ADVERSARY HEARING

Legal Overview of Adversary Hearing

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 262. Procedures in Suit by Governmental Entity to Protect Health & Safety of Child
Subchapter C. Adversary Hearing

Please see the At a Glance, Adversary Hearing, and Show Cause Hearing Checklists in the Checklist Section of the Bench Book.

There are two types of hearings considered to be adversary under Tex. Fam. Code Chapter 262, Subchapter C. The first and most well-known occurs after a court grants an ex parte order approving the removal of a child from a parent or caretaker; this hearing is to be held within 14 days of the date the child was taken into the possession of DFPS. Tex. Fam. Code § 262.201. The second type of Adversary Hearing occurs when the child is not in the possession of DFPS and DFPS is requesting to take possession of the child after notice and hearing. Tex. Fam. Code § 262.205. Although there is no time limit as to when this hearing is to occur, it should occur promptly. Courts across Texas differ in the way full Adversary Hearings are held, but in all cases DFPS has the burden to show why its recommendations, including why a child should be in substitute care, should be approved by the court.

A. Service of Citation

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A. Service of Citation

Service is required in a suit filed by DFPS as in other original suits per Tex. Fam. Code § 102.009, but most courts do not require service on all those entitled to service before proceeding with the Adversary Hearing. The court may proceed with temporary orders prior to any required service by publication. Tex. Fam. Code § 262.201(f).

1. DFPS Must Make a Diligent Effort to Locate Parent and Relatives

If a parent, as defined by Tex. Fam. Code § 160.102(11), of the child has not been personally served in a suit in which DFPS seeks termination, DFPS must make a diligent effort to locate that parent. Tex. Fam. Code § 161.107(b).

If a parent has not been personally served and cannot be located, DFPS shall make a diligent effort to locate a relative of the missing parent to give the relative an opportunity to request appointment as the child's managing conservator. Tex. Fam. Code § 161.107(c).

2. Relative Defined for Diligent Search Purposes

A relative means a parent, grandparent, adult sibling, or child. Tex. Fam. Code § 161.107(a)(2). If DFPS is not able to locate a missing parent or a relative of that parent and sufficient information is available concerning the physical whereabouts of the parent or relative, DFPS shall request the Office of the Attorney General to use the parental locater service to determine the location of the missing parent or relative. Tex. Fam. Code § 161.107(d).

DFPS shall be required to provide evidence to the court to show what actions were taken by DFPS in making a diligent effort to locate the missing parent and relative of the missing parent. Tex. Fam. Code § 161.107(e).

3. Citation by Publication and Diligent Search

Once DFPS has made the effort and has been unsuccessful, DFPS can file a Motion to Cite by Publication under Tex. R. Civ. P. 109.

Tex. R. Civ. P. 109 requires that before citation by publication can be issued by the clerk, the petitioner must file an affidavit of "due diligence". That rule also requires the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the known parent who cannot be located, before granting any judgment on such service.

B. Notice

1. The Right to Notice

The Petitioner, which is usually DFPS, must ensure that notice of the lawsuit is provided to those who are sued.

2. Methods of Providing Notice of Hearing

The requirements for citation should not be confused with the requirements for notice of motions or of particular hearings. Citation generally must be by personal service on the Respondent unless citation is waived by the Respondent, forfeited under the "paternity registry" process, or given by some form of substituted service, including citation by publication, as authorized by the Texas Rules of Civil Procedure.

Once citation is complete and a return of service is on file, notice may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, **electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager or in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.**

Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Notice may also be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. Tex. R. Civ. P. 21a.

3. Information Provided to Relatives and Certain Individual; Investigation

When DFPS takes possession of a child under Tex. Fam. Code Chapter 262, DFPS **shall** provide information to each adult DFPS is able to identify and locate who:

- Is related to the child within the third degree of consanguinity, as defined by Tex. Gov't Code § 573.023(c);
- Is an adult relative of the alleged father if DFPS has a reasonable basis to believe the alleged father is the child's biological father; and
- Anyone who is identified as a potential relative or designated caregiver on the proposed Child Placement Resources Form. Tex. Fam. Code § 262.1095(a)(1).

DFPS **may** provide information to adults DFPS determines have a long-standing and significant relationship with the child. Tex. Fam. Code § 262.1095(a)(2).

The written notice must include, among other things:

- A statement that the child is in the state's custody;
- Options available for participation in the care and placement and support of the family;
- Options that may be lost if the individual fails to timely respond; and

- The date, time, and location of the Status Hearing, if known. Tex. Fam. Code § 262.1095(b).

DFPS is not required to provide information to a person who has criminal or family violence history. Tex. Fam. Code § 262.1095(c).

DFPS must use due diligence to identify and locate all individuals described by Tex. Fam. Code § 262.1095(a) within 30 days of the date DFPS files the SAPCR, and the failure of a parent or alleged father to complete the Child Placement Resources Form does not relieve DFPS of its duty to seek information about persons under Tex. Fam. Code § 262.1095(d). Tex. Fam. Code § 262.1095(d) and Tex. Fam. Code § 262.1095(e).

4. Report Regarding Notification of Relatives

Tex. Fam. Code § 263.007 requires DFPS to provide the court with a report regarding their compliance with Tex. Fam. Code § 262.1095. The court should review this report to assess DFPS' diligent efforts. Tex. Fam. Code § 263.007.

5. Notice to Parents of Right to Counsel

Before commencement of the full Adversary Hearing, if an attorney has not already been appointed under Tex. Fam. Code § 107.013, the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. Tex. Fam. Code § 262.201(a-1).

Tex. Fam. Code § 107.0141 allows the court to appoint an attorney for a parent whenever the SAPCR is filed, but if a parent's first appearance is at the Adversary Hearing and the parent requests the appointment of an attorney, then the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the appointment of an attorney for the parent is requested, the court shall make a determination of indigence before commencement of the full Adversary Hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent. Tex. Fam. Code § 262.201(a-2).

C. Hearing After Emergency Removal With or Without a Court Order

1. When Must Hearing Be Held

A hearing must be held not later than the 14th day after the date the child was taken into possession unless the court grants an extension pursuant to Tex. Fam. Code § 262.201(a-3). Tex. Fam. Code § 262.201(a).

2. Extension

Although Tex. Fam. Code § 262.103 allows for the temporary order, temporary restraining order, and attachment of a child to be extended, there is no specific provision for the extension of the Adversary Hearing beyond the 14th day. If the hearing cannot be held within the 14 days, some courts convene and reset the hearing, while others rely on case law which indicates that the failure to conduct the Adversary Hearing does not deprive the court of its jurisdiction. *In re J.M.C.*, 109 S.W.3d 591, 595 (Tex. App. – Fort Worth 2003, no pet.).

The court may, for good cause shown, postpone the full Adversary Hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under Tex. Fam. Code § 262.201(a-3), if the parent and the appointed attorney agree in writing. If the court postpones the full Adversary Hearing, the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under Tex. Fam. Code § 262.102(a) for the protection of the child until the date of the rescheduled full Adversary Hearing. Tex. Fam. Code § 262.201(a-3).

3. Burden/Standard of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution. Tex. Fam. Code § 262.201(b).

Special Issue: Numerous studies indicate that African American children are disproportionately represented in the Texas child welfare system. According to data collected by DFPS, African American children are more likely to be removed, are less likely to be reunified, and spend longer waiting to be adopted. For more information regarding disproportionality, please see the Disproportionality chapter later in this Bench Book.

4. Required Findings if Child to Remain in Care

a. Danger to Physical Health and Safety

There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Tex. Penal Code § 20A.02 or Tex.

Penal Code § 20A.03, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child. Tex. Fam. Code § 262.201(b)(1).

b. Urgent Need to Protect

The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal. Tex. Fam. Code § 262.201(b)(2).

In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child. Tex. Fam. Code § 262.201(d).

c. Reasonable Efforts

Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home. Tex. Fam. Code § 262.201(b)(3).

5. Court Actions/Orders if Child to Remain in Care

a. Issue an Appropriate Temporary Order

A temporary order rendered under Tex. Fam. Code Chapter 262 is valid and enforceable until properly superseded by a court with jurisdiction to do so. A court to which the suit has been transferred may enforce by contempt or otherwise a temporary order properly issued under Tex. Fam. Code Chapter 262. Tex. Fam. Code § 262.204.

b. Admonish and Notify Parents

Inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child. Tex. Fam. Code § 262.201(c).

Before the commencement of the full Adversary Hearing, the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and

- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. Tex. Fam. Code § 262.201(a-1).

c. Order Placement With Non-Custodial Parent or Relative

Unless it is not in the best interest of the child, place a child who has been removed from the child's custodial parent with the child's noncustodial parent or another relative of the child if placement with the noncustodial parent is not appropriate. Tex. Fam. Code § 262.201(e).

d. Render Protective Order, If Necessary

If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under Tex. Fam. Code Chapter 105. Tex. Fam. Code § 262.205(c)(1).

e. Inquire About Native American Heritage

The court shall ask all parties present at the full Adversary Hearing whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated. Tex. Fam. Code § 262.201(a-4). For more information regarding requirements when a child has a Native American heritage, please see the Bench Book chapter on the *Indian Child Welfare Act*.

f. Set Status Hearing

Although not statutorily required, the Status Hearing date is usually set at the Adversary Hearing and open-court notice to parties can be given.

Special Issue: Courts may consider setting the dates for Status, Initial Permanency, and Final Hearings at the start of the case as it helps provide parents with notice of future hearings.

Also, courts may want to inquire whether the following forms and plans are completed timely:

- Caregiver Resource Form 2625, should be filled out at removal, and completed no later than the Status Hearing. It is designed to:
  - instruct the parents, or other person having legal custody of the child, to identify three individuals who could be relative caregivers or designated caregivers; and
  - inform the parent or other person how to submit the form to DFPS or other agency either in person or by fax or email. Tex. Fam. Code § 261.307(a)(2).
- Service Authorization Form 2054, which is required before services may be rendered.
- Family Information Form 2626, which is filled out by the parent or caregiver to provide information about the child and child's family. It includes questions about the child's medical history.
- Visitation Plan, required no later than 30 days from the date DFPS is named the child's TMC. Courts are required to review the Visitation Plan at the Status Hearing and again at each Permanency Hearing. Tex. Fam. Code § 263.107.

All forms may be found at: http://www.dfps.state.tx.us/site_map/forms.asp

D. Hearing When Child Not in Possession of DFPS

1. Filed Under Tex. Fam. Code § 262.113

DFPS can file a suit requesting possession of a child after notice and a hearing. The suit must be supported by an affidavit sworn to by a person with personal knowledge and stating facts that satisfy the burden of proof. Tex. Fam. Code § 262.113.

2. When Must Hearing Be Held

In a suit requesting possession of a child after notice and hearing, the suit shall be promptly set for hearing. Tex. Fam. Code § 262.205(a).

3. Conduct Hearing Under Tex. Fam. Code § 262.205

After the hearing, the court may grant the request to remove the child from the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled

to possession of the child if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- Reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
- Allowing the court to remain in the home would be contrary to the child's welfare. Tex. Fam. Code § 262.205(b).

If the court orders removal of the child from the child's home, the court shall:

- Issue an appropriate temporary order under Tex. Fam. Code Chapter 105; and
- Inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child. Tex. Fam. Code § 262.205(c).

4. Burden/Standard of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution that:

- Reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
- Allowing the child to remain in the home would be contrary to the child's welfare. Tex. Fam. Code § 262.205(b).

5. Court Actions/Orders if Child is Placed in Care

a. Issue an Appropriate Temporary Order

A temporary order rendered under Tex. Fam. Code Chapter 262 is valid and enforceable until properly superseded by a court with jurisdiction to do so. A court to which the suit has been transferred may enforce by contempt or otherwise a temporary order properly issued under Tex. Fam. Code Chapter 262. Tex. Fam. Code § 262.204.

b. Admonish and Notify Parents

Inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child. Tex. Fam. Code § 262.201(c).

Before the commencement of the full Adversary Hearing, the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and

- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. Tex. Fam. Code § 262.201(a-1).

c. Order Placement With Non-Custodial Parent or Relative

Unless it is not in the best interest of the child, the court shall place a child who has been removed under Tex. Fam. Code § 262.205 with:

- The child's noncustodial parent; or
- Another relative of the child if placement with the noncustodial parent is inappropriate. Tex. Fam. Code § 262.205(e).

d. Render Protective Order, If Necessary

If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under Tex. Fam. Code Chapter 105. Tex. Fam. Code § 262.205(c)(1).

e. Set Status Hearing

Although not statutorily required, the Status Hearing date is usually set at the Adversary Hearing and open-court notice to parties can be given.

f. Ensure Child Placement Resources Form is Complete

The Child Placement Resources Form should:

- Instruct the parents, or other person having legal custody of the child, to identify three individuals who could be relative caregivers or designated caregivers; and
- Inform the parent or other person how to submit the form to DFPS or other agency either in person or by fax or email. Tex. Fam. Code § 261.307(a)(2).

E. If Court Does Not Remove the Child or Continue DFPS Conservatorship

Both statute and case law encourage the use of alternatives to removal as long as the child is protected. See Bench Book chapter entitled *Alternatives to Removal*. If the court orders the return of the child to the parent or does not remove the child, the same alternatives are available to the court.

F. Mandatory Appointment of Attorney for Parent

When DFPS files a petition requesting termination or seeking conservatorship of a child, the court must appoint an attorney for the following persons:

- An indigent parent who responds in opposition to either termination of parental rights or to the appointment of DFPS as managing conservator, Tex. Fam. Code § 107.013(a)(1);
- A parent served by publication, Tex. Fam. Code § 107.013(a)(2);
- An alleged father who failed to register with paternity registry and whose identity or location is unknown, Tex. Fam. Code § 107.013(a)(3); and
- An alleged father who registered with the paternity registry but cannot be personally served. Tex. Fam. Code § 107.013(a)(4).

During the 84th Legislative Session in 2015, Tex. Fam. Code § 107.013(a-1) was created to require that in a suit described by Tex. Fam. Code § 107.013(a), if a parent is not represented by an attorney at the parent's first appearance in court, the court shall inform the parent of:

- The right to be represented by an attorney; and
- If the parent is indigent and appears in opposition to the suit, the right to an attorney ad litem appointed by the court. Tex. Fam. Code § 107.013(a-1).

The court may appoint one attorney for both parents if they are both entitled and their interests are not in conflict and there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties. Tex. Fam. Code § 107.013(b).

The court shall require a parent who claims indigence under Tex. Fam. Code § 107.013(a) to file an affidavit of indigence pursuant to Tex. R. Civ. P. 145(b) before the court may conduct a hearing to determine the parent's indigence under Tex. Fam. Code § 107.013. Tex. Fam. Code § 107.013(d).

The court may consider additional evidence at that hearing, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the court determines the parent is indigent, the court shall appoint an attorney ad litem to represent the parent. Tex. Fam. Code § 107.013(d).

However, if DFPS has alleged grounds for termination of parental rights under Tex. Fam. Code § 161.003(b) based on inability to care for the child, the court must appoint an attorney when the petition is filed and without regard to opposition or indigence.

1. Temporary Appointment of Attorney ad Litem for Parents

Changes to the Texas Family Code during the 84th Legislative Session in 2015 provide for temporary appointment of an attorney for parents. Tex. Fam. Code § 107.0141 states that

the court may appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under Tex. Fam. Code Chapter 262 and ending on the court's determination of whether the parent is indigent before commencement of the full Adversary Hearing. Tex. Fam. Code § 107.0141(a).

An attorney ad litem appointed for a parent under this section:

- Has the powers and duties of an attorney ad litem appointed under Tex. Fam. Code § 107.0131; and
- If applicable, shall:
  - conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent; and
  - interview any parent or other person who may have information relating to the identity or location of the parent. Tex. Fam. Code § 107.0141(b).

If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

- Inform the parent of the parent's right to be represented by an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;
- If the parent claims indigence and requests an attorney ad litem beyond the period of time the temporary appointment under Tex. Fam. Code § 107.0141, assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and
- Assist the parent in preparing for the full Adversary Hearing under Tex. Fam. Code Chapter 262, Subchapter C. Tex. Fam. Code § 107.0141(c).

If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Tex. Fam. Code § 107.013(a)(1). Tex. Fam. Code § 107.0141(d).

If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by Tex. Fam. Code § 107.0141(e), the court shall discharge the attorney ad litem from the appointment. Tex. Fam. Code § 107.0141(e).

If the attorney ad litem identifies or locates the parent, and the court determines that the parent is not indigent, the court shall discharge the attorney ad litem from the appointment. Tex. Fam. Code § 107.0141(f).

G. Transfer

On a motion of any party or the court's own motion, the court that rendered the temporary order shall:

- Transfer the suit to the court of continuing, exclusive jurisdiction, if any;
- Order transfer of the suit from the court of continuing, exclusive jurisdiction, if grounds exist for mandatory transfer; or
- Order transfer of the suit to the court having venue, if grounds exist for transfer based on improper venue. Tex. Fam. Code § 262.203(a).

A motion to transfer relating to a suit filed under Tex. Fam. Code Chapter 262 may be filed separately from the petition and is timely filed while the case is pending. Tex. Fam. Code § 262.203(b).

1. When Transfer is Discretionary

A court exercising jurisdiction under Tex. Fam. Code Chapter 262 is not required to transfer the suit to a court in which a parent has filed a suit for dissolution of marriage before a final order for the protection of the child has been rendered under Tex. Fam. Code Chapter 263. Tex. Fam. Code § 262.203(c).

2. Order of Transfer

An order of transfer must include:

- The date of any future hearings in the case that have been scheduled by the transferring court;
- Any date scheduled by the transferring court for the dismissal of the suit under Tex. Fam. Code § 263.401; and
- The name and contact information of each attorney ad litem or guardian ad litem appointed in the suit. Tex. Fam. Code § 263.203(d).

The court to which a suit is transferred may retain an attorney ad litem or guardian ad litem appointed by the transferring court. If the court finds that the appointment of a new attorney ad litem or guardian ad litem is appropriate, the court shall appoint that attorney ad litem or guardian ad litem before the earlier of:

- The 10th day after the date of receiving the order of transfer; or
- The date of the first scheduled hearing after the transfer. Tex. Fam. Code § 262.203(e).

3. Transfer of Court Files

Amended in 2015, Tex. Fam. Code § 155.207(a) and Tex. Fam. Code § 155.207(c) address the transfer of court files from one jurisdiction to another. Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send to the proper court in the county to which transfer is being made:

- The pleadings in the pending proceeding and any other document specifically requested by a party;
- Certified copies of all entries in the minutes;
- A certified copy of each final order; and
- A certified copy of the order of transfer signed by the transferring court. Tex. Fam. Code § 155.207(a).

On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the judge of the transferee court, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. Tex. Fam. Code § 155.207(c).

H. Placement With Relatives or Designated Caregiver

1. Before the Adversary Hearing

DFPS must:

- Evaluate each person listed on the Child Placement Resources Form to determine who would be most the appropriate substitute caregiver;
- Complete a home study of the most appropriate caregiver, Tex. Fam. Code § 262.114(a); and
- Conduct background and criminal history checks of the relatives or other designated individuals identified as potential relatives or designated caregivers on the Child Placement Resources Form. Please see the CPS Handbook § 4523 located at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_4500.asp#CPS_4523.

DFPS may place the child with the relative or designated caregiver identified on the proposed placement form if DFPS determines that the placement is in the best interest of the child. DFPS must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver. Tex. Fam. Code § 262.114(b).

Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, DFPS shall begin the home study of the relative or other designated caregiver. Tex. Fam. Code § 262.114(b). DPS shall complete the home study as soon as possible unless otherwise ordered by a court. Tex. Fam. Code § 262.114(b).

DFPS must provide an informational manual required by Tex. Fam. Code § 261.3071 to the relative or other designated caregiver at the time of the child's placement. Tex. Fam. Code § 262.114(b).

2. At the Adversary Hearing

DFPS must, after redacting any social security numbers, file with the court:

- A copy of each proposed Child Placement Resources Form;
- A copy of any completed home study; and
- The name of the relative or other designated caregiver, if any, with whom the child has been placed. Tex. Fam. Code § 262.114(a-1).

If the child has NOT been placed by the time of the full Adversary Hearing, DFPS shall file with the court:

- A statement that explains the reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and
- The actions DFPS is taking, if any. Tex. Fam. Code § 262.114(a-2).

DFPS may file with the court the temporary visitation schedule developed pursuant to Tex. Fam. Code § 262.115(d). The court may render any necessary order regarding the temporary visitation schedule. Tex. Fam. Code § 262.115(e).

3. Further Consideration of Former Foster Parent

DFPS must consider placing a child who has previously been in the managing conservatorship of DFPS with a foster parent with whom the child previously resided if DFPS determines that placement of the child with a relative or designated caregiver is not in the child's best interest and the placement is available and in the child's best interest. Tex. Fam. Code § 262.114(c).

I. Placement When Child Victim of Human Trafficking

A court in an emergency, initial, or full Adversary Hearing conducted under Tex. Fam. Code Chapter 262 may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with Tex. Hum. Res. Code § 42.0531, if the court finds that:

- The placement is in the best interest of the child; and
- The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03. Tex. Fam. Code § 262.011.

Special Issue: During the 84th Legislative Session in 2015, Tex. Gov't Code § 22.011 and Tex. Gov't Code § 22.110 were amended to require judicial instruction related to trafficking of persons.

J. Aggravated Circumstances

If the court finds aggravated circumstances, it may:

- Waive the requirement:
  - of a service plan; and
  - to make reasonable efforts to return the child to a parent; and
- Accelerate the trial schedule. Tex. Fam. Code § 262.2015(a).

To view the list of aggravated circumstances, see Tex. Fam. Code § 262.2015.

The court must also:

- Find that reasonable efforts to make it possible for the child to safely return home are not required;
- Set and conduct the initial Permanency Hearing within 30 days of making this finding; and
- Set the final hearing. (No required time frame other than before dismissal date set pursuant to Tex. Fam. Code § 263.401.) Tex. Fam. Code § 262.2015(c) and Tex. Fam. Code § 262.2015(d).

K. Decisions Regarding Education Required at Adversary Hearing

1. Designation of Education Decision-Maker

Tex. Fam. Code § 263.004 requires DFPS to provide notice to the court and others of the entity or person holding education decision-making authority. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a

non-parent managing conservator pursuant to Tex. Fam. Code § 153.371, which includes the right to make decisions regarding the child's education. Tex. Fam. Code § 153.371(10).

Unless the court order limits the rights and duties of DFPS under Tex. Fam. Code § 153.371(10) to make decisions regarding the child's education, DFPS must file with the court the name and contact information for each person who has been:

- Designated by DFPS to make educational decisions on behalf of the child; and
- Assigned to serve as the child's surrogate person in accordance with 20 U.S.C. 1415(b) and Tex. Educ. Code § 29.001(10), for purposes of decision-making regarding special education services, if applicable. Tex. Fam. Code § 263.004(a).

Not later than the fifth day after the date of an Adversary Hearing held under Tex. Fam. Code § 262.201 or Tex. Fam. Code § 262.205 is concluded, DFPS must file the information required by Tex. Fam. Code § 263.004(a) with the court and provide a copy to the school the child attends. Tex. Fam. Code § 263.004(b).

Special Issue: The notice required by Tex. Fam. Code § 263.004 will be provided by DFPS via is Form 2085E, Designation of Education Decision-Maker. For more information regarding this form, please see the *Education* Chapter of this Bench Book.

If a person other than a person identified under Tex. Fam. Code § 263.004(a) is designated to make educational decisions or assigned to serve as a surrogate parent, DFPS shall file the updated information in a permanency progress report filed under Tex. Fam. Code § 263.303 or Tex. Fam. Code § 263.502. The updated information must be provided to the school the child attends not later than the 5th day after the date of the designation or assignment. Tex. Fam. Code § 263.004(c).

2. DFPS Must Ensure the Child Returns Child to School After Removal

If DFPS takes possession of a child during the school year, DFPS shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by DFPS, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible. Tex. Fam. Code § 264.115(a).

If the child has a physical or mental condition of a temporary and remediable nature, that makes the child's attendance infeasible, DFPS shall notify the school in writing that the child is unable to attend school. If the child's physical or mental condition improves so that the child's attendance is feasible, DFPS shall ensure that the child immediately returns to school. Tex. Fam. Code § 264.115(b).