



STATE OF ALABAMA  
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.  
State Superintendent of Education

September 9, 2022

Alabama  
State Board  
of Education

**MEMORANDUM**

Governor Kay Ivey  
President

**TO:** City and County Superintendents of Education

Jackie Zeigler  
District I

**FROM:** Eric G. Mackey *EGM*  
State Superintendent of Education

Tracie West  
District II  
President Pro Tem

**RE:** Mental Health Services Notification and Opt-In (Act 2022-442)

Stephanie Bell  
District III

Alabama Act 2022-442, which is now codified as *Alabama Code* Section 16-22-16.2, requires each local education agency (LEA) and independent school system to employ a mental health services coordinator and to adopt a policy concerning parent opt-in for mental health services.

Yvette M. Richardson, Ed.D.  
District IV

At a minimum, each policy must contain a provision for written annual notification to parents about school-provided or school-sponsored mental health services, a provision addressing written permission by parents for students under the age of 14 to participate in mental health services, and a provision requiring all records pertaining to mental health services to be treated as health care records and kept separately from academic records.

Tonya S. Chestnut, Ed.D.  
District V

As it relates to the opt-in provision, the State Board of Education has adopted additional guidance and specifically provided, in part, by administrative regulation:

Cynthia McCarty, Ph.D.  
District VI

“(a) No student of a public K-12 school under the age of 14 may be allowed to participate in ongoing school counseling services including, but not limited to, mental health services, unless specific written instruction has been granted by the student’s parent, unless there is an imminent threat to the health of the student or others. For the purposes of this section, this written permission is referred to as an opt-in.

Belinda McRae  
District VII

(b) For the purposes of this section, “mental health services” includes services, treatment, surveys, or assessments relating to mental health, and **“ongoing school counseling services” shall not include those school counseling services which are split into domains not requiring a mental health therapist or other mental health therapeutic license.** See *State Board of Education Rule 290-4-5-.08 (emphasis added)*.

Wayne Reynolds, Ed.D.  
District VIII  
Vice President

There has been much uncertainty about the coordinating roles of school counselors, mental health services coordinators, mental health therapists, school social workers, etc., since the passage of this Act, but essentially very little has changed in the regular day-to-day work of school counselors and others who rarely offer ongoing therapeutic services. Since the coordinating roles of school officials are not easily defined, the Alabama State Department of Education has prepared the general considerations listed below to assist you in making determinations of which services fall within the Act. These submissions are intended to be a

Eric G. Mackey, Ed.D.  
Secretary and  
Executive Officer

resource but are not fully inclusive of all related issues that you may encounter at your local school system. You should be mindful that the Act requires compliance with applicable law and, as always, I recommend your local system consult with your staff and board attorney to ensure compliance.

Regular classes traditionally provided by school counselors like those related to hygiene, respectfulness, course selection, and character education are not subject to the opt-in regulations. Furthermore, occasional interventions are not subject to opt-in requirements either, as these are regular duties of school counselors and other educators. As an example, if a child is disruptive in class and the school procedure includes a cooling-off period and conversation with the school counselor, no opt-in would be required for this intervention, as it is clearly not an ongoing counseling service that is continuing and therapeutic in nature. If, however, the school counselor, mental health services coordinator, or other educator decides that regularly scheduled counseling or therapeutic appointments are necessary to improve the child's behavior, then the school should pursue parental permission before scheduling or referring the child into these types of ongoing, therapeutic sessions. In most cases, this is already school system policy and best practice.

Furthermore, mental health services coordinators, school social workers, and others provide additional services and supports beyond individual or small-group counseling. For instance, many work with families and community partners to address issues like food insecurity, family resources, and employment assistance related to students' overall well-being. Neither would these be subject to the opt-in regulations.

What if the school counselor, or another educator, believes ongoing counseling/therapy sessions to be the best option for the child, but the parents refuse to sign a permission form? Schools should not proceed with ongoing counseling or therapy sessions if the parents opt out of those sessions. Parental engagement is crucial, and nothing herein should be construed to limit the fundamental rights of parents to direct the care, custody, and control of their children. Be mindful that other rules may also be at play in a situation like this one—for instance, a child's Individualized Education Plan may guide the application of services and interventions.

Another question that has arisen is, what if the counselor is afraid to notify the parents because of suspected abuse at home? If an abusive situation is suspected, educators may be required to report the home situation to the Department of Human Resources (DHR) under mandatory reporter laws. Alabama Law requires educators who know or have reasonable cause to believe or suspect that a child has been abused or neglected or who observe any child being subjected to conditions or circumstances that would reasonably result in abuse to report it orally, either by telephone or direct communication immediately, followed by a written report, to DHR, law enforcement, or the District Attorney.

Finally, the law makes clear that student or school safety can be an overriding factor. An example of this might include the child being sent to the counselor due to multiple outbursts in the classroom. However, if these sessions to see the counselor are sporadic rather than regularly scheduled, then they would not be subject to the opt-in requirement since they are not considered "ongoing," that is to say regular, scheduled sessions.

Each LEA must define the roles of all personnel based on local needs. Roles and clearly defined job descriptions are vital to develop a common understanding and work effectively and collaboratively. The general considerations listed below should assist in determining, which services align within Alabama Act 2022-442. The chart is intended to be a resource; however, it is not exhaustive of all potential issues that school leaders may encounter.

**GENERAL CONSIDERATIONS**

<b>Service or School Activity</b>	<b>Included in Mental Health Services Notification</b>	<b>Included in Mental Health Opt-In Policies</b>
Large-Group, Small-Group, or Mentoring activities that include ongoing counseling/therapy that are continuing and may be considered therapeutic in nature.	Yes	Yes
Large-Group, Small-Group, or Mentoring activities that include instructional activities designed to educate students regarding topics related to mental health, <i>but</i> (1) contained in the school system’s approved curriculum or (2) otherwise required to be taught by law (e.g., <i>Erin’s Law</i> ; <i>Jamari Terrell Williams Student Bullying Prevention Act</i> ).	No	No
Formal Assessments or Surveys related to social behaviors, feelings, etc.	Yes	Yes
Crisis Intervention (unless immediate intervention is needed to safeguard the health and safety of the student or others).	Yes	Yes
School-Based Mental Health counseling or therapy offered by school or outside partners.	Yes	Yes

If you have any questions, please contact Dr. Kay Warfield, Education Administrator, Prevention and Support Services, at (334) 694-4724 or Mr. Sean J. Stevens, Education Administrator, Instructional Services, at (334) 694-4767.

EGM:JKS

- cc: LEA Mental Health Services Coordinators
- LEA Counseling Coordinators
- LEA School Counselors
- LEA School Principals
- Mrs. Angela Martin
- Mr. Terry Roller
- Mrs. Elisabeth Davis
- Mr. Sean J. Stevens
- Dr. Kay Warfield