

# TEXAS LAWYER

## **New laws impact educators regarding students in foster care – How can attorneys help?**

'Teachers may find themselves at a moral crossroads as never before, based on some new Federal legislation... '

**By Elisa Reiter and Daniel Pollack** | August 9, 2021



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### **What You Need to Know**

- There are almost 30,000 Texas children in foster care, many of whom attend school.
- Many of these children will need an Individual Education Program (IEP), a plan tailored to meet the needs of students with physical or learning disabilities.

- These specially tailored supports will aid every individual child make the maximum progress they can.

Educators, families, and attorneys working together can help ensure that the education environment for a child in foster care is welcoming, safe, and productive. There are almost 30,000 Texas children in foster care, many of whom attend school. Many of these children will need an Individual Education Program (IEP), a plan tailored to meet the needs of students with physical or learning disabilities. These specially tailored supports will aid every individual child make the maximum progress they can. Because of numerous confidentiality and privacy issues and other legal requirements, the involvement of an attorney — whether that attorney represents the school or the child — may be necessary to guarantee access to these services. Teachers may find themselves at a moral crossroads as never before, based on some new Texas and Federal legislation.

New legislation for teachers and administrators to be cognizant of:

1. Changes to the Texas Education Code were embodied in House Bill 3979. Social studies classes are to address a list of founding documents that Texas social studies students must be taught, including the U.S. Constitution, the Federalist papers, and some of the writings of Alexis de Tocqueville, yet:
  1. No teacher can be compelled by a policy of a state agency, school district, open enrollment charter school or by school administration to “discuss current events or widely debated and currently controversial issues of public policy or social affairs”.

2. If teachers discuss current events, teachers are mandated by the new law to explore such issues from diverse perspectives.
  3. Students will be prohibited from getting credit or extra credit due to participating in demonstrations that include political activism, or lobbying elected officials on a particular issue. Will this hold up to First Amendment scrutiny?
2. Changes to Texas Family Code Chapter 107 mean that attorneys are perennial students: attorneys must familiarize themselves with a minimum of three hours of study related to trauma, and the impact of trauma on children in the foster care system. Texas Family Code Chapter 107.004(b-1)(2)-(b-4) has been added to mandate that attorneys who seek to be on a judge's list for potential court appointments as an ad litem in a child protection proceeding must complete a minimum of three hours of training in trauma dealing with:

(1) the symptoms of trauma and the impact that trauma has on a child, including how trauma may affect a child's development, emotions, memories, behavior, and decision-making;

(2) attachment and how a lack of attachment may affect a child;

(3) the role that trauma-informed care and services can have in a child's ability to build connections, feel safe, and regulate the child's emotions to help the child build resilience and overcome the effects of trauma and adverse childhood experiences;

(4) the importance of screening children for trauma and the risk of mislabeling; and inappropriate treatment of children without proper screening, including the risks and benefits associated with the use of psychotropic medication;

(5) the potential for re-traumatization of children in the conservatorship of the Department of Family and Protective Services; and

(6) the availability of:

(A) research-supported, trauma-informed, non-pharmacological interventions; and

(B) conservatorship of the Department of Family and Protective Services, to: (i) trauma-informed care; and

(ii) trauma-informed mental and behavioral health services.

By September 1, 2022, attorneys seeking appointments as ad litem on judge's approved lists must provide the court with a certificate of completion as proof of three hours of trauma based continuing legal education classes. These courses can change the dynamic between attorneys and the foster children attorneys represent in court. How? Trauma based education is critical for teachers and for attorneys; such education makes us more sensitive to the child's experience prior to removal and thereafter, as the child processes inevitable changes imposed by removal, by the foster care dynamic, and beyond.

Teachers may find themselves facing more controversy and claims of attempting to indoctrinate students in ways that are acceptable to some parents, but not to all parents. What to do? Reach out to an attorney. How?

## *Building a relationship with your attorney*

As the pandemic slowly recedes, and new legislation becomes law, build a good relationship with an attorney, with these tips in mind:

- Meet each other live. Building a personal relationship allows the attorney to really get to know the child and the important people in their life. Importantly, make the most of these meetings. Introductory small talk is nice, but use the time wisely to tackle critical issues.
- Follow up and memorialize meetings. Stay in touch with phone calls and emails to make sure that all of the “i’s are dotted and the t’s are crossed.” One missed signature or document that wasn’t submitted can affect the foster child’s entire school year.
- Have high expectations of the attorney. The attorney-client relationship is governed by rules of professional responsibility. The attorney’s most important duties are to represent their client competently and to advocate diligently for their client.

Training and increased understanding is not limited to attorneys representing children in child protection cases. Cross-collaboration is essential to meet the physical and emotional needs of children who have been removed from their homes due to allegations of abuse or neglect. The Texas Education Agency (TEA) and Children’s Commission, in Foster Care & Student Success: Texas Systems Working Together to Transform Education Outcomes of Students in Foster Care state:

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 directs local and state child welfare systems to coordinate with education providers. Collaboration between the child welfare and

education system and education systems is recognized as an important component of improving the educational outcomes of students who experience foster care. A challenging task, it may force systems and individuals within those systems to work in new and unfamiliar ways.

### Recommendations include:

- Maintaining continuity for children in the foster program by keeping them in the same school when possible.
- Assuring that:
  1. If there is to be a transfer between schools, easing transfer and transition between schools.
  2. Children in foster care receive such extra services and interventions as needed to keep them ready to learn.
  3. Children in care have the opportunity to experience extracurricular activities that are developmentally appropriate to embrace the full educational experience.
  4. Children in care have access to resources to prevent truancy, the need for discipline, and dropout, and instead readily participate in the educational process.
  5. Children can self-advocate in their educational experience.
  6. Children have the assistance they need to matriculate and complete a college education.

How to achieve these lofty goals? Communication is key. Meeting with stakeholders is essential. Who are stakeholders? Principals, attorneys, guardians ad litem, TDPFS social workers, special education teachers, home room teachers, and the players who comprise an Admission, Review, and Dismissal Process (ARD). The purpose of communication is to assure that teachers and attorneys share awareness, so that they can collaborate to serve the best interest of children or youth in foster care. Cross

training to assure collaboration includes: “Foster Care/CPS 101, Culture of Foster Care/Sensitivity, Impact of Trauma, DFPS Transition Supports, Foster Care Youth-specific Post-secondary opportunities, Mandatory Child Abuse Reporting and others.” Child welfare partners must be trained to understand how to enroll and withdraw children from school, to gather and process data from the schools the children in their care attend, to assist with graduation planning and foster parent training. Social workers must familiarize themselves with special education laws, the importance of teaching children financial planning, how to continue to keep parents and children for whom they are responsible, apprised, informed, and involved, McKinney-Vento supports for homeless students, and other available services. CASA advocates can be key players in this process as well.

We are never too old to learn to help one another. Mr. Bumble in Oliver Twist may not listen as we would have liked when Oliver pleads, “Please sir, I want some more.” We must listen. We must communicate. We are never too jaded nor experienced to learn how to better serve and how to get more for children and youth.

**Elisa Reiter** is an attorney, Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization, at Underwood Perkins, P.C. Contact: [ereiter@uplawtx.com](mailto:ereiter@uplawtx.com). **Daniel Pollack** is an attorney and professor at Yeshiva University’s School of Social Work in New York City. Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu).