

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 290 Department or Agency State Department of Education
Rule No. 290-8-9-04
Rule Title: Eligibility and Consent for Services

New Amend X
Repeal Adopt by Reference (Check appropriate box)

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

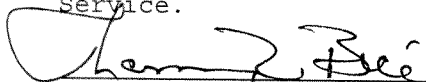
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule does have an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.



Thomas R. Bice
State Superintendent of Education

8/8/13

DATE

APA-2
11/96

STATE DEPARTMENT OF EDUCATION

NOTICE OF INTENDED ACTION

AGENCY NAME: State Department of Education

RULE NO. & TITLE: **290-8-9-.04 Eligibility and Consent for Services.; 290-8-9-.05 Individualized Education Program (IEP).; 290-8-9-.10 Administration.**

INTENDED ACTION: Amend existing rules


SUBSTANCE OF PROPOSED ACTION: The rules listed above are being amended to add clarification to requirements and to be consistent with federal regulations.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at October 10, 2013, Auditorium, Plaza Level, Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama. All persons wishing to express their views should contact Mrs. Ann Starks in the office of the State Superintendent of Education (334-242-9702) no later than September 27, 2013, between 8:00 a.m. and 5:00 p.m. Monday through Friday, in order to be scheduled on the agenda. All persons wishing to express their views in writing to the State Superintendent of Education should address all written comments to the State Superintendent of Education, Gordon Persons Building, P.O. Box 302101, Montgomery, Alabama 36130-2101.

Disabled persons desiring reasonable accommodations should notify Mrs. Ann Starks at (334) 242-9072 at least three (3) days prior to the public hearing so that arrangements for reasonable accommodations can be made.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: October 5, 2013

CONTACT PERSON AT AGENCY: Crystal Richardson, Program Coordinator
Alabama State Department of Education
P.O. Box 302101
Montgomery, Alabama 36130-2101
(334) 242-8114



Thomas R. Bice
State Superintendent of Education

290-8-9.03(13)(b)

290-8-9.04(1)(d)

(b) Criteria.

1. Evidence that hearing screening results are satisfactory prior to proceeding with evaluations.
2. Optometric/ophthalmic data indicating that the individual has a visual impairment.
3. Evidence of visual functioning that adversely affects educational performance as evaluated by a certified vision specialist.

(c) Minimum Evaluative Components.

1. Hearing screening.
2. Optometric and/or ophthalmic evaluation indicating that the individual has a visual impairment.
3. Documentation of educational problems that even after appropriate accommodations, the disability continues to affect educational performance. Educational problems may be assessed by a certified vision specialist through one or more of the following:
 - (i) A learning media assessment,
 - (ii) Functional vision assessment, and/or
 - (iii) An orientation and mobility evaluation.

Author: Joseph B. Morton**Statutory Authority:** Ala. Code Title 16, Chapter 39; 20 U.S.C. 1400 et seq.; 34 CFR§300.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 deleted preschool caseloads from 290-8-9-.05(11) effective 1-21-91; 8-8-91 adopted 290-8-9-.05-.48ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.03-.60ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted 290-8-9-.03-.73ER effective 6-14-01; adopted ER as regular rule effective 9-13-01; adopted as ER effective 7-1-05; adopted as regular rule effective 9-15-05; repealed and adopted new 6-14-07, effective 7-19-07. **Amended:** filed August 4, 2008; effective September 8, 2008; amended 4-14-2011, effective 5-19-2011.

290-8-9-.04 Eligibility and Consent for Services.

Public agencies must develop and implement procedures to ensure that children will be properly identified according to the definitions, criteria, and minimum evaluative components set forth in these rules. If a child has a disability but only needs a related service and not specially designed instruction, the child is not considered to be a child with a disability under the IDEA.

(1) Procedures for Determining Eligibility. Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals, including the parent of the child, or the IEP Team, must determine if a child has a disability and the educational needs of the child within 30 calendar days from the date the public agency's completes the initial evaluation. When making the determination with respect to each child, the group must:

- (a) Be composed of a team of qualified professionals including the parents (Eligibility Committee) or the IEP Team;
- (b) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
- (c) Consider all evaluation information pertaining to the child, so that no single evaluation procedure will be used as the sole criterion for determining eligibility;
- (d) Ensure that all evaluation information from (b) above is documented and carefully considered; and

290-8-9.04(1)(e)

290-8-9.04(2)(d)

(e) Ensure that a child is not determined to be a child with a disability if the determinant factor is a lack of appropriate instruction in reading [including the essential components of reading instruction as defined in section 1208(3) of the *Elementary and Secondary Education Act of 1965* (phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies)], a lack of appropriate instruction in math; the child has limited English proficiency; or the child does not otherwise meet the eligibility criteria for a specific area of disability. Children from various ethnic groups, including speakers of regional dialects, do not have a disability solely because their manner of communicating does not conform to the expectations of the standard English speaking community. In order for a limited English proficient student to be deemed eligible, the eligibility team must determine that the communication disorder exists in the child's native language and is not the result of learning English as a second language. The teaching of English as a second language or general American dialect is not the responsibility of special education.

(f) Use standard scores when determining eligibility for special education.

(g) Reconvene when the public agency or the parents believe that the child's eligibility should be reviewed.

(h) Determine continued eligibility at least once every three years.

(i) For children suspected of having a specific learning disability, the Eligibility Committee and/or IEP Team must also include:

1. The child's regular education teacher, or
2. If the child does not have a regular education teacher, a regular education teacher qualified to teach a child of his or her age, or
3. For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age, and
4. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(2) Eligibility Report. An eligibility report must be written for initial eligibility determination for a child with a disability that includes the evaluation information and documentation of eligibility determination and each time a child is reevaluated for continued eligibility.

(a) Each eligibility team member must certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the member must submit a separate statement presenting his or her conclusions. This statement becomes a part of the child's special education record.

(b) A copy of the eligibility report, including information regarding the evaluation data, must be given to the parent at no cost.

(c) If it is determined that no additional data are needed for continued eligibility, that decision must be documented and a copy of the decision must be given to the parents.

(d) If the parent and the public agency agree that a reevaluation is not necessary, that decision must be documented, maintained, and a copy must be given to the parents.

290-8-9.04(3)

290-8-9.04(4)(e)

(3) Age Requirements. The following age requirements apply to the provision of special education and related services:

(a) Preschool children with disabilities by the child's third birth date. Public agencies may not use school admission cut-off dates to deny special education services for eligible preschool children. However, these children may not attend the regular kindergarten program, unless they meet the age requirements.

(b) Children with disabilities who have not earned an Alabama High School Diploma and who have not reached their twenty-first birthday by August 1. These children are entitled to services up to age 21, even if it means that instruction is provided in excess of 12 years. A child who turns 21 on or after August 1 is entitled to begin and complete the school year. ~~This rule goes into effect beginning July 31, 2008.~~

(4) Parental Consent for Services.

(a) A public agency that is responsible for making FAPE available to a child with a disability must obtain written informed consent from the parent of the child before the initial provision of special education and related services to the child. This consent may be obtained after an eligibility determination has been made, but must be obtained prior to the provision of special education and related services.

(b) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services under (a) and (b) of this section, the public agency:

(i) May not use the mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP in accordance with these rules.

(d) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(i) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;

(ii) May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

(e) If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public

290-8-9.04(4)(f)

290-8-9.04(4)(g)

agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(f) Once a child has been determined eligible for special education and related services, the child may receive any service that the IEP Team determines is required after appropriate evaluations have been completed.

(g) Public agencies must ensure that special education and related services are provided to all eligible children even though a child may be earning passing grades and advancing from grade to grade.

Author: Joseph B. Morton

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1400 et seq.; 34 CFR §300.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 amended 290-8-9-.04(4)(a) and (b) changing date to September 1, added .04(4)(d) effective 1-21-91; 8-8-91 adopted 290-8-9-.04-.47ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.04-.61ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted as ER effective 7-1-05; adopted as regular rule effective 9-15-05; repealed and adopted new 6-14-07, effective 7-19-07. **Amended:** adopted April 9, 2009, effective May 14, 2009; amended 4-14-2011, effective 5-19-2011; adopted as ER effective 8-8-13; adopted as regular rule effective 10-10-13.