup>70</sup> While this opportunity may be limited where it is impracticable, it should generally be offered at no cost to the student and allow for the student to complete the course prior to the beginning of the following school year.<sup>71</sup> The third change brought by S.B. 1404 is the addition of the requirement that the Texas Education Agency ensure that a student in substitute care's course credit accrual and personal graduation plan be reviewed if the district determines that the student is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine.<sup>72</sup> Section 3 of S.B. 1404 also creates a general requirement that a school district offer an intensive instruction program to any student (regardless of whether he is in substitute care) who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine.<sup>73</sup> Finally, the last change made by section 1 of S.B. 1404 requires that the Texas Education Agency ensure that 11th and 12th grade students in substitute care are provided information about tuition and fee exemptions available under Education Code section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit.<sup>74</sup>

Section 4 of S.B. 1404 adds a provision to the Education Code that allows a student in DFPS conservatorship, who transfers between school districts as an 11th or 12th grader and is ineligible to graduate from the district to which he transfers, to request a diploma be awarded by the district from which he transferred.<sup>75</sup> The district from which the student transferred must comply with this request if the student meets the district's graduation requirements.<sup>76</sup>

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<sup>70</sup> Tex. Educ. Code § 25.007(b)(10).

<sup>71</sup> *Id.*

<sup>72</sup> Tex. Educ. Code § 25.007(b)(11).

<sup>73</sup> Tex. Educ. Code § 28.0213.

<sup>74</sup> Tex. Educ. Code § 25.007(b)(12).

<sup>75</sup> Tex. Educ. Code § 28.025.

<sup>76</sup> *Id.*

### *Ideas for Advocates*

Advocates should ensure that the child's best interests are considered before the child is moved between schools or school districts. Transitioning between school environments may be disruptive to a student's educational experience or it may offer the student a chance at a fresh start. Advocates should consider whether it is safe to keep a student in his present school, whether a move might be necessary to prevent against abuse, or whether there are specialized programs available at either school which are particularly beneficial to the child. Determining which option is best will require a careful consideration of the individual circumstances of each child. Thankfully, the revisions offered by section 1 of S.B. 206 have increased the flexibility of Texas law to ensure that a student can be enrolled, and remain, in a school environment that best serves that student.

Advocates should also ensure that a student's absences are properly excused when the student is participating in court or service plan ordered activities. If issues arise, advocates should assist with documenting the nature of the absences, and their excusability under state law. In any situation, advocates should work to ensure that a student is not penalized for complying with the requirements of a court order or a service plan.

For advocates who have been named as education decision makers, it is important to make use of the access to the child's education passport afforded to that role. A foster child's education passport is required by law to contain educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other educational information the Health and Human Services Commission determines is important, all of which can be incredibly useful when making decisions about the student's education. Similarly, an advocate named as an education decision maker ought to ensure that he opens lines of communication with relevant school and district officials to better facilitate the notifications required by H.B. 2619. Advocates should also look to identify the liaison officer at the child's school.

When dealing with students in 11th or 12th grade, advocates should particularly work to ensure that the student does not lose credits or course progress and is aware of the added benefits afforded to these students. An advocate should inquire as to whether the student might be aided by any of the items required of the Texas Education Agency by Education Code section 25.007(b). A transitioning student might be eligible to have partial credit awarded or have the opportunity to complete courses required for graduation that the student was previously enrolled in. Similarly, an advocate should determine whether the school district believes the student is likely to graduate within five years of starting grade nine or whether the student might be eligible for an intensive instruction program to help the student graduate in a timelier manner. Advocates should also ensure that the student has received information about tuition and fee exemptions for dual credit courses.

Finally, if a student who transferred between school districts in 11th or 12th grade is not eligible to graduate from the new school district, an advocate should help the student investigate whether the student would qualify to graduate from the student's previous school district. If the student is eligible to do so, an advocate should encourage the student to request that the prior school district award a diploma.

## **VII. School Experience**

### ***Recent Legislative Activity***

#### *S.B. 206 § 3*

Section 3 of Senate Bill 206 expands tuition and fee waivers for students in DFPS conservatorship to include a waiver of tuition and fees for certain students who leave DFPS conservatorship and are returned to a parent.<sup>77</sup> Eligibility for this waiver, which exempts the student from paying any tuition or fees for dual-credit course or any other course for which a high school student may earn joint high school and college credit, is determined by DFPS rules and factors

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<sup>77</sup> Tex. Educ. Code § 54.366.

determined by the executive commissioner of the Health and Human Services Commission in consultation with DFPS and the Texas Higher Education Coordinating Board.<sup>78</sup>

S.B. 206 § 27

Section 27 of Senate Bill 206 added a new provision to the Family Code which allows for a foster child to be homeschooled.<sup>79</sup> Under the new provision, if the person providing substitute care for a child in DFPS conservatorship requests to homeschool the child, DFPS is required to grant permission unless one of three conditions are met.<sup>80</sup> The situations in which a caregiver is not entitled to permission to homeschool a child in DFPS conservatorship are: when DFPS' right to allow homeschooling has been specifically limited by a court order; when a court finds, following a hearing under Family Code Chapter 263, that homeschooling is not in the best interest of the child; and when DFPS determines that federal law requires another school setting.<sup>81</sup>

S.B. 1407

Senate Bill 1407 codifies several matters related to age-appropriate normalcy activities, which had previously only been addressed in DFPS rules.<sup>82</sup> These additions to the Family Code focus on defining age-appropriate normalcy activities, and clarifying the roles, duties, and protections for the various parties involved in providing children in DFPS conservatorship with normalcy activities.<sup>83</sup> The goal of S.B. 1407 is to establish a clear framework that helps support and encourage opportunities for children in state custody to experience similar experiences as children who are not fostered.<sup>84</sup>

As previously discussed in the portion of this paper covering changes in judicial practices, sections 2 and 3 of S.B. 1407 require courts to review DFPS's efforts to ensure that children have

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<sup>78</sup> *Id.*

<sup>79</sup> Tex. Fam. Code § 263.0045.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Senate Research Ctr., Bill Analysis, Tex. S.B. 1407, 84th Leg., R.S. (2015).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*



regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child’s service plan.<sup>85</sup>

Sections 1 and 4 of S.B. 1407 codify definitions of the terms “age-appropriate normalcy activity” and “standard of care of a reasonable and prudent parent.”<sup>86</sup> Age-appropriate normalcy activities are defined as activities or experiences that are generally seen as suitable for the child’s age or maturity-level or that is typically developmentally appropriate for the child’s age or age group and in which a child who is not in DFPS conservatorship is generally allowed to participate.<sup>87</sup> Examples include extracurricular activities, in-school and out-of-school social activities, cultural and enrichment activities, and employment opportunities.<sup>88</sup> Meanwhile, the standard of care of a reasonable and prudent parent is defined as “the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child.”<sup>89</sup> The definition also lists several factors to be taken into consideration when determining this standard of care.<sup>90</sup>

Section 6 of S.B. 1407 adds two new provisions to the Family Code which protect foster parents, relatives, licensed child placing agencies, and other substitute or designated caregivers from liability for injuries or harm to a child that results from the child’s participation in an age-appropriate normalcy activity if the caregiver exercised the standard of care of a reasonable and prudent parent in approving the child’s participation in the activity.<sup>91</sup> DFPS is also prohibited from taking adverse action,

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<sup>85</sup> See *supra* p. 5; Tex. Fam. Code § 263.306(c); Tex. Fam. Code § 263.503(c).

<sup>86</sup> See Tex. Fam. Code § 264.001. See also Tex. Fam. Code § 263.001.

<sup>87</sup> Tex. Fam. Code § 264.001(1).

<sup>88</sup> *Id.*

<sup>89</sup> Tex. Fam. Code § 264.001(5).

<sup>90</sup> The factors, taken from Tex. Fam. Code § 264.001(5) are: “(A) the overall health and safety of the child; (B) the child’s age, maturity, and development level; (C) the best interest of the child based on the caregiver’s knowledge of the child; (D) the appropriateness of a proposed activity and any potential risk factors; (E) the behavioral history of the child and the child’s ability to safely participate in a proposed activity; (F) the importance of encouraging the child’s social, emotional, and developmental growth; and (G) the importance of providing the child with the most family-like living experience possible.”

<sup>91</sup> Tex. Fam. Code § 264.114.

including contractual, licensing, or other regulatory action, against a licensed child placing agency for actions of a foster parent who exercised the appropriate standard of care.<sup>92</sup>

S.B. 1407 requires DFPS to use its best efforts to normalize the lives of children in DFPS's conservatorship by allowing substitute caregivers, to make decisions similar to those a parent would be entitled to make regarding a child's participation in age-appropriate normalcy activities without prior approval from DFPS.<sup>93</sup> As mentioned above in the section on multi-disciplinary training, part of these best efforts include requiring training regarding age-appropriate normalcy activities and associated decision making.<sup>94</sup>

### ***Ideas for Advocates***

Advocates should encourage students to participate normalcy activities and nurture the student's hobbies and interests. Experiences like extracurricular activities, in-school and out-of-school social activities, and summer or after-school jobs are important both to a child's development and to the goal of giving children in state custody the same or similar experiences as children who are not fostered and are effective in improving educational outcomes. Ensuring that children are given appropriate opportunities to engage in normalcy activities should be one of an advocate's top priorities, and as such, advocates should seek out training for themselves, as well as for the child's caregivers. Advocates should also ensure that any great barriers to providing the child with normalcy activities is brought to the attention of the court in a timely manner.

Because of the unique situations in which a child in DFPS conservatorship finds himself, advocates should also consider what, if any, alternative educational options that might benefit the child, and ensure that the student, educational decision makers, and other relevant people are aware

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<sup>92</sup> *Id.*

<sup>93</sup> Tex. Fam. Code § 264.125

<sup>94</sup> *See supra* p. 5; Tex. Fam. Code § 264.125.

of those options. Charter schools, homeschooling, and dual-credit courses are all options that could potentially benefit a child, depending on the child's unique circumstances and personality.

## VIII. Post-Secondary Education

### *Recent Legislative Activity*

#### H.B. 3748

House Bill 3748 requires each institution of higher education<sup>95</sup>, to designate an employee to act as a liaison officer for current and incoming students at the institution who were previously in DFPS conservatorship.<sup>96</sup> The liaison officer's duties, include providing information regarding support services and other resources available to the students at the institution and any other relevant information to assist the students.<sup>97</sup>

H.B. 3748 similarly requires the Texas Higher Education Coordinating Board to designate an employee as a liaison officer assist in coordinating college readiness and student success efforts for current and incoming students at institutions of higher education who were formerly in DFPS conservatorship.<sup>98</sup>

The bill also contains provisions requiring the Texas Higher Education Coordinating Board and DFPS to enter into a memorandum of understanding covering the exchange of information needed to facilitate DFPS's evaluation of educational outcomes of students formerly in DFPS's conservatorship.<sup>99</sup> Among the information to be covered by the memorandum of understanding is information relating to student academic achievement, graduation rates, attendance, and other educational outcomes as determined by the Higher Education Coordinating Board and DFPS.<sup>100</sup>

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<sup>95</sup> As defined by Tex. Educ. Code § 61.003.

<sup>96</sup> Tex. Educ. Code § 25.007(b).

<sup>97</sup> Tex. Educ. Code § 51.9356.

<sup>98</sup> Tex. Educ. Code § 61.0908.

<sup>99</sup> Tex. Educ. Code § 61.0909. While Section 4 of H.B. 3748 requires that the memorandum of understanding outlined by § 61.0909 be entered into no later than January 1, 2016, the author was unable to find any indication that this requirement has been complied with when searching on either the DFPS or THECB websites.

<sup>100</sup> *Id.*

Further, the provisions allow DFPS discretion to authorize the coordinating board to release demographic information to education research centers<sup>101</sup> to allow the centers to perform additional analysis regarding educational outcomes of students in foster care.<sup>102</sup>

### ***Ideas for Advocates***

Advocates should work with the student, liaison officers, and other school staff to help ensure that students are aware of all the options available for post-secondary education, and the programs and benefits available to the student related to each. Further, students may need help or advice making decisions about the future. Helping ensure the student is fully-informed about his post-secondary options and prepared to begin his transition into adulthood can be essential to a child's on-going educational success. Advocates should make themselves available to provide assistance to the student in evaluating career and educational options, applying to universities, trade schools, or other programs, and accessing benefits and programs designed to aid and assist those who were previously in DFPS conservatorship.

## **IX. Other Considerations**

### ***Recent Legislative Activity***

#### **S.B. 830**

Senate Bill 830 directed the creation of an independent ombudsman for children and youth in foster care.<sup>103</sup> This ombudsman is housed within the Health and Human Services Commission, and is responsible for taking complaints and providing independent investigations to ensure that DFPS is following proper policies and procedures.<sup>104</sup>

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<sup>101</sup> Specifically, those research centers established under Tex. Educ. Code § 1.005.

<sup>102</sup> Tex. Educ. Code § 61.0909(d).

<sup>103</sup> Tex. Gov't. Code §§ 531.991-531.998.

<sup>104</sup> Senate Research Ctr., Bill Analysis, Tex. S.B. 830, 84th Leg., R.S. (2015).

### *Ideas for Advocates*

The independent ombudsman provides children in DFPS conservatorship with a direct remedy for any complaints the child has regarding his care. Advocates should ensure that children are made aware of the ombudsman and their ability to file confidential complaints about their care.<sup>105</sup> Further, children should be made aware that Government Code section 531.997 prohibits retaliation against anyone in DFPS conservatorship who makes a complaint to the ombudsman in good faith.<sup>106</sup> While a complaint to the ombudsman is unlikely to be necessary in most situations, where other attempts at remedying a problem have not been fruitful, it may be in a child's best interest to encourage him to lodge a complaint with the ombudsman.

### **X. Conclusion**

While the Texas legislature has made many changes in the more than four years since the *Texas Blueprint* was first published, much remains to be done to improve outcomes for children who find themselves in the conservatorship of DFPS. Continued efforts on the parts of advocates, lawmakers, the judiciary, foster parents, and department employees are all essential to achieving the goals set forth by the Children's Commission. Effective advocacy is essential in the efforts to close the gap in educational outcomes suffered by children who enter DFPS conservatorship, and in order to be effective, advocates must remain abreast of changes in the law. It is the author's hope that this paper will prove to be a useful resource for advocates in their efforts representing the best interests of children in conservatorship and improving their educational outcomes.

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<sup>105</sup> Tex. Gov't. Code § 531.996.

<sup>106</sup> Tex. Gov't. Code § 531.997.