



**State of Florida
Department of Children and Families**

Rick Scott
Governor

David E. Wilkins
Secretary

DATE: September 4, 2012

TO: Regional Managing Directors

THROUGH: Pete Digre, Assistant Deputy Secretary for Operations
Elisa Cramer, Director of Family and Community Services

FROM: Patricia Armstrong, LCSW, Director, Office of Child Welfare

SUBJECT: Educational Services for Exceptional Students Placed in Residential Care Facilities that Cross School District Lines

PURPOSE: The purpose of this memorandum is to remind regions and community-based care lead agencies (CBCs) of the responsibilities regarding the placement of exceptional students in residential facilities. Specifically, within ten business days of placing an exceptional student in a private residential care facility **and** the placement crosses school district lines, the current school district and the new school district must receive written notification of the placement.

BACKGROUND: Section 1003.57(3)(b), Florida Statutes, requires that when an exceptional student is placed in a private residential care facility, primarily to address residential or other non-educational needs, and the placement crosses school district lines, the private residential care facility must, within ten business days of the placement, provide written notification of the placement to the:

- Current school district where the student is being counted for funding purposes **and**
- New (receiving) school district.

The coordination of services and supports across agencies is critical to ensure that students are provided the special education and related services necessary to receive a free appropriate public education. CBCs and school districts must:

- (a) establish and maintain guidelines and communication protocols;
- (b) designate staff responsible for prompt and substantive information sharing among the parties; and
- (c) attempt to reach resolution informally within a reasonable amount of time if staff from CBCs and school districts encounter an issue. When a resolution is not reached within a reasonable amount of time, elevate the dispute to agency designees identified in the attached interagency agreement for resolution.

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

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Facilities that Cross School District Lines.

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ACTION REQUESTED: Please ensure that your region and CBCs coordinate with the school district(s) and have in place procedures and protocols for providing written notices to school districts when exceptional students are placed in residential facilities that cross school district lines.

CONTACT INFORMATION: If you have any questions, or for additional information please contact Mukweso Mwenene @dcf.state.fl.us or 850-717-4672.

Attachment

cc: Mary Cagle, Director, Children's Legal Services
DCF Contract Managers
Community-Based Care Lead Agencies
Sheriffs' Offices

**Interagency Agreement Between
Florida Department of Education
Florida Department of Children and Families
Florida Agency for Persons with Disabilities
and
Agency for Health Care Administration
To Coordinate Services Regarding the Placement of Exceptional Students
In Residential Facilities**

The Department of Education (DOE), the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the Agency for Health Care Administration (AHCA) (the Parties), enter into this Interagency Agreement pursuant to Section 1003.57(4), Florida Statutes, to coordinate their respective responsibilities regarding the placement of exceptional students in residential facilities. The coordination of services and supports across agencies is critical to ensure that students are provided the special education and related services necessary to receive a free appropriate public education.

The specific terms and conditions of this Agreement are as follows:

1. Effective Date

The terms of this Interagency Agreement shall begin on the date of the last signature and shall continue until June 30, 2012. The agreement shall be reviewed by June 1, 2012, and be renewed and/or renegotiated as needed.

2. Definitions

As set forth in Section 1003.57, Florida Statutes,

- a. "Exceptional Student" means an exceptional student, as defined in Section 1003.01, Florida Statutes, who has a disability.
- b. "Receiving school district" means the district in which a private residential care facility is located.
- c. "Placement" means the funding or arrangement of funding by an agency for all or a part of the cost for an exceptional student to reside in a private residential care facility and the placement crosses school district lines.

3. General

The Parties acknowledge that the placement of students in residential facilities and the provision of a free appropriate public education require a commitment by the Parties to work together. The Parties consequently agree to the following:

- a. DOE is the State Educational Agency (SEA) responsible for monitoring the implementation of the Individuals with Disabilities Education Act, including ensuring

that the obligations for special education and related services for exceptional students are met; and

b. DCF is the state agency responsible for providing services and supports, either directly or through contracted providers, in the areas of child protection and family preservation, adult protection, economic assistance, domestic violence, homelessness, refugee services, and mental health and substance abuse treatment services under various provisions of federal law, Florida Statutes, and administrative rules; and

c. APD is the state agency responsible for providing services to persons with developmental disabilities under Chapter 393, Florida Statutes, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities; and

d. AHCA is the state agency serving as the chief health policy and planning entity for the state pursuant to Section 20.42, Florida Statutes. AHCA is responsible for health facility licensure, inspection, and regulatory enforcement and the administration of the Medicaid Program pursuant to the authorizing statutes and applicable rules; and

e. Section 1003.57(4), Florida Statutes, requires the Parties to enter into an agreement for interagency coordination regarding the placement of exceptional students in residential facilities across school district lines, including ensuring continued Medicaid eligibility as deemed appropriate, consistent with federal law and regulations.

4. Interagency Collaboration

Each Party will designate a representative from the Party's respective agency to oversee the implementation of this Agreement. In order to support continued collaboration, the agency designees will meet at least quarterly. The agency principals agree the work under this Agreement shall include all efforts necessary to ensure timely and appropriate educational services for exceptional students placed in private residential care facilities by public agencies. Areas of work shall specifically include, but not be limited to:

a. Development of procedures for use by agencies and school districts for written notification to school districts regarding the placement of an exceptional student in a private residential care facility, when such placement crosses school district lines, and for identification of the entity responsible for the notification to school districts for each private residential care facility; and

b. Recommendations to the Commissioner of Education, the Secretary of DCF, the Director of APD, and the Secretary of AHCA regarding changes needed in procedures, processes, guidelines, and policies; and

- c. Defining and establishing or enhancing existing related communication protocols, identification of responsible staff, and facilitation of prompt and substantive information sharing and communication among the Parties; and
- d. Compiling a list of all facilities operated, licensed or regulated by DCF, APD, and AHCA; and
- e. The appropriate placing agency shall inform the residential facility of the identity and location of the student's parent(s) and the status of parental rights; and
- f. In the absence of a parent directly involved in the placement decision, the appropriate parties shall identify which entity is responsible for enrolling the student in the relevant school district and the process for doing so.

5. Training and Staff Development

The Parties agree to provide specific training and staff development to their agency staff and contracted providers as necessary to ensure the effective implementation of this Agreement to share expertise and better serve the students. The training shall include procedures to ensure:

- a. Pursuant to Section 1003.57(3)(b), Florida Statutes, when an exceptional student is placed in a private residential care facility by a Party, primarily to address residential or other noneducational needs, and the placement crosses school district lines, within ten business days of the placement, the Party or private residential care facility shall provide written notification of the placement to the school district where the student is currently counted for funding purposes under Section 1011.62, Florida Statutes, and also to the receiving school district. The exceptional student shall be enrolled in school and receive a free and appropriate public education, special education, and related services while the notice and procedures regarding payment are pending.
- b. The Parties shall cooperate to ensure that the receiving school district is notified of the child's placement in a private residential care facility, as set forth in Section 1003.57(3)(b), Florida Statutes, as well as the duties of the receiving school district pursuant to Section 1003.57(3)(c), Florida Statutes.

6. Sharing of Information

Each Party agrees:

- a. To promote to the fullest extent permissible and in compliance with federal law and Florida Statutes, the sharing of information on the student;
- b. That it may be necessary to restrict information sharing due to statutory prohibitions. It is understood that the sharing of student records does not abrogate the confidentiality of the records as to other non-designated parties;

c. To continue to improve the technical interface among state and local automated data systems of the Parties to provide for the efficient sharing of information within existing resources.

7. Headquarters Interagency Meeting (Tallahassee)

DOE, DCF, APD, and AHCA will meet on a regular basis to collaborate on developing interagency strategies and initiatives to enhance the coordination and quality of educational services as part of this Agreement.

8. Agency Designees

The Parties agree that for the purpose of executing, administering, and monitoring compliance with the requirements of this Agreement:

- a. The Commissioner of Education may designate an administrator to represent DOE;
- b. The Secretary of DCF may designate an administrator to represent DCF;
- c. The Director of APD may designate an administrator to represent APD;
- d. The Secretary of AHCA may designate an administrator to represent AHCA.

9. Interagency Dispute

Each Party agrees to the following in the case of an interagency dispute:

- a. Those staff who encounter the issue will attempt to reach resolution informally within a reasonable amount of time; and
- b. In the event resolution is not reached within a reasonable amount of time, the representatives of the agencies involved in the dispute will resolve the dispute. Staff will elevate the dispute to the agency designees for resolution.

Each Party agrees to work with school districts to ensure that exceptional education services shall continue to be provided to the student during the pendency of a dispute.

10. Evaluation

Each Party agrees to participate, as appropriate, in evaluations conducted by the agencies or a neutral third party as agreed upon by the Parties to determine the effectiveness of the Agreement and to make recommendations for future enhancements that may benefit students in residential facilities receiving exceptional student education.

11. General Conditions

- a. **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.
- b. **No Third Party Beneficiaries.** This Agreement does not confer any additional rights or obligations enforceable by a third party beyond those rights and obligations created by federal and state law. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of this Agreement.
- c. **Non-Discrimination.** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.
- d. **Records.** Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law. Each Party shall comply with all federal and state laws, rules, and regulations regarding confidential records.
- e. **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- f. **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each Party hereto.
- g. **Preparation of Agreement.** The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses the mutual intent of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
- h. **Waiver.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any Party's failure to enforce any provision of

this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

i. **Compliance with Laws.** Each Party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

j. **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and federal law.

k. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

l. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any Party without the prior written consent of the other Parties.

m. **Force Majeure.** None of the Parties shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, tornado, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of any of the Parties, and which cannot be overcome by reasonable diligence and without unusual expense.

n. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalid, illegal, unlawful, unenforceable or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

o. **Notice.** When any of the Parties desire to give notice to the other, such notice must be in writing, addressed to the Party for whom it is intended at the place last specified. The address for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective Party and place for giving notice:

Gerard Robinson, Commissioner
Department of Education
325 West Gaines Street
Tallahassee, FL 32399-0400

David Wilkins, Secretary
Department of Children and Families
1317 Winewood Boulevard
Tallahassee, FL 32399-0700

Michael P. Hansen, Director
Agency for Persons with Disabilities
4030 Esplanade Way
Tallahassee, FL 32399-0950

Elizabeth Dudek, Secretary
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

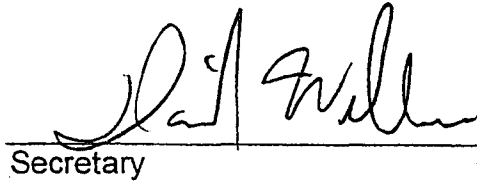
IN WITNESS WHEREOF, the Parties have caused their hand to be set to this Agreement written by their respective authorized officials thereto.

DEPARTMENT OF EDUCATION


Commissioner

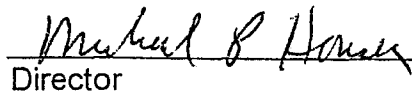
10-10-11
Date

DEPARTMENT OF CHILDREN AND FAMILIES


Secretary

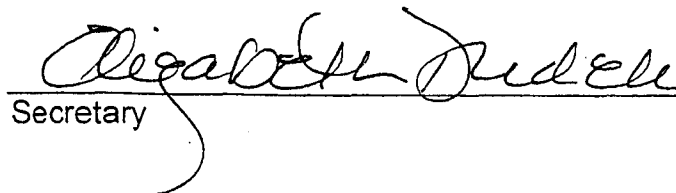
10/5/11
Date

AGENCY FOR PERSONS WITH DISABILITIES


Director

9/12/11
Date

AGENCY FOR HEALTH CARE ADMINISTRATION


Secretary

10/3/2011
Date