

Policy Title:	Educational Services for a Child in Substitute Care – OAR		
Policy Number:	I-E.8 413-100-0900 thru 0940		Effective Date: 12/28/11

Approved By: *on file*

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Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- Family Educational Rights and Privacy Act 20 USC Section 1232g
- Individuals with Disabilities Education Act, 20 USC Section 1400 et seq.
- ORS 326.575
- ORS 339.113
- ORS 409.050
- ORS 418.005
- ORS 419B.192, 419B.220, 419B.343

Form(s) that apply:

- CF 323, Early Intervention Referrals
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0323.doc
- CF 338, School Record Request – Cover Letter
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0338.doc
- CF 339, School Record Request
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0339.doc

Rules:

413-100-0900

Purpose

The purpose of these rules, OAR 413-100-0900 to 413-100-0940, is to describe the activities required to --

- (1) Ensure that regular education and *special education services* are provided to promote academic achievement of a *child* or *young adult* in the care and custody of the Department; and
- (2) Ensure that public preschool education, early intervention education programs, and appropriate post-secondary education or training opportunities are explored for an

eligible *child* or *young adult* in the care or custody of the Department.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

413-100-0905

Definitions

The following definitions apply to OAR 413-100-0900 to 413-100-0940:

- (1) "CASA" means Court Appointed Special Advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the *child* pursuant to ORS 419A.170.
- (2) "Child" means a person under 18 years of age.
- (3) "Department" means the Department of Human Services, Child Welfare.
- (4) "GED" means a General Educational Development certificate issued pursuant to ORS 326.550.
- (5) "Homeless individual" for the purposes of the McKinney-Vento Homeless Education Act means children and youth who have a right to public school enrollment and are awaiting foster care placement or are in temporary foster settings awaiting permanent placement under ORS 339.115(7).
- (6) "IEP team" means the participants who determine whether the *child* is a *child* with a disability and who develop the individualized education program (IEP) for the *child* as described under OAR 581-015-2000(15) and 581-015-2210(1).
- (7) "Parent", except as provided otherwise in OAR 413-100-0930, means the biological or adoptive mother or the biological, legal, or adoptive father of the *child*.
- (8) "Special education," as defined in OAR 581-015-2000(33), means specially designed instruction, at no cost to the parents, to meet the unique needs of a *child* with a disability, including instruction in the classroom, instruction in the home, and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.
- (9) "Special education services" means assistance provided to a *child* with a disability to meet the child's unique needs and includes instruction in the classroom, in the home, and in hospitals, institutions, special schools, and other settings.
- (10) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a *child* who is in the legal or physical custody of the Department.

- (11) "Surrogate" means an individual who has been appointed to safeguard a child's rights in the *special education* decision-making process. The individual may be appointed pursuant to applicable Department of Education administrative rules and statutes or by the juvenile court.
- (12) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220, 419B.343

413-100-0910

Role of the Department in the Education of a Child or Young Adult

The Department promotes the academic achievement of a *child* or *young adult* by participating as a member of the team that performs the academic assessment, planning, and goal setting for the *child* or *young adult*. The caseworker works collaboratively with the *parent* or legal guardian whenever appropriate; the local school district and school officials; the *substitute caregiver*; the *surrogate*, if one is appointed; the CASA and attorney of the *child* or *young adult*; local Department of Education District Homeless Liaison; and service providers involved in the case plan of the *child* or *young adult*, as appropriate, in order to ensure school enrollment and promote academic achievement.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 326.575, 409.050, 418.005, 419B.192, 419B.220, 419B.343

413-100-0915

Ensure a Child or Young Adult's Enrollment in School or Educational Setting

- (1) When a *child* or *young adult* is in substitute care, the child's caseworker must arrange school enrollment and educational services under the following requirements.
- (a) Preferred school or educational setting when a *child* first enters substitute care and at each placement move while the *child* or *young adult* remains in substitute care. The preferred school or educational setting when a *child* first enters substitute care is the school or educational setting the *child* attended prior to entry into substitute care unless --
- (A) Remaining in the same school or educational setting is not in the best interest of the *child*; and
- (B) Continuing to attend the same school or educational setting is not consistent with the ongoing safety plan or jeopardizes the child's safety.
- (b) Consideration of continuity of previous school placement when a *child* is in substitute care. A *child* who meets the definition of a *homeless individual* under the McKinney-Vento Homeless Education Act must be referred to the local Department of Education District Homeless Liaison, and may qualify for services

available through the Act.

- (2) Responsibility for ensuring school enrollment. The caseworker must ensure a *child* or *young adult* in the Department's care or custody is enrolled in a school or educational setting, through eligibility established under ORS 339.115.
- (3) Responsibility for school or educational setting placement decisions. The juvenile court makes the finding whether it is in the child's or young adult's best interest to continue to attend the school that the *child* or *young adult* attended prior to placement in substitute care by the Department. The *child* or *young adult* shall be considered a resident of the school district the *child* or *young adult* attended prior to placement and may continue to attend the school the *child* or *young adult* attended prior to placement through the highest grade level of the school, in accordance with ORS 339.133.
 - (a) A caseworker must consider recommendations from the child's or young adult's parents or legal guardian, attorney, CASA, school, and surrogate, if one has been appointed, and *substitute caregiver* in making the decision on school enrollment.
 - (b) The child's or young adult's IEP team makes the decision regarding *special education services* provided to the *child* or *young adult* when the *child* or *young adult* is receiving or eligible to receive *special education services*.
 - (c) The *young adult* makes the decision regarding educational services and school placement when educational rights have been passed to the *young adult*.
 - (d) When a *child* is in the care or custody of the Department under a Voluntary Placement Agreement, the *parent* or legal guardian retains legal authority over the *child* and continues to be responsible to exercise and perform all parental duties and legal responsibilities except those that the *parent* or legal guardian specifically delegates to the Department by the signed agreement.
- (4) Regardless of the authority to make school or educational placement setting decisions in section (3) of this rule, the caseworker must ensure the school or educational setting is consistent with the ongoing safety plan of the *child* or *young adult*.
- (5) Additional responsibilities when a private school, charter school, alternative school, or international study program is considered.
 - (a) Private School. Except as provided in subsections (3)(c)-(d) of this rule, when considering the enrollment of the *child* or *young adult* in a private school, the caseworker must:
 - (A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;
 - (B) Determine whether the school is accredited in the state in which the school is located;
 - (C) Verify that an entity or person other than the Department will pay all costs

except those approved under OAR 413-100-0935;

- (D) Consider the religious affiliation of the *child* or *young adult* and the *parent* or legal guardian when considering enrollment in a religiously-affiliated private school;
 - (E) Consider recommendations from the child's or young adult's parents, attorney, CASA, and *substitute caregiver*; and
 - (F) Obtain approval from the Child Welfare program manager.
- (b) Charter school or alternative school. Except as provided in subsections (3)(c)-(d) of this rule, when considering the enrollment of a *child* or *young adult* in a charter school or alternative school, the caseworker must:
- (A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;
 - (B) Verify that the charter school is approved by the local school district board or the Oregon Department of Education;
 - (C) Consider recommendations from the child's or young adult's parents, attorney, CASA, and *substitute caregiver*; and
 - (D) Obtain approval from the Child Welfare program manager.
- (c) International study program. Except as provided in subsections (3)(c)-(d) of this rule, when considering enrolling a *child* or *young adult* in an international study program, the caseworker must:
- (A) Ensure that enrollment is consistent with the child's or young adult's permanency plan;
 - (B) Verify that the international study program is accredited;
 - (C) Consider recommendations from the child's or young adult's parents, attorney, CASA, and *substitute caregiver*;
 - (D) Obtain approval from the Child Welfare program manager, the District Manager, the Diversity and International Affairs Manager; and
 - (E) Obtain approval of the juvenile court.
- (6) Additional responsibilities when considering a GED program. Except as provided in subsections (3)(c)-(d) of this rule, when considering a GED program for the *child* or *young adult*, whether the program is held at a public school or at a location other than a public school, the caseworker must:
- (a) Determine, that obtaining a GED meets the child's or young adult's educational

needs better than obtaining a high school diploma;

- (b) Verify that a GED program is consistent with the child's or young adult's case plan;
 - (c) Consider recommendations from the child's or young adult's parents, attorney, CASA, and *substitute caregiver*; and
 - (d) Obtain approval from the Child Welfare program manager.
- (7) Additional responsibilities when considering home schooling. Except as provided in subsections (3)(c)-(d) of this rule, when considering home schooling for the *child* or *young adult* in the substitute caregiver's home, the caseworker must:
- (a) Determine that a home schooling environment would not interfere with the child's or young adult's social development;
 - (b) Determine that home schooling would promote inclusion in the substitute caregiver's home;
 - (c) Determine that a home school environment is consistent with the child's or young adult's permanency plan;
 - (d) Determine that the child's or young adult's enrollment in a home school program is permitted by state law in another state if the *child* or *young adult* is placed in another state through the Interstate Compact on the Placement of Children;
 - (e) Obtain the approval of the child's or young adult's *parent*, as defined in OAR 413-100-0905(7), or guardian for the *substitute caregiver* to act as a private teacher;
 - (f) Verify the *substitute caregiver* has provided written notification to the education service district of intent to provide home schooling;
 - (g) Obtain the approval of the Child Welfare program manager; and
 - (h) Obtain the approval of the juvenile court.
- (8) Transportation to school. After the school or educational setting has been determined, the caseworker must assess the school district's available transportation options and, if school district transportation is unavailable, select and arrange the most reliable, safe, cost-effective transportation option to transport the *child* or *young adult* to and from the school or educational setting.
- (9) Once a school or educational setting has been selected for a *child* or *young adult*, the caseworker must notify the school or educational setting that the *child* or *young adult* is in the legal custody of the Department and may provide information about the reason the *child* or *young adult* is in substitute care to the staff of the school or educational setting only when providing such information to a particular staff person is necessary

for the child's or young adult's education planning or to ensure the safety of the *child*, *young adult*, or others in the school with whom the *child* or *young adult* has contact.

- (10) Unless a *child* or *young adult* has achieved high school graduation or is incapable of attending school for a medical reason, the Department will ensure school enrollment under Chapter 581 of Oregon Administrative Rules for a *child* or *young adult* in the custody of the Department.
- (11) The caseworker must document in the case plan of the *child* or *young adult* all of the following:
 - (a) Information about the current school or educational setting of the *child* or *young adult*.
 - (b) All schools or educational settings the *child* or *young adult* has attended since the date the *child* or *young adult* has been in the custody of the Department.
 - (c) The length of time the *child* or *young adult* has spent in each school or educational setting.
 - (d) The number of high school credits each *child* or *young adult* 14 years of age or older has earned.
 - (e) The child's *surrogate*, if one has been appointed.
 - (f) The reason for any change in the child's or young adult's school or educational setting.
 - (g) Information regarding the child's or young adult's educational records, which may include but is not limited to:
 - (A) Report cards;
 - (B) Transcripts;
 - (C) Individual Education Plan;
 - (D) A 504 plan, developed under the provisions of Section 504 of the Rehabilitation Act of 1973; and
 - (E) A transition plan.
 - (h) The basis the *child* or *young adult* is incapable of attending school under section (10) of this rule should that section apply.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220, 419B.343

413-100-0920

Consent for School Activities

Once the Department has determined the child's or young adult's school or educational setting, the *substitute caregiver* may give permission for the *child* or *young adult* to attend school-related activities such as, but not limited to, school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

413-100-0925

Consent for Special Education Services

- (1) When a *child* or *young adult* is in the care and custody of the Department, and there is reason to believe the *child* has a disability under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding *special education* (OAR 581, Division 15), the caseworker must identify who is the *parent* or *surrogate* making educational decisions for the *child* or *young adult*.
- (2) If a *surrogate* has not been appointed, or if more than one person is qualified to make *special education* decisions for the *child* or *young adult*, the caseworker may ask the court to determine the education decision maker. Persons who qualify to make educational decisions include:
 - (a) The biological or adoptive *parent* of the *child* or *young adult*.
 - (b) A foster *parent* or relative caregiver of the *child* or *young adult*.
 - (c) A legal guardian.
 - (d) An individual acting in the place of a biological or adoptive *parent* (including a grandparent, stepparent, or other relative) with whom the *child* or *young adult* lives, or a person who is legally responsible for the welfare of the *child* or *young adult*.
- (3) When a *child* or *young adult* with a disability is being considered for home schooling, in addition to the requirements of OAR 413-100-0915, the caseworker must:
 - (a) Ensure the *surrogate* of the *child* or *young adult* has approved home schooling; and
 - (b) Ensure the *surrogate* participates in the *special education* planning for the *child* or *young adult* in the home school environment.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220, 419B.343

413-100-0930

Rights to a Child's Education Records

- (1) The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, protects the authority of parents to review their minor children's education records, limit the records' release without written consent by the parents, and correct errors in those records. 34 CFR 99.3, one of FERPA's implementing regulations, defines "parent" as "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." Under this definition, a Department employee may act as a "parent," for FERPA purposes, if the Department is the legal guardian of the *child*.
- (2) A Department employee may demonstrate his or her authority to exercise the FERPA rights of a child's parent by providing the educational agency or institution with evidence that the Department is the legal guardian of the *child*, which may include a juvenile court order appointing the Department as the legal guardian of the *child*.
- (3) This rule does not apply to the *special education* records for a student who is eligible for *special education services* or is suspected of being eligible for *special education services* under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding *special education* (OAR 581, Division 015). To receive these records, a Department employee may:
 - (a) Receive information from the school of a child's personally identifiable information in connection with a child protective services (CPS) investigation under OAR 581-021-0380;
 - (b) Be advised by the school of a child's disabling conditions prior to an interview with the *child* during the course of a CPS assessment under ORS 419B.045;
 - (c) Seek a court order to obtain the *special education* records; or
 - (d) Seek a release of information to obtain the *special education* records from a child's or young adult's parent, guardian, *surrogate*, or from a *young adult* whose *special education* rights have been passed to the student.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 326.575, 336.187, 409.010, 418.005, 419B.045, 419B.192, 419B.220, 419B.343

413-100-0935

Educational Expenses

- (1) The Department may authorize payment for some allowable school costs other than transportation, if sufficient funds are available and the school district does not cover the expense. Authorization for these expenses is outlined in Child Welfare Policies I-E.5.2, "Payments for Special or Extraordinary Needs", OAR 413-090-0365 and I-E.5.4,

"Flexible Fund".

- (2) A school district board or public charter school may waive school fees for certain activities under ORS 339.147 and ORS 339.155 when the student is a ward of the court.

Stat. Auth.: ORS 339.147, 339.155, 409.050, 418.005

Stat. Implemented: ORS 339.133, 339.147, 339.155, 409.050, 418.005, 419B.192, 419B.343

413-100-0940

Early Education and Post-Secondary Education

- (1) The caseworker must ensure that an eligible *child* in the care or custody of the Department has the same access to public preschool education and early intervention education programs as eligible children not in the care or custody of the Department. In meeting this obligation, the caseworker must ensure a *child* victim under three years old has been referred to an early intervention education program.
- (2) The caseworker must ensure that a *child* or *young adult* in the care or custody of the Department has access to the information and resources available to explore post-secondary education and training opportunities. In meeting this obligation the caseworker must include education in any child's or young adult's plan for transition to independent living.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 409.050, 418.005, 419B.192, 419B.343

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