

DEPARTMENT OF HUMAN SERVICES
OFFICE OF CHILD WELFARE PROGRAMS

CHAPTER 413
DIVISION 105

EDUCATIONAL SERVICES FOR A CHILD OR YOUNG ADULT
IN SUBSTITUTE CARE

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Educational Services for a Child or Young Adult in Substitute Care

413-105-0000

Purpose

(Amended 12/13/2018)

The purpose of these rules, OAR 413-105-0000 to 413-105-0090, 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

413-105-0010

Definitions

(Amended 11/01/2019)

Unless the context dictates otherwise, the following definitions apply to OAR chapter 413 division 105.

- (1) "504 Plan" means a plan created pursuant to Section 504 of the Rehabilitation Act of 1973, which ensures that a *child* who is legally disabled and is attending an elementary or secondary educational institution receives accommodations that will ensure the child's academic success and access to the learning environment.
- (2) "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.
- (3) "Child" means a person under 18 years of age.
- (4) "Disability" means one of the following conditions or diagnoses that causes the *child* or student to require special education: autism spectrum disorder; communication disorder; deafblindness; developmental disability emotional disturbance; hearing impairment, including deafness; intellectual disability; orthopedic other health impairment; specific learning disability; traumatic brain injury; or visual impairment, including blindness. (See "children with disabilities," OAR 581-015-2000.)

- (5) "Department" means the Oregon Department of Human Services.
- (6) "Foster care" means substitute care for children placed by the Department of Human Services or a tribal child welfare agency away from their parents and for whom the Department or agency has placement and care responsibility, including placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. Foster Care does not mean care for children whose parent or guardian voluntarily placed the child outside the child's home with a public or private agency and for whom the child's parent or guardian retains legal guardianship.
- (7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.
- (8) "GED" means a General Educational Development certificate issued pursuant to ORS 350.175.
- (9) "Guardian" means an individual who has been granted guardianship of the *child* through a judgment of the court.
- (10) "Individualized Education Program" or "IEP" means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a *disability*.
- (11) "Legal custody" means that a person or agency has legal authority:
 - (a) To have physical custody and control of a *child*;
 - (b) To supply the *child* with food, clothing, shelter and other necessities;
 - (c) To provide the *child* with care, education and discipline;
 - (d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the *child*, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and
 - (e) "Legal custody" includes temporary custody of a *child* under an order of a court.
- (12) "Office of Child Welfare Programs" or "OCWP" means the Office of Child Welfare Programs within the Department. "OCWP" includes all the individual programs that are responsible for various functions relating to child welfare, such as child safety, foster care, and permanency.

- (13) "Parent" means, except as otherwise provided in OAR 413-105-0060, the biological or adoptive mother or the biological, legal, or adoptive father of the *child*.
- (14) "Relative caregiver" means a person defined as a "relative" under OAR 413-070-0000 who operates a home that has been approved by the Department to provide care for a related *child* or *young adult* placed in the home by the Department.
- (15) "School district of origin" means the school district where a *child* or *young adult* was a resident before:
- (a) The *child* or *young adult* was placed into *foster care*; or
 - (b) The *foster care* placement of the *child* or *young adult* changed.
- (16) "School of origin" means the school that a *child* or *young adult* attended before:
- (a) The *child* or *young adult* was placed into *foster care*; or
 - (b) The *foster care* placement of the *child* or *young adult* changed.
- (17) "Special education," as defined in OAR 581-015-2000 means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability. Special education includes instruction that:
- (a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and
 - (b) May involve physical education services, speech language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.
- (18) "Substitute care" means the out-of-home placement of a *child* or *young adult* who is in the legal or physical custody of the Department.
- (19) "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.
- (20) "Surrogate parent" means an individual appointed pursuant to OAR 581-015-2320 for school-aged children, OAR 581-015-2760 for preschool-aged children or ORS 419B.220. The surrogate parent acts in place of a biological or adoptive parent in safeguarding a child's rights in the special-education decision-making process.
- (21) "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

413-105-0020

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

(Amended 09/01/2020)

- (1) The Department promotes the academic achievement of a *child* or *young adult* by participating as a member of the team that performs the academic planning and goal setting for the *child* or *young adult*. The caseworker works collaboratively with the *parent* or legal *guardian* whenever appropriate; Tribes; the local school district and school officials; the *substitute caregiver*; the *surrogate parent*, if one is appointed; the CASA and attorney of the *child* or *young adult*; local school district *foster care* point of contact; 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.
- (2) The Department must verify that the *child* or young adult's enrollment in a school program is permitted by Oregon law or other state law if the *child* or *young adult* is placed in another state through the Interstate Compact on the Placement of Children.

Stat. Auth.: ORS 409.050, 418.005

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

413-105-0030

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

(Amended 09/01/2020)

- (1) A child or young adult in substitute care is required to be enrolled in school pursuant to ORS 339.010 and 339.020 unless:
 - (a) A *child* or *young adult* has achieved high school graduation; or
 - (b) An exemption from ORS 339.030 applies.
- (2) Responsibility for school or educational setting placement decisions.
 - (a) A *child* or *young adult* who is between the ages of 4 and 21 who is placed in *foster care* must be considered a resident of:
 - (A) The *school district of origin*; or
 - (B) The school district where the *child* or *young adult* resides due to placement by the Department, if a juvenile court determines that it is not in the best interests of the *child* or *young adult* to continue to attend the school or *school district of origin*.

- (b) A *child* who is between the ages of 4 and 18 who is placed on a voluntarily placement agreement, in substitute care and for whom the child's parent or guardian retains legal guardianship, must be considered a resident of the school district in which the child's parent or guardian resides if:
- (A) The child's school preference is taken into consideration;
 - (B) There is a plan for the child to return home;
 - (C) The voluntary placement is within 20 miles by the nearest traveled road from the school the child attended prior to the voluntary placement, unless there are physiographic conditions that make transportation to the school not feasible; and
 - (D) The child's parent or guardian and the school staff from the school the child attended prior to the voluntary placement can demonstrate that it is in the best interest of the child to continue to attend the school the child attended prior to the voluntary placement. The best interest of the child may be demonstrated by factors, including but not limited to the following:
 - (i) The child's siblings attend the school;
 - (ii) A change in the child's routine would be detrimental to the child; or
 - (iii) The child has developed and maintained a network of personal contacts, support services and friends and a sense of community within the school
- (c) If the *child* or *young adult* remains a resident of the *child* or *young adult's school district of origin*, the *child* or *young adult* continues to attend the *school of origin*, unless:
- (A) The *child* or *young adult's school of origin* or *school district of origin* places the *child* or *young adult* in a different school or educational setting;
 - (B) The IEP team decides the *child* or *young adult* should attend a different school or educational setting; or
 - (C) Educational rights have transferred to the young adult as outlined in subsection (2)(e) of this rule, and the young adult wishes to and is able to enroll in a different school or educational setting without changing the *school district of origin*.

- (d) If a juvenile court makes a determination that it is not in the best interests of the *child* or *young adult* to remain in the *school of origin* or *school district of origin*, the Department must ensure that the *child* or *young adult* is immediately enrolled in a different school, even if the *child* or *young adult* is unable to produce the records normally required for enrollment, pursuant to ORS 339.133.
 - (e) The *young adult* makes the decision regarding educational services and school placement when educational rights have been passed to the *young adult*.
 - (f) When a *child* is in the care 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. When the *child* is in substitute care, decisions by the *parent* or legal guardian regarding the child's school or educational setting placement are subject to the requirements in subsections (2)(a) to (2)(d) of this rule.
- (3) Decisions by the Department regarding the school or educational setting placement of a *child* or *young adult* are subject to section (2) of this rule and all the following requirements:
- (a) A caseworker must consider recommendations from the *child* or *young adult*, the *child* or young adult's parents or legal guardian, Tribes; attorney, CASA, school, *substitute caregiver*, and surrogate parent, if one has been appointed, in making the decision on school enrollment.
 - (b) When appropriate, the caseworker may seek a finding from the juvenile court that it is not in the best interest of the *child* or *young adult* to continue attending the *school of origin* or any other school in the *school district of origin* and ensure the *child* is enrolled in a new school.
 - (c) When one of the criteria in paragraph (2)(c)(A) to (B) is met, the caseworker may ensure that a *child* or *young adult* is enrolled in a new school without a juvenile court finding.
 - (d) The caseworker must ensure that enrollment in the school or program would be consistent with the *child* or young adult's permanency plan.
- (4) Additional responsibilities when a private school, charter school, alternative school, or international study program is considered.
- (a) Private School. Subject to the requirements of section (2) of this rule, when considering the enrollment of the *child* or *young adult* in a private school, in addition to the requirements of section (3) of this rule, the caseworker must:

- (A) Verify that an entity or person other than the Department will pay all costs except those approved under OAR 413-105-0070 or when a child or young adult requires placement in a residential treatment program;
 - (B) 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; and
 - (C) If the *child* is not a resident of the school district where the school is located, determine if the *child* or *young adult* can enroll in the school and, if not, seek a determination from the juvenile court under subsection (3)(c) of this rule.
- (b) Charter school, virtual charter school or alternative school. Subject to the requirements of section (2) and subsection (3)(a) of this rule, when considering the enrollment of a *child* or *young adult* in a charter school, virtual charter school or alternative school, the caseworker must comply with all the following:
- (A) Verify that the school is approved by the local school district board or the Oregon Department of Education.
 - (B) Determine the requirements for the *child* or *young adult* to be enrolled in the school and ensure all appropriate consents are obtained. If the *child* or *young adult*'s residence must change to the school district where the *child* or *young adult* resides due to placement by the Department to attend the charter school or alternative school, seek a determination from the juvenile court under subsection (3)(c) of this rule.
 - (C) If the charter school is a virtual public charter school, the Department must ensure that at least 14 days prior to enrollment, the school district where the *child* or *young adult* has residency, pursuant to ORS 339.133, receives notice of intent to enroll the *child* in the virtual public charter school.
 - (D) The *child* or *young adult* must not be enrolled until the charter or alternative school receives evidence that the appropriate school districts were notified.
- (c) Online schools not accredited in Oregon. For a *child* or *young adult* to attend a virtual or online school not accredited in Oregon, the caseworker must:
- (A) Comply with subsection (3)(a) of this rule;
 - (B) Consult with the Department Education Program Coordinator; and
 - (C) Seek approval from the juvenile court.

- (d) International study program. When considering enrolling a *child* or *young adult* in an international study program, the caseworker must:
- (A) Verify that the international study program is accredited;
 - (B) Comply with subsection (3)(a) of this rule;
 - (C) Obtain approval from the Child Welfare program manager, the District Manager, the Diversity and International Affairs Manager; and
 - (D) Obtain approval of the juvenile court.
- (5) Additional responsibilities when considering a GED program. Subject to the requirements of section (3) 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 is appropriate for the *child* or young adult's needs;
 - (b) Verify the *child* or *young adult* meets the requirements of the Oregon Department of Education's GED Option Program;
 - (c) Obtain school district approval when *child* is under age 18; and
 - (d) If the *child* must become a resident of the school district where the *child* lives to participate in the selected GED program, seek a determination from the juvenile court under paragraph 3(b) of this rule.
- (6) Additional responsibilities when considering home schooling. Except when subsections (2)(e) and (f) of this rule apply, 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* or young adult's social development;
 - (b) Determine that home schooling would promote inclusion in the substitute caregiver's home;
 - (c) Consider whether the *child* participating in an organized extracurricular activity would be appropriate for the *child*;
 - (d) Verify that the *child* or *young adult* has a controlled, organized and structured school setting or learning environment;
 - (e) If applicable, verify the parent or legal guardian has provided written consent for the *substitute caregiver* to act as a private teacher for the *child* or *young adult*;

- (f) If applicable, verify the *substitute caregiver* meets the Oregon Department of Education's requirements to be a private teacher pursuant to ORS 339.035;
 - (g) Verify the *foster parent* or relative caregiver has provided written notification to the education service district of intent to provide home schooling within 10 days of the *child* being taught or being withdrawn from a public or private school, pursuant to OAR 581-021-0026;
 - (h) Verify that state standardized testing required by the Education Service District has been completed;
 - (i) Comply with subsection (3)(a) of this rule;
 - (j) Obtain the approval of the Child Welfare program manager; and
 - (k) Obtain the approval of the juvenile court.
- (7) If a child is placed in foster care before the age of four, the child is a resident of the school district where the child resides. If the child's foster care placement changes when the child is for years of age or older, subsection (2)(a) of this rule applies.
- (8) Transportation to school. After the school or educational setting and location has been determined, the caseworker must work with the *substitute caregiver* or school district to organize transportation for the *child* or *young adult* to and from the school or educational location. Transportation for a child whose parent or guardian voluntarily placed the child outside the child's home with a public or private agency and who is living in a licensed, certified or approved substitute care program is the responsibility of the child's resident school district, as determined under subsection (1) or (2) of this section.
- (9) Once a school or educational setting has been selected for a *child* or *young adult*, the caseworker must notify the school district foster care point of contact 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 *foster 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 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 case plan of the *child* or *young adult* all 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 parent*, if one has been appointed.
- (f) The reason for any change in the *child* or young adult's school or educational setting.
- (g) Information regarding the *child* 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) If applicable, the reasons the *child* or *young adult* is not attending school pursuant to ORS 339.030.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 339.133, 409.010, 418.005, 419B.192, 419B.220, 419B.343,

413-105-0040

Consent for School Activities

(Amended 12/13/2018)

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, photographs, and cultural events.

Stat. Auth.: ORS 409.050, 418.005

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

413-105-0050

Consent for Special Education Services

(Amended 12/13/2018)

- (1) When a *child* or *young adult* is in the care and custody of the Department, and there is reason to believe the *child* or *young adult* 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 parent or *surrogate parent*, if designated, makes education decisions for the *child* or *young adult*.
- (2) If a *surrogate parent* 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.
- (3) Persons who qualify to make educational decisions include:
 - (a) One or more of the following persons:
 - (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*, 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* or *young adult* lives, or a person who is legally responsible for the welfare of the *child* or *young adult*; or
 - (E) A *surrogate parent* who has been appointed in accordance with OAR 581-015-2320 for school-age children or 581-015-2760 for preschool children.
 - (b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) 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) 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.
- (4) When a *child* or *young adult* with a *disability* is being considered for home schooling, in addition to the requirements of OAR 413-105-0030, the caseworker must:

- (a) Ensure the *parent* or *surrogate parent* of the *child* or *young adult* has home schooling approved by a person qualified to make educational decisions for the *child* or *young adult* pursuant to section (3) of this rule; and
- (b) Ensure the *parent* or *surrogate parent* 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

413-105-0060

The Office of Child Welfare Programs' Access to a Child's Education Records

(Amended 6/13/2018)

- (1) Accessing a student's education records when the Department has custody of a student.
 - (a) OCWP has authority to access a student's education records when it *has legal custody* of a student, without obtaining the consent of a *parent* or *guardian*, or a court order, pursuant to the Uninterrupted Scholars Act (20 U.S.C § 1232g).
 - (b) To obtain the student's records, the OCWP must provide notice of *legal custody* and legal responsibility of the student to the school district.
 - (c) The OCWP must not disclose records obtained pursuant to the Uninterrupted Scholars Act to any other person or entity unless that person or entity is engaged in addressing the student's educational needs and is authorized by the OCWP to receive such disclosure consistent with state confidentiality laws.
- (2) Accessing a student's education records when the OCWP does not have custody of a student. The OCWP has authority to access a student's education records when it does not have *legal custody* of a student, without obtaining the consent of a *parent* or guardian or a court order, pursuant to OAR 581-021-0380 when:
 - (a) The need for records is in connection with a health and safety emergency; and
 - (b) Knowledge of the information is necessary to protect the health and safety of the student or other individuals.

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, 20 U.S.C. § 1232g

413-105-0070

Educational Expenses

(Amended 12/13/2018)

- (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 OAR 413-090-0300 to 0380, 413-090-0365 and OAR 413-053-0000 to 0070.
- (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

413-105-0080

Early Education and Post-Secondary Education

(Amended 12/13/2018)

- (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. When a disposition is founded or substantiated for abuse, the CPS worker must refer all victims 3 years old and under to Early Intervention. When completing the referral, the CPS worker must use the “CPS to Early Intervention Referral” form (CE0323) if a release of information is not signed.
- (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

413-105-0090

Minimum Credits Required to Obtain a Diploma

(Amended 09/01/2020)

If at any time from grade nine to 12 a *child* or *young adult* was a *foster child*, as defined in 30.297, the *child* or *young adult* cannot be required to complete more than the minimum state credit requirements specified in ORS 329.451(2)(a) to receive a high school diploma.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: ORS 409.050, 418.005, 329.451