

	Department of Human Services CHILDREN, ADULTS & FAMILIES	NUMBER: I-E.8 OAR: 413-100-0900 thru 0940
	CLIENT SERVICES INDEX	SECTION: E. Substitute Care
	ISSUED BY: Office of Safety and Permanency for Children TEMPORARY: 1-01-08	SUBSECTION:
SUBJECT: 8. Educational Services for a Child in Substitute Care – OAR		

REFERENCES

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

FORMS

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

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 available pre-school education and post-secondary education or training opportunities are explored for a child or young adult in the care and 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) "Parent", for the purposes of these rules, means the biological or adoptive mother or the biological, legal, or adoptive father of the child, except as provided otherwise in OAR 413-100-0930.
- (5) "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.
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "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 must work 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; and service providers in the child or young adult's case plan, as appropriate, in order to facilitate information and record sharing, case planning, and educational advocacy.

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**Determination of a Child or Young Adult's School or Educational Placement**

- (1) Preferred school or educational placement when a child first enters substitute care. The preferred school or educational placement when a child first enters substitute care is the school or educational placement the child attended prior to entry into substitute care whenever possible and when --
 - (a) Remaining in the same school or educational placement is in the best interest of the child; and
 - (b) Continuing to attend the same school or educational placement is consistent with the ongoing safety plan and does not jeopardize the child's safety.
- (2) Responsibilities for determination of any school or educational placement. The Department must determine a school or educational placement for a child or young adult in the Department's care and custody.
 - (a) The caseworker must involve the following persons in school or educational placement selection and other decisions regarding the child or young adult's education whenever appropriate:
 - (A) The child or young adult;
 - (B) The child's or young adult's legal parent or legal guardian; and
 - (C) Consider the recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and
 - (D) The child's or young adult's surrogate.

- (b) Before determining any school or educational placement for a child or young adult, the caseworker must determine that:
 - (A) The school or educational placement is the most appropriate available for the child or young adult; and
 - (B) The school or educational placement is consistent with the child's ongoing safety plan or is a safe setting for a young adult.
 - (c) If 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 the care and custody of 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.
 - (d) When a child is in the care and 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.
- (3) Additional responsibilities when selecting a private school, charter school, alternative school, or international study program for a child or young adult.
- (a) 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 and educational goals;
 - (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) The Child Welfare program manager must review information gathered in paragraphs (A) through (E) of this subsection, and may approve enrollment.

- (b) 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 and educational goals;
 - (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) The Child Welfare program manager must review information gathered in paragraphs (A) through (C) of this subsection, and may approve enrollment.
- (c) 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 and educational goals;
 - (B) Verify that the international study program has documented program credentials;
 - (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, and the Foster Care Program Manager; and
 - (E) Obtain approval from the juvenile court.
- (4) Additional responsibilities when considering a GED program or obtaining a modified diploma. When considering a GED program or a modified diploma for the child or young adult, whether the program is held at a public school or at a location other than a public school, prior to the approval of the Child Welfare program manager, the caseworker must:
- (a) Determine, in conjunction with a child's or young adult's educational providers, that obtaining a GED or modified diploma meets the child's or young adult's educational needs better than attending a public school or obtaining a regular diploma;
 - (b) Verify that a GED program or modified diploma is consistent with the child's or young adult's case plan and educational goals;

- (c) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and
 - (d) The Child Welfare program manager must review information gathered in subsections (a) through (c) of this section, and may approve enrollment.
- (5) Additional responsibilities when considering home schooling. 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 and educational goals;
 - (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 legal parent or legal guardian for the substitute caregiver to act as a private teacher;
 - (f) Obtain the approval of a child's surrogate when OAR 413-100-0925 applies;
 - (g) Verify the substitute caregiver has provided written notification to the education service district of intent to provide home schooling; and
 - (h) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver.
 - (i) The Child Welfare program manager must review information gathered in subsections (a) through (h) of this section, and may approve recommendation for enrollment to the juvenile court.
 - (j) Obtain the approval of the juvenile court.
- (6) Transportation to school. After the school or educational placement 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 placement.

- (7) Once a school or educational placement has been selected for a child or young adult, the caseworker must notify the school 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 placement only if 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.
- (8) The caseworker must document in the child's or young adult's case plan and report to the court:
- (a) The name and address of the current school or educational placement of the child or young adult;
 - (b) The name and address of each school or educational placement 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 placement;
 - (d) The number of high school credits each child or young adult fourteen years of age or older has earned;
 - (e) The grade level of the child or young adult's academic performance;
 - (f) The child's surrogate, if one has been appointed;
 - (g) The reason for any change in the child's or young adult's school or educational placement; and
 - (h) 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 placement, the substitute caregiver may give permission for the child or young adult to attend to 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 015), the child's parent is responsible for safeguarding a child's rights in the special education decision-making process.
- (2) "Parent," for the purposes of special education decision-making, means:
 - (a) One or more of the following persons:
 - (A) A biological or adoptive parent of the child;
 - (B) A foster parent of the child;
 - (C) A legal guardian, other than a state agency;
 - (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 a child's welfare; or
 - (E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or OAR 581-015-2760 for preschool children.
 - (b) Except as provided in subsection (c) of this section, if more than one party is qualified under subsection (a) of this section to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
 - (c) If a judicial decree or order identifies a specific person under subsection (a) of this section to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.
- (3) The caseworker must verify who has been authorized to make educational decisions for the child who qualifies for special education.
- (4) 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 parent, as defined in OAR 413-100-0925(2), or 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) This rule does not apply to the special education records of a child that 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 must obtain a release of information from a child's or young adult's legal parent, legal guardian or surrogate to obtain the special education records.

Stat. Auth.: ORS 409.050, 418.005

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

413-100-0935

Educational Expenses

The Department may authorize "Payments for Special or Extraordinary Needs" or "Flexible Funds" 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".

Stat. Auth.: ORS 409.050, 418.005

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

413-100-0940

Early Education and Post-Secondary Education

- (1) The caseworker must ensure that a child in the care and custody of the Department has the same access to pre-school education programs as eligible children not in the care and custody of the Department. In meeting this obligation, the caseworker must make reasonable efforts to refer and enroll children who meet the enrollment criteria of licensed pre-school education programs available at no cost to the Department.
- (2) The caseworker must ensure that a child or young adult in the care and 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 planning for transition to independent living.

Stat. Auth.: ORS 409.050, 418.005

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