

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

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May 2016

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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*

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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

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

[REDACTED]

[REDACTED]

*egisle*

[REDACTED]

Judicial Practices, Data and Information Sharing, Multi-Disciplinary Training, School Readiness,

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

[REDACTED]

report to each person entitled to notice of a permanency hearing under section 263.301 has now been

[REDACTED]

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,

[REDACTED]

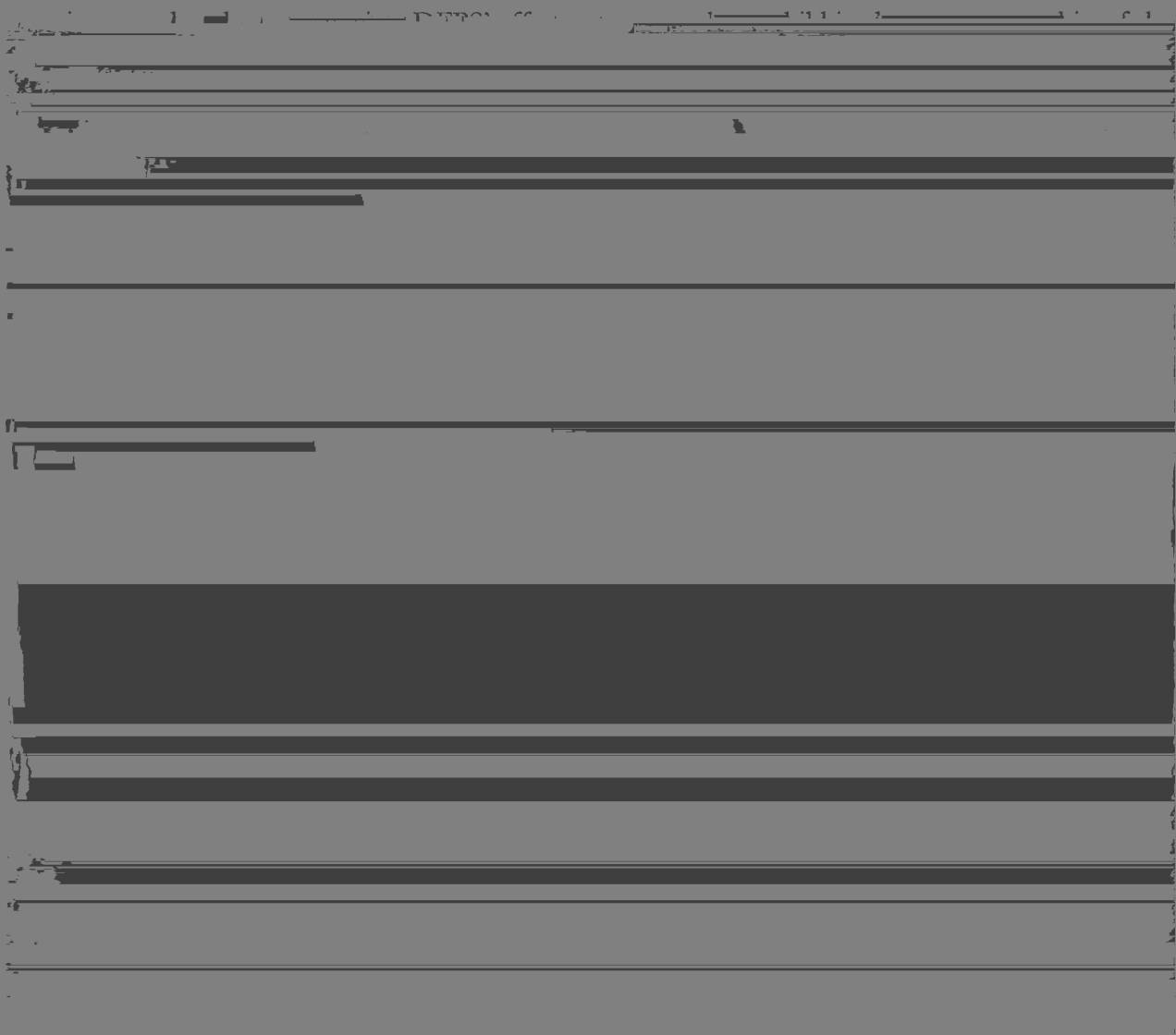
order has been rendered.<sup>15</sup> The updated section 263.502 adopts the same requirements regarding the content of a permanency progress report, requiring the report to contain information necessary for the court to conduct the permanency hearing and make findings and determinations, information on



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



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*

department to put relevant information before both the court and the other parties in written form

[REDACTED]

[REDACTED]

[REDACTED]

prior to a hearing.

### III. Data and Information Sharing

#### *Recent Legislative Activity*

On 11/11/2020, the California State Assembly passed Assembly Bill 1033, which would require the Department of Justice to submit a report to the Legislature regarding the Department's efforts to address the needs of the public during the COVID-19 pandemic.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

residing; and any other person determined by a court to have an interest in the child's welfare.<sup>28</sup>

[REDACTED]

[REDACTED]

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>

[REDACTED]

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

162.006 and 162.006.36. The bill also redesignates subsections (a) and (a-1) of  
[REDACTED]

[REDACTED]

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

[REDACTED]

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



*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.

[REDACTED]

## 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, foster family care providers, and other personnel whom 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>

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*Recent Legislative Activity*

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

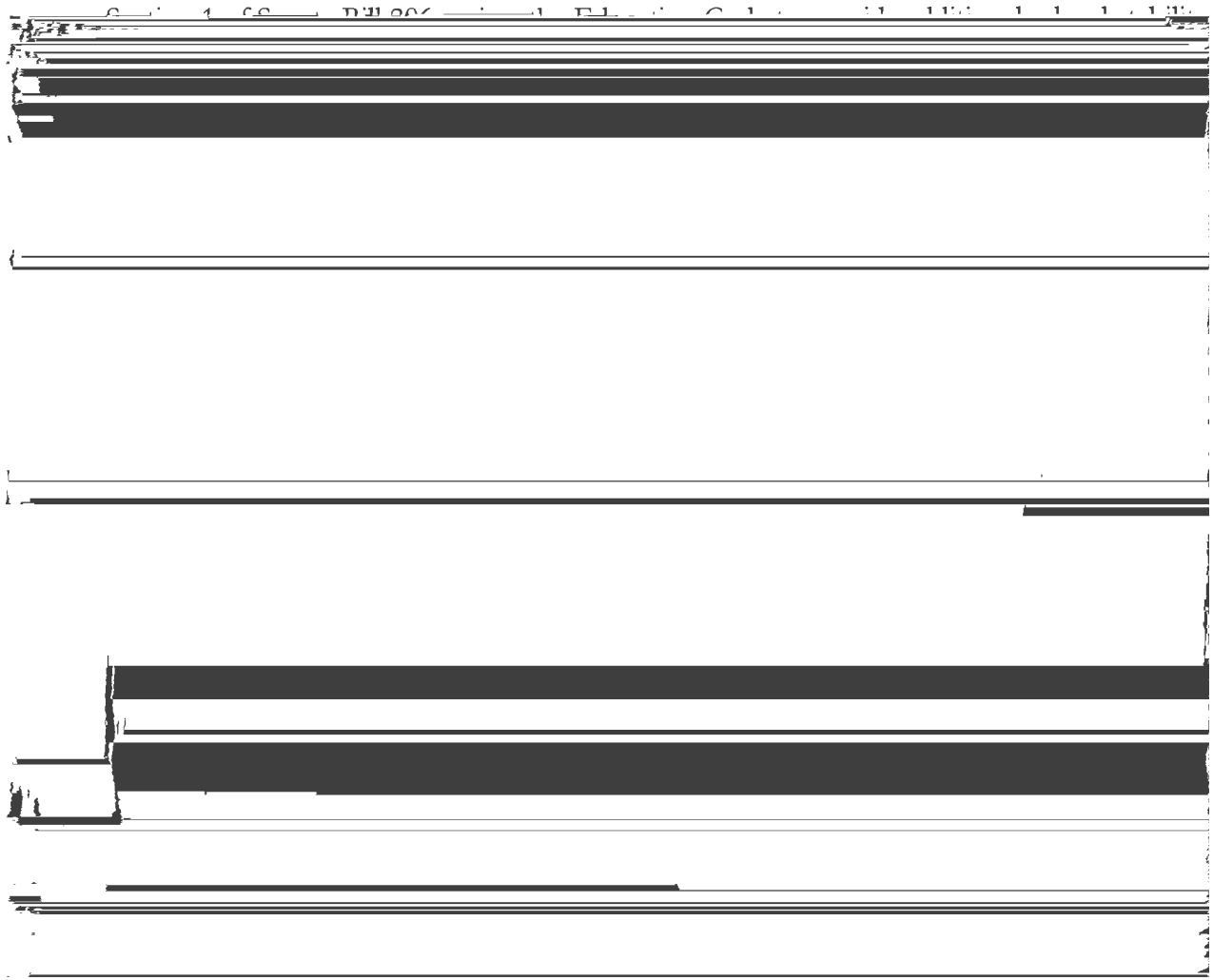
to include a duty for each to determine whether the child's educational needs and goals have





## VI. School Stability and Transitions

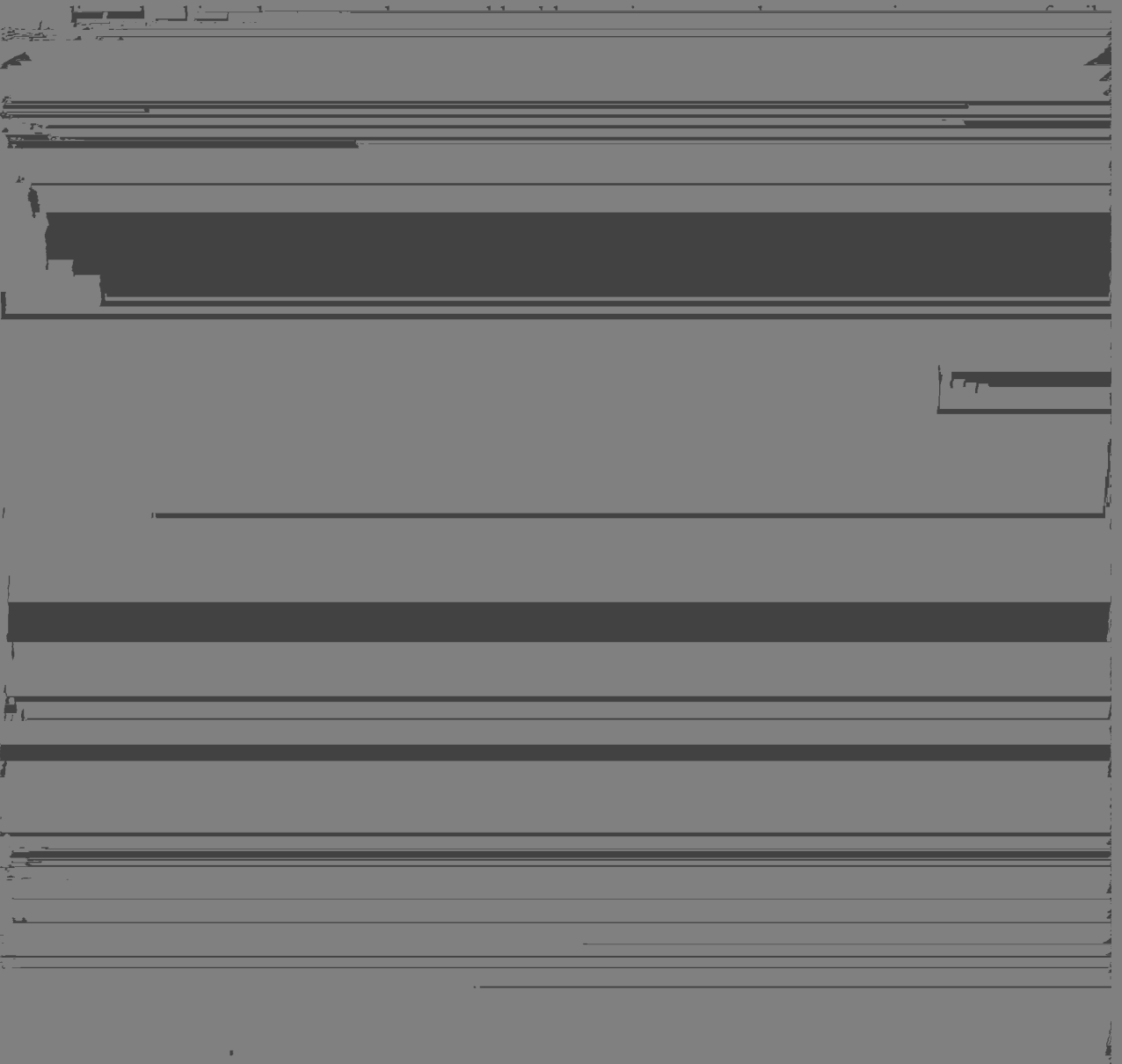
### *Recent Legislative Activity*



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

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



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>



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

[REDACTED]

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 personal and personal education also be reviewed if the district determines that the student is not likely

[REDACTED]

[REDACTED]

*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 leave a student in his present school, whether a move

[REDACTED]

might be necessary to prevent conflict, check whether there are specialized programs available at

[REDACTED]

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

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>

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

home schooling has been specifically limited by a court order when a court finds, following a hearing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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 DEPS custody is generally allowed to participate.<sup>87</sup> Examples

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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>

[REDACTED]

§ 1407 "authorize DFPS to use its best efforts to reestablish the lives of children in DFPS's

[REDACTED]

[REDACTED]

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

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

custodianship

### *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.

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

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