

<b>Policy Title:</b>	Educational Services for a Child in Substitute Care – OAR		
<b>Policy Number:</b>	I-E.8 413-100-0900 thru 0940		<b>Effective Date:</b> 6/28/08

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

### Reference(s):

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

### Form(s) that apply:

- CF 323, Early Intervention Referrals
- CF 338, School Record Request – Cover Letter
- CF 339, School Record Request

### 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) "Department" means the Department of Human Services, Child Welfare.
- (3) "GED" means a General Educational Development certificate issued pursuant to ORS 326.550.
- (4) "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).
- (5) "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).
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "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.
- (10) "Surrogate" means a person who has been appointed to safeguard a child's rights in the special education decision-making process. The person may be appointed pursuant to OAR 581-015-2320 for school-age children, OAR 581-015-2760 for preschool children, or by the juvenile court under ORS 419B.220.
- (11) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

**Stat. Auth.: ORS 409.050, 418.005**

**Stats. Implemented: ORS 409.050, 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 child or young adult's academic assessment, planning, and goal setting. 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 child or young adult's CASA and attorney; local Department of Education District Homeless Liaison; and service providers involved in the child or young adult's case plan, 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) Preferred school or educational setting when a child first enters 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 whenever possible and when --
  - (a) Remaining in the same school or educational setting is in the best interest of the child; and
  - (b) Continuing to attend the same school or educational setting is consistent with the ongoing safety plan and does not jeopardize the child's safety.
- (2) Consideration of continuity of previous school placement when a child enters substitute care or moves to another substitute care placement. A child who meets the definition of a homeless individual under the McKinney-Vento Homeless Education Act, may be referred to the local Department of Education District Homeless Liaison, and may qualify for services available through the Act.
- (3) 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.
- (4) Responsibility for school or educational setting placement decisions. When the juvenile court makes a finding that 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 shall be a resident of the school district the child attended prior to placement and may continue to attend the school the child attended prior to placement through the highest grade level of the school, in accordance with ORS 339.133. Except when the court orders continued enrollment, when the Department has been given legal custody of a child or young adult --
  - (a) The team of individuals described in OAR 413-100-0910 makes the decision regarding placement when the child is not receiving special education services; or

- (b) The child's or young adult's IEP team makes the decision regarding educational services and school placement when the child or young adult is receiving or eligible to receive special education services; or
  - (c) The young adult makes the decision regarding educational services and school placement when educational rights have been passed to the young adult; or
  - (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 is obligated to continue 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.
  - (e) The caseworker must ensure the school or educational setting is consistent with the child's ongoing safety plan or is a safe setting for a young adult.
- (5) Additional responsibilities when a private school, charter school, alternative school, or international study program is considered.
- (a) Except as provided in subsection (4)(b) 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) Verify that the school is accredited in the state where 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 attorney, CASA, and substitute caregiver; and
    - (F) Obtain approval from the Child Welfare program manager.
  - (b) Except as provided in subsection (4)(b) 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 attorney, CASA, and substitute caregiver; and

- (D) Obtain approval from the Child Welfare program manager.
- (c) Except as provided in subsection (4)(b) 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 attorney, CASA, and substitute caregiver;
  - (D) Obtain approval from the Child Welfare program manager, the District Manager, the Foster Care Program Manager; and
  - (E) Obtain approval from the juvenile court.
- (6) Additional responsibilities when considering a GED program. Except as provided in subsection (4)(b) 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 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 subsection (4)(b) 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(6), 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 a 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) The caseworker must document in the child's or young adult's case plan:
- (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; and
  - (g) Information regarding the child's or young adult's educational records, which may include but is not limited to report cards, transcripts, Individual Education Plan or 504 plan, and transition plan.

**Stat. Auth.: ORS 409.050, 418.005**

**Stat. Implemented: ORS 409.050, 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 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 determine who is the parent or surrogate making educational decisions for the child.
- (2) If a surrogate has not been appointed, or if more than one person is qualified to make special education decisions for the child, 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.
  - (b) A foster parent or relative caregiver of the child.
  - (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 lives, or a person who is legally responsible for the child's welfare.
- (3) When a child 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 child's surrogate has approved home schooling; and
  - (b) Ensure the surrogate participates in the special education planning for the child in the home school environment.

**Stat. Auth.: ORS 409.050, 418.005**

**Stat. Implemented: ORS 409.050, 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) A child 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). A Department employee may:
  - (a) Receive information from the school of a child's personally identifiable information in connection with a 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, 409.050, 418.005, 419B.192, 419B.045, 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**

### **Contact(s):**

- **Name:** CAF Reception; **Phone:** 503-945-5600

### **Policy History**

- [01/01/08 thru 06/27/08](#)
- [6/30/11](#)