

ALABAMA DEPARTMENT OF REVENUE  
ADMINISTRATIVE CODECHAPTER 810-3-60  
ALABAMA ACCOUNTABILITY ACT-PARENT TAX CREDITS

## TABLE OF CONTENTS

810-3-60-.01	Eligibility For Parent Tax Credit For Students Enrolled In Or Assigned To Attend A Failing School
810-3-60-.02	Eligibility For Parent Tax Credit For Students Attending A Nonpublic School
810-3-60-.03	Eligibility For Parent Tax Credit For Students Transferring To A Failing Public School
810-3-60-.04	Calculation Of Average Annual Cost Of Attendance For A Public K-12 Student
810-3-60-.01	<u>Eligibility For Parent Tax Credit For Students Enrolled In Or Assigned To Attend A Failing School.</u>

(1) Scope. This rule is issued pursuant to Section 16-6D-1, Code of Ala. 1975, to provide guidance to parents with students enrolled in or assigned to attend a failing school who may be eligible for a refundable income tax credit to offset the costs of transferring a student to a non-failing public school or nonpublic school of the parent's choice.

(2) Definitions. The following terms have the meanings ascribed to them for purposes of this rule:

(a) Eligible student. A student who receives written notification from his or her local school system that the student is assigned to attend or enrolled in a failing public school.

(b) Creditable Costs. Tuition and other mandatory fees charged to the parent by the non-failing public school or nonpublic school to which the eligible student transferred.

(3) Eligibility for Credit. A parent is eligible to claim an income tax credit if all of the following criteria are satisfied:

(a) Parent claims the eligible student as a dependent on his or her Alabama income tax return;

(b) Student is enrolled in or assigned to attend a failing school and receives notification from the local school system that he or she is assigned or enrolled in a failing school;

(c) Parent chooses to transfer the student from the failing school to a non-failing public school or nonpublic school; and

(d) Parent incurs creditable costs related to the transfer of the eligible student.

(a) Example: Student A receives notice that he or she is assigned to attend a failing school during the upcoming school year. Student A's parents choose to transfer Student A to a non-failing public school within the same local school system which charges no tuition or mandatory fees for the student's attendance. Student A's parents incurred no creditable costs for transferring Student A from the failing school to the non-failing school. Therefore, since Student A's parents have no creditable costs related to the student's transfer, Student A's parents are not eligible for the parent tax credit.

(b) Example: Student B attends a failing school in School District A. Student B's parents are divorced. His father transfers him to a non-failing school and incurs \$5,000 of creditable costs associated with the student's attendance at the non-failing school. For income tax purposes, Student B's mother claims him as a dependent on her Alabama income tax return. Neither parent is eligible for the parent tax credit since neither of them can meet all criteria for claiming the credit.

(c) Example: Student B has been enrolled in and has attended a non-public school for the past 2 years. Based upon the student's physical residence, Student B is zoned for a failing school for the upcoming school year. Student B's parents choose to continue sending Student B to the same non-public school he has been attending. The parents of Student B are not eligible for the credit because they have not transferred Student B away from a failing school to a non-failing school.

(4) Calculation of Credit. The maximum credit that may be claimed for each eligible student is the lesser of the following:

(a) An amount equal to 80 percent of the average annual state cost of attendance for a public K-12 student during the tax year as defined within the statute, or

(b) An amount equal to the actual creditable cost, tuition and mandatory fees, incurred to attend the non-failing public school or nonpublic school.

(5) Continuity of Credit. Once approved for this tax credit, the parent may continue to receive the credit for all grade levels offered by the original failing school to which the student was enrolled in or assigned to attend. The parent, however, must continue to incur creditable costs, claim the student as a dependent and file the appropriate form on an annual basis each tax year for which he or she may receive the credit even if approval is obtained in an earlier year.

**Author:** Brandee Tickle

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 16-6D-1.

**History: New Rule:** Filed August 23, 2013, effective September 27, 2013.

**810-3-60-.02      Eligibility For Parent Tax Credit For Students Attending A Nonpublic School.**

(1) Scope. This rule is issued pursuant to Section 16-6D-1, Code of Ala. 1975, to provide guidance to parents who choose to transfer a student to a nonpublic school upon notification that the student is enrolled in or assigned to attend a failing school.

(2) In order to be eligible for the parent tax credit, a parent must transfer a student and incur creditable costs at a nonfailing public school or nonpublic school.

(a) A nonpublic school, for purposes of the parent tax credit, is any private school, including parochial schools, that is accredited by a state recognized accrediting agency and has notified the Department of Revenue of its intent to participate in and comply with the requirements of the Section 9 scholarship program established by the Alabama Accountability Act (Act 2013-64).

(b) Example. Upon notification that Student A is assigned to attend a failing school, his parents choose to enroll him in an accredited private school that chooses **not** to participate in the Section 9 scholarship program. In this scenario, the student's parents are not eligible to claim the parent tax credit, even if they incur otherwise creditable costs, because the school that the student transferred to does not meet the Alabama Accountability Act definition of nonpublic school, a requirement to be eligible for the parent tax credit.

(c) Example. Upon notification that Student B is assigned to attend a failing school, her parents choose to enroll her in an accredited private school that participates and complies with the requirements of the Section 9 scholarship program. Assuming Student B's parents meet the other requirements for the Section 8 parent tax credit further outlined in Rules 810-3-60-.01 and 810-3-60-.03, Student B's parents are eligible to claim the parent tax credit.

(3) Homeschooling does not meet the criteria required for the tax credits established in the Alabama Accountability Act.

**Author:** Brandee Tickle

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 16-6D-1.

**History: New Rule:** Filed August 23, 2013, effective September 27, 2013. **Amended:** Filed March 21, 2014, effective April 25, 2014.

### 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 Ala. 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.

**Author:** Brandee Tickle

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 16-6D-1.

**History: New Rule:** Filed August 23, 2013, effective September 27, 2013. **Amended:** Filed March 21, 2014, effective April 25, 2014.

**810-3-60-.04      Calculation Of Average Annual Cost Of Attendance For A Public K-12 Student.**

(1) Scope. This rule is issued pursuant to Section 16-6D-1, Code of Ala. 1975, to provide guidance to parents who are eligible to claim a refundable income tax credit under the Alabama Accountability Act of 2013.

(2) For purposes of calculating the 80% of the average annual cost of attendance for a public K-12 student limitation as referenced in Rule 810-3-60-.01, the Department of Finance will provide the amounts of the average state cost of attendance for a public K-12

student for each fiscal year pertaining to the current school year.

(a) For example, the Department of Finance will provide the average state annual cost of attendance for a public K-12 student for fiscal year ending September 30, 2013 and fiscal year ending September 30, 2014 for purposes of determining the average cost of attendance for the 2013-2014 school year.

(b) To determine the average cost of attendance for the 2013-2014 school year, the Department shall calculate this number by multiplying 80% of the FY 2013 cost of attendance by 9/12 and 80% of the FY 2014 cost of attendance by 3/12.

(c) For the 2013-2014 school year, the 80% of the average annual cost of attendance for a public K-12 student is calculated as follows:

$$(\$3,538 \times 9/12) + (\$3,639 \times 3/12) = \$3,563$$

(3) This number will be updated annually based upon the average state cost of attendance for a public K-12 student, as determined by the Department of Finance, by using the methodology stated within this rule.

**Author:** Brandee Tickle

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 16-6D-1.

**History: New Rule:** Filed November 20, 2013, effective December 25, 2013.