

810-3-60-.03 Eligibility for Parent Tax Credit for Students Transferring to a Failing Public School.

(1) Scope. This rule is issued pursuant to Section 16-6D-1, Code of Alabama 1975, to provide guidance to parents with students who transfer to a new school and are notified that the new school is a failing public school for purposes of the Alabama Accountability Act (Act 2013-64). These parents may be eligible for a refundable income tax credit to offset the costs of subsequently transferring a student to a non-failing public school or nonpublic school of the parent's choice if certain conditions are met.

(2) General rule. When determining whether a student's parents are eligible to claim the parent's tax credit, the Department will consider substance over form when determining whether a bona fide transfer away from a failing school to a non-public school occurred so that the parent is eligible for the tax credit addressed within this rule.

(a) If a student currently attends a non-failing public school or nonpublic school and subsequently transfers to a failing public school, the student's transfer to the failing public school must meet the requirements for a bona fide transfer before the student's parents may transfer the student to a non-failing school of the parent's choice and be eligible to apply for the parent tax credit.

(b) For purposes of this rule, a bona fide transfer requires a student to remain in the school in which he or she transfers to, for a minimum of one semester, or 90 school days. A student who first transfers away from a non-failing public school or nonpublic school to a failing public school and subsequently transfers away from the failing public school after having attended for any period of time less than one school semester or 90 school days, whichever is shorter, shall not be considered as having been part of a bona fide transfer and the student's parents shall not be eligible for the credit.

(3) Exceptions. There are certain instances where a student assigned to attend a failing public school may not need to enroll and attend the failing public school before the parent(s) are eligible to apply for the parent tax credit upon enrolling the student in a different non-failing public school or nonpublic school.

(a) A parent whose student is rising to kindergarten and has been notified by the local school system that the student is assigned to a failing public school may choose to enroll the rising kindergartener in a non-failing public school or nonpublic school and still be eligible to claim the parent tax credit even if the student never attends the failing school to which he or she is assigned.

(b) A parent whose student has completed the highest grade level offered at the student's current non-failing public school is notified by the local school system that the student is assigned to attend a failing public school for the next school year, then

the parent may choose to enroll the student in a non-failing public school or nonpublic school of the parent's choice and still be eligible for the parent's tax credit.

(c) A parent whose student is transferring from his or her current non-failing public school due to the bona fide move of the family to a new physical residence may enroll the student in a different non-failing public school or nonpublic school of the parent's choice if the parent has been notified that the student is assigned to a failing public school based on the family's new physical residence. When determining whether the family has made a bona fide move, the family must have moved its household furniture into the new physical residence and all principal members of the family must reside at the new residence. Further, the original residence should be closed, rented or disposed of and not used by the family.

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Authority: Sections 40-2A-7(a)(5) and 16-6D-1, Code of Alabama 1975

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