

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-28-1
THE CHOOSE ACT PROGRAM

810-28-1-.05 Requirements for Education Service Providers.

1. General Requirements for Approval and Participation. An ESP must do all of the following:

a. Submit to the department any information required by the department for implementation of the program, including its address, contact information, and a summary of each program or service it proposes to provide to participating students.

b. Agree not to refund, rebate, reimburse, or share any portion of program funds with a parent or student in any manner. Program funds may only be used for qualifying expenses.

c. Agree to submit annual reports to the department concerning implementation of the program, including the number of students participating, services provided, and other similar information requested by the department.

d. Agree not to discriminate based on grounds of race, color, or national origin in the provision of its services.

e. Agree to document amounts received for all qualifying expenses in a manner prescribed by the department.

f. Agree to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

g. Agree not to discriminate against participating students in setting tuition or fees.

2. Additional Requirements for Certain Education Service Providers: In addition to all other requirements, additional documentation and attestation may be required based on the services provided by the ESP.

a. *Private Tutors.* A private tutor must:

i. Submit proof of a Bachelor's degree, or certification by the state, or accreditation by a regional or national accrediting organization in order to provide tutoring services.

ii. Agree to conduct criminal history background information checks as required by the Alabama Child Protection Act of 1999,

Rule 810-28-1-.05

Ala. Code §§ 16-22A-1 et seq, as if the education service provider were a nonpublic school.

b. *Education Service Therapists.* An education service therapist must:

i. Submit a valid license for the therapy he or she provides. See administrative rule 810-28-1-.06 for program approved therapies.

ii. Agree to conduct criminal history background information checks as required by the Alabama Child Protection Act of 1999, Ala. Code §§ 16-22A-1 et seq, as if the education service provider were a nonpublic school.

c. *Participating Schools.* Participating schools must do the following:

i. Agree to comply with all applicable health and safety laws or codes.

ii. Hold a valid occupancy permit if required by the municipality where the school is located.

iii. Agree to comply with the Alabama Child Protection Act of 1999, Chapter 22A of Title 16, Code of Ala. 1975.

iv. Agree to release educational records of participating students to any other school, including a public school, in which the student subsequently enrolls.

v. Provide financial statements that demonstrate, to the satisfaction of the department, the school's ability to adequately provide for participating students' continued receipt of educational services in the event the school suffers a financial failure. Alternatively, the school may file with the department a surety bond payable in an amount equal to the aggregate amount of the program funds expected to be paid during the academic year from participating students enrolled at the participating school.

vi. Submit to the department information required on the application form, including:

(a) Verification of school's accreditation or proof of the process of obtaining accreditation. A school may demonstrate that it is in the process of obtaining accreditation by submitting a letter, on the letterhead of the accrediting agency and signed by the agency's executive officer, or authorized signatory that certifies the school is in the process of obtaining accreditation.

(b) The maximum number of students who can enroll in the school and grades served.

(c) The school's academic calendar.

(d) The school's tuition and fee schedule.

vii. Notify the department, within 10 business days of a participating student's graduation, withdrawal, or other event that occurs, in which the participating student is no longer enrolled in the participating school.

viii. Provide the parents of each participating student who was tested with a copy of the results of the tests on an annual basis, beginning with the first year of testing.

ix. Provide the department with school-level test results for participating students, provided that no party shall disaggregate data to a level that could identify that academic level of individual students.

(a) At least once annually, participating students must take a standardized assessment aligned to the curricula of the participating school, a nationally norm-referenced assessment, or a nationally recognized aptitude assessment of the participating school's choice, which may include the ACT, the SAT, the Stanford Achievement Test, the Wechsler Individual Achievement Test, the Otis-Lennon School Ability Test, the Armed Services Vocational Aptitude Battery, the Iowa Test of Basic Skills, the Classic Learning Test, TerraNova, among others.

(b) Special-needs students for whom standardized testing is not appropriate are exempt from the testing requirement.

(c) If a participating school chooses not to remain in the program, the required testing must be submitted to the department within 30 days of the close of the academic year.

(d) For purposes of protecting student privacy under Section 16-6J-5(b)(5)c., a participating school shall not report school-level test results to the department if fewer than 20 participating students are enrolled at the participating school.

(e) School-level test results provided to the department under Section 16-6J-5(b)(5)c. shall be treated as a public record, and available for inspection, pursuant to Section 36-12-40 et seq.

3. Invoicing and Payment Requirements for Education Service Providers:

a. Parents can only direct payments from an ESA account to an ESP through the platform.

b. Payment for services can be made prior to the service or paid after the service has been rendered. However, invoices will be approved only for services provided within an academic year for which a tax credit has been awarded.

Rule 810-28-1-.05

c. Invoices must include the following: date issued, due date, provider/company name and address, student name, amount due, and a description of the service provided. Invoices can include charges for multiple students. However, such charges must be separately stated and identifiable for each student.

d. The invoice must be for the original charge. Statement of accounts will not be accepted. Handwritten invoices are not allowed.

f. The parent of an eligible student cannot receive payment for services or products provided to such student in their capacity as an education service provider.

g. No payment or refund shall be provided directly to a participating student or his or her parent. All payments, reimbursement or refunds must be returned to the ESA.

4. Failure to Adhere to Requirements. Fulfillment of the agreements made pursuant to the provisions of the act and this rule is a requirement of continuing approval as an education service provider. Failure to fulfill the agreements shall constitute grounds for the department, in its discretion, to suspend or disqualify the participating school from receiving program funds.

Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Title 16, Chapter 6J and §40-2A-7(a)(5), Code of Ala. 1975.

History: New Rule: Published November 27, 2024; effective January 11, 2025.