

# **EDUCATION**

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## IX. EDUCATION

### **Code of Alabama Section 16-28-3 - Ages of children required to attend school; exemption for church school students; transfer students.**

(a) Except as otherwise provided in subsection (b), every child between the ages of six and 17 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic year except that, prior to attaining his or her 16th birthday every child attending a church school as defined in Section 16-28-1 is exempt from the requirements of this section, provided such child complies with enrollment and reporting procedure specified in Section 16-28-7. Admission to public school shall be on an individual basis on the application of the parents, legal custodian, or guardian of the child to the local Board of Education at the beginning of each school year, under such rules as the board may prescribe; provided a person who is under 19 years of age and on track to graduate from public school may not be denied admission to public school solely on account of his or her age. The parent, legal custodian, or guardian of a child who is six years of age, may opt out of enrolling his or her child in school at the age of six years by notifying the local school Board of Education, in writing, that the child will not be enrolled in school until he or she is seven years of age.

(b)(1) If a child withdraws from a public school, upon verification of enrollment in a Southern Association of Colleges and Schools or any entity with accreditation status as determined by one of the agencies identified on the United States Department of Education's list of Recognized National and Regional Accrediting Agencies or their affiliates accredited and recognized online school which has been authorized by the Alabama State Department of Education to provide instruction in lieu of in-person instruction, the child shall be counted as a transfer student.

(2) If a child returns to a public school, semester exams shall be given to the child to determine grade placement.

(3) This subsection does not and should not be interpreted to create online schools. However, if a student chooses to attend an accredited, state authorized online school, that student's former school should not be penalized by the student being classified as a dropout.

Code of Alabama § 16-39-3 provides that all "exceptional" children must be provided with at least twelve consecutive years of free and appropriate instruction and special services in the public school systems of Alabama. Public Law 108-446 (IDEA 2004) also requires that each child, birth to twenty-one, with a disability be provided a free and appropriate public education and related services. The County Department should work with the Local Education Agency (LEA) to assure that all children in out-of-home care receive appropriate educational services as needed.

#### A. School Enrollment

Children in out-of-home care shall be placed whenever possible within close proximity of their home, thereby maintaining children in the same school system to help ensure educational stability. If this is not possible, it is the child welfare worker's responsibility to ensure enrollment/transfer of a child in school who is in out-of-home

care. If enrollment is to be done by out-of-home care provider, the necessary information included on the “Foster Care Placement Information” form must be provided by the worker to enroll the child. If the out-of-home care provider agrees to enroll the child, a phone call should be made by the child welfare worker to alert the school to the child’s situation. It is important that the worker notify the Local Education Agency’s (LEA) Point of Contact (POC), where the child has been attending, of the child’s change in residence and transfer to a different school. Procedures for transfer of a child’s school and immunization records may vary from one school system to another. The child welfare worker and the LEA Point of Contact will need to assure that the school records have been transferred.

The child welfare worker’s communication with the out-of-home care provider, child’s former school, new school and the LEA Point of Contact are key to a smooth transition from school to school. Information which may be needed by the out-of-home care provider and school includes: child’s custody status; grade placement; immunization record; name(s) of person(s) who can pick up the child at school; child’s special needs; person(s) to call in case of accident or illness; birth verification; etc. Children in out-of-home care will not be prohibited from enrolling in a new school if these documents are not readily available. The child welfare worker must only present the Court Order for school enrollment. The required items should be provided no later than 30 days of school transfer/enrollment.

#### B. Educational Information Provided to Foster Parents/Providers

Federal and state statutes (P. L. 101-239; Foster Parent Bill of Rights, Act No. 2004-257) require that certain educational information must be reviewed, updated and provided to foster parents or other out-of-home providers when a child is placed in out-of-home care. The information must include past educational experiences along with the following:

- name and address of the prior school before entry into care;
- grade level performance of child and school record;
- school arrangements made for the child including records being transferred;
- special arrangements including special education services; and
- existence of IEP, if known by the child welfare worker.

The worker must document in the child’s record that the above information was given to the foster parent/provider at the time of the initial placement and to any new provider if a child is moved. The “Foster Care Placement Information” form (see Forms and Instructions) provides a suggested format that covers all required items; including educational information. While County Departments may develop and use similar forms, we encourage you to use the suggested format. If you opt to create another format, ; all the required information must be included .

#### C. DHR/SDE/LEA Protocols

The Federal Child and Family Services Review under the Well-Being Outcome evaluates whether “Children receive appropriate services to meet their educational needs.” To address broad systemic issues, the State Department of Human

Resources and the Alabama State Department of Education (ALSDE) have entered into a Memorandum of Understanding to promote the education success and well-being of the children mutually served by both departments and updated related to the Every Student Succeeds Act signed into law on December 10, 2015.

Meeting educational needs of children, including education stability, is critical to achieving successful outcomes for children. A cooperative and collaborative effort between county DHR staff and local school system(s) can help support this. When there is a strong working agreement between the county department and the local school system(s), a foundation is formed for successful collaborative efforts toward meeting educational needs of children.

There are a number of common elements that are helpful toward establishing or assessing a local interagency educational protocol. These include:

- procedures for notification of schools when DHR becomes involved with a child;
- expectations for DHR providing in-service training on child welfare issues to education personnel;
- requirements for reporting suspected child abuse/neglect;
- expectations for educational staff involvement in ISP's;
- expectations for DHR staff involvement in IEP's;
- expectations and procedures for addressing concerns regarding individual children;
- procedures for worker visits to schools;
- DHR worker and supervisor names and phone numbers;
- expectations for sharing of information and confidentiality requirements;
- procedures for addressing health related issues as they relate to educational concerns;
- expectations for securing resources for identified needs of children;
- education participation on County QA Committee;
- signature of DHR and Education official; and
- distribution of protocol.

Foster children represent a truly vulnerable educational population. Every Student Succeeds Act (ESSA) was signed into Federal law on December 10, 2015. ESSA removes barriers related to children in foster care so that smooth transitions occur as they move through the out-of-home care process. The educational stability of children in out-of-home care is a joint responsibility of the educational and child welfare systems. ESSA requires collaboration between the Department and the LEA to keep children in out-of-home care in the same school setting when placements change. Any changes in school placement should be made only when they are in

the best interest of the child. ESSA states that children are entitled to school stability and prompt school enrollment protections, with requirements as follows:

- A child in foster care remains in his or her school of origin, unless it is determined through the ISP Process that remaining in the school of origin is not in that child's best interest;
- If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school, even if records normally required for enrollment are not available; and
- That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.

The educational stability plan must be documented in the ISP no later than 60 days after the child's removal from home and every six months thereafter, or whenever any subsequent placement moves require a change in school placement, as determined by the ISP team.

Factors to be considered when making ISP team decisions regarding school placement moves include:

- Preferences of the child in accordance with the Reasonable and Prudent Parenting Standard;
- Preferences of the child's parent(s) or education decision maker(s)
- The child's attachment to the school, including meaningful relationships with staff and peers;
- Placement of the child's sibling(s);
- Influence of the school climate on the child, including safety;
- The availability and quality of the services in the school to meet the child's educational and socioemotional needs;
- History of school transfers and how they have impacted the child;
- How the length of the commute would impact the child, based on the child's developmental stage;
- Whether the child is a student with a disability under the IDEA who is receiving special education and related services or a student with a disability under Section 504 who is receiving special education or related aids and services and, if so, the availability of those required services in a school other than the school of origin; and
- Whether the child is an EL and is receiving language services, and, if so, the availability of those required services in a school other than the school of origin

#### Best Interest Determination

A representative from the school of origin (POC or designee) should be knowledgeable about the child and able to provide feedback on significant relationships that the child may have formed with staff and peers and how changing schools would impact his or her academic, social, and emotional well-being. Based on the individual situation, this person could be a teacher, counselor, coach, or other meaningful person in the child's life.

The LEA and county child welfare designee should consult other relevant parties, such as the child, depending on age, foster parents, biological parents when appropriate, education decision maker(s), and other relatives for their perspectives on which school the child should attend during his or her time in foster care, consistent with the child's case plan. If a child has an IEP or a Section 504 plan, then the relevant school staff members also need to participate in the best interest decision process. If the child is an EL, this may also affect the relevant school staff members who would need to participate in the best interest decision process.

#### Resolving Disputes

Given these coordination expectations/requirements, the LEA and the Department should make every effort to reach agreement regarding the appropriate school placement of children in out-of-home care. However, if there is disagreement regarding school placement for a child in foster care, the child welfare agency should be considered the final decision maker in determining best interest of the child. The Department has the responsibility and knowledge regarding factors such as safety, sibling placements, the child's permanency goal, and the other components of the case plan. The child welfare agency also has the authority, capacity, and responsibility to collaborate with and gain information from multiple parties, including parents, children, schools, and the court in making these decisions.

#### *Transportation*

Some children in out-of-home care will need transportation to remain in their school of origin when it **remains** in their best interest. To facilitate transportation for these children, the LEA must collaborate with the Department to ensure that transportation for children in foster care is provided, arranged, and funded.

Children in out-of-home care needing transportation to their schools of origin will promptly receive that transportation in a cost effective manner

If there are additional costs incurred in providing transportation to the school of origin, the LEA will provide such transportation if (1) the county office designee and the County **DHR** Director agree to reimburse the LEA for the cost of such transportation; (2) the LEA agrees to pay for the cost; or (3) the LEA and county office designee and County **DHR** Director agree to share the cost.

#### D. Referral for Problem Solving Teams (PST)

Alabama Administrative Code 290-3-1-.02(19) became effective on August 15, 2011 and required all public schools in Alabama to implement the Problem Solving Teams. A list of documentation requirements for a referral for special education services is also listed in the Alabama Administrative Code, Chapter 290-8-9.01 (2) and (4) and Chapter 290-8-9.03(10)(b) 1, (10)(c)2(ii), (10)(d)2.(I)(II)(ii) and (10)(d)4.

The Problem Solving Teams (PST) is a model to guide general education intervention service for all students who have academic and/or behavioral difficulties. The PST is central to the school's successful implementation of the Response to Instruction framework. Any student who is reevaluated and determined not eligible for special education services must be referred to the PST to determine the appropriate supplemental services to facilitate successful transition in the general education program.

The number of PST's needed by a school should be determined at the school level; however a minimum of one PST per school is required.

A special rule applies to the referral process. Prior to, or as part of, a child being referred, the child should have been provided appropriate instruction in regular education settings, delivered by qualified personnel; and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parent.

Intervention strategies should occur in the general education class before a child is referred for special education evaluation or concurrently during the evaluation process, intervention strategies must be implemented in the general education program and monitored by the Problem Solving Team (PST) for an appropriate period of time (a minimum of eight weeks), and be determined unsuccessful. This rule may be waived for a child who has severe problems that require immediate attention, for three- and four-year olds, for five-year olds who have not been in kindergarten, for children with articulation, voice, or fluency problems only, for children with a medical diagnosis of traumatic brain injury, and for a child who has been referred by his or her parents.

Once a child has been determined eligible for special education services, the child is eligible anywhere in Alabama until such time the child is reevaluated and determined ineligible or the parent revokes consent for services or the child relocates out of state.

#### E. Referral for Special Education Services

While the child welfare worker cannot serve as a surrogate parent nor authorize evaluation for special education, the child welfare worker can make a referral to the LEA for the child to receive an evaluation to determine eligibility special education services. As soon as it is known that a child in out-of-home care may require special education services, a referral shall be made to the Special Education Coordinator of the LEA in which the child's school is located. The State Department of Education maintains a list of special education coordinators on its website, [www.alsde.edu](http://www.alsde.edu). (enter "coordinator" in "search" box and scroll to the Coordinator List).

LEAs operate with a certain amount of autonomy. Therefore, it is necessary for each county department to work with the local special education coordinator(s) in the county to determine any local procedures for referral for special education services. Counties with more than one educational system will need to work with each LEA's special education coordinator.

When children are placed outside of the county of responsibility, the referral should be made to the special education coordinator for the LEA where the school is located. If a child had been receiving special education services upon entry into care, but will attend a school operated by another LEA, the child welfare worker will need to contact the special education coordinator of the former LEA and request that the child's records be transferred. The Individualized Education Program (IEP) will follow the child and the receiving school system will generally accept the IEP from another school system until the receiving school system can have a conference to update the IEP.

The County Department child welfare workers are responsible for the following:



- When appropriate, complete referral form (obtained from LEA) requesting that the child be evaluated for special education. This includes any foster child with a DSM diagnosis (current edition).
- Attach a cover letter to referral form which identifies custody status of child, name, and address of parents and indicate whether parent is available to participate in child's educational plan. The LEA is required to obtain consent from the parents for an evaluation and to provide special education services. In cases where the child is in the permanent custody of the Department, the names of parents will not be given. Child welfare staff must provide the LEA with documentation (Court Order terminating parental rights) that education rights were terminated from parents or confirmation that current location of the parents is unknown. The worker may make a suggestion of a person to serve as surrogate parent (refer to section G) if one is necessary.
- If the child is identified as a child with a disability needing special education services following the evaluation, request in writing that the LEA notify the Department of IEP meetings.
- Participate in all of the child's IEP conferences.
- A copy of the IEP must be filed in the case record.
- Document results of all IEP conferences in the narrative.
- Identify and record in child's case record the name of surrogate parent appointed by the Department of Education for the child.

#### F. Individualized Education Program (IEP)

An Individualized Education Program (IEP) is a written document detailing a child's individual educational needs. IEP's are completed by LEA's on children ages three through twenty-one. Children receiving early intervention services are referred to LEA's for development of IEP's with the parent's permission to refer their child to the LEA. Children may continue to receive educational services after completing the required twelve years of schooling if their IEP provides for this. However, special education services cease upon the receipt of a regular diploma. An IEP should be in effect for each child with a disability. Members of the IEP team should include:

- parent/guardian of the student;
- not less than one regular education teacher of the child, if the child participates in the regular education program;
- not less than one special education teacher of the child, or if appropriate, not less than one special education provider of the child;
- an LEA representative;
- an individual who can interpret instructional implications of evaluations results;

- for an initial IEP conference, and in the case of a child served under Part C (Early Intervention), at the request of the parent or social worker, the Part C service provider;
- transition services are for children ages sixteen and above;
- the child welfare worker for children in out-of-home care should be invited as a person who has knowledge of the child;
- whenever appropriate the student with the disability;
- others at the discretion of the parent or LEA.

IEP's should include the following information:

- the student's present level of educational performance;
- measurable annual goals;
- special educational services the child is to receive;
- identified modifications or accommodations the child is to receive.

The student's IEP should be reviewed annually to determine the appropriateness of educational placement; review progress made; determine whether the student's annual goals continue to be appropriate; assess modifications and accommodations; and make any necessary revisions to the IEP. If the parent/guardian believes that the child is not learning or making progress, a conference may be scheduled to revise the IEP. This request must be in writing and the IEP Team shall meet within 30 days of receiving the parent/guardian's written request.

Individualized Service Plans Policy (ISP) provides that joint ISP/IEP meetings shall be held when possible and reasonable, to facilitate service planning and the delivery of services for children needing special education services. Child welfare staff shall participate in the IEP case conferences, and may offer suggestions as to who should be appointed as the surrogate parent.

#### G. Surrogate Parent

In order to protect the rights of a child with disabilities, a surrogate parent is appointed to represent the child. The LEA's superintendent of education or designee appoints surrogate parents. The responsibility of the surrogate parent is to act for the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child, [Code of Alabama, § 290-8-9-.08 (1) (f)].

A surrogate parent is a person appointed to act as a child's advocate in place of the child's birth parents or guardian in the educational decision-making process. Surrogate parents or their representatives have the same right to inspect, review, and copy educational records as natural parents. This includes all records to which administrators and teachers have access.

Federal regulations (34CFR300.515) provide that no person may be appointed as a surrogate parent who is an employee of the public agency which is involved in the education or care of the child. If the person is involved only in non-educational care,

he or she may be considered as a surrogate parent. A DHR employee cannot serve as a surrogate parent. Also, staff of a licensed group home or childcare institution cannot serve as a surrogate parent. If the County DHR agrees, a foster parent may “act in the place of a parent” for educational purposes and the LEA does not need to appoint a surrogate parent.

For educational purposes, U.S. C34CFR300.20 defines the term “parent” to mean a legal parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed to represent the child. Persons acting in the place of a parent includes a grandparent or stepparent with whom a child lives/lived; persons who are legally responsible for a child’s welfare; and neighbors, friends, or private individuals caring for the child with the explicit or tacit approval of the child’s natural parent or guardian. The term “parent” does not include the State if the child is a ward of the State.

The LEA will request appointment of a surrogate parent when:

- no parent can be identified (refer to definition of parent);
- the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
- the child is a ward of the State. Children in the permanent custody of the Department who remain in foster care may need a surrogate parent appointed if educational rights have been removed from the parent or if the parent cannot be located in order for the child to receive special education services. For children in the Department’s permanent custody, foster parents may “act in the place of a parent” and a surrogate parent is not needed. Prospective adoptive parents may act as parents for children placed in adoptive homes if legal proceedings have been or will be initiated.