

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

Title/OAR #: Sheltered Workshop Definition Changes- OAR 581-015-2000(33)

Date: April 9, 2015

Staff/Office: Mitch Kruska and Claudette Rushing, Office of Learning- Student Services

New Rule Amend Existing Rule Repeal Rule
Hearing Date: _____ NA _____ Hearings Officer Report Attached
Prompted by: State law changes Federal law changes Other

Action Requested:

First Reading/Second Reading Adoption Adoption/Consent Agenda

PROPOSED/AMENDED RULE SUMMARY: Minor changes are necessary to the definition of “sheltered workshop” in OAR 581-015-2000, in order to more fully align this definition with the definition as used by the Department of Human Services, and to match the changes to the term found in Executive Order 15-01.

BACKGROUND:

- The ODE created administrative rules which were adopted by the State Board, pursuant to Executive Order 13-04, which addressed employment services for transition aged students.
- The Department of Human Services (DHS) also had a number of rules to enact pursuant to Executive Order No.13-04 and there are requirements for ODE to collaborate with DHS in this area.
- The Governor signed Executive Order 15-01 on February 2, 2015 which changed the definition of “sheltered workshop” which was originally established in Executive Order 13-04.
- DHS has now adopted an administrative rules (found at Chapter 407, Division 25), which defines the term “sheltered workshop” in a manner consistent with that found in Executive Order 15-01.
- The ODE accordingly, would like to change its definition of “sheltered workshop” found at 581-015-2000(33) in order to ensure compliance with the Executive Order 15-01, and to further ensure consistency with DHS’ definition of the term.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK The draft rules will be sent to the State Advisory Counsel for Special Education (SACSE) and the Dispute Resolution advisory committee (DRC) for commentary during the public commentary period in order to see if any issues arise related to the adoption of the new definition.

CHANGED SINCE LAST BOARD MEETING?

- N/A; first read—hasn’t been before board
- No; same as last month

Yes – As follows:

FISCAL IMPACT: None

STAFF RECOMMENDATION:

- Adopt temporary administrative rules as prepared this month
 Adopt administrative rule next month
 No recommendation at this time (rarely used)

581-015-2000

Definitions

The definitions below apply to OARs 581-015-2000–2999, unless the context indicates otherwise.

(1) "Adult student" is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(3) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) "Children with disabilities" or "students with disabilities" means children or students who require special education because of: autism; communication disorders; deafblindness; emotional disturbances; hearing

impairments, including deafness; intellectual disability; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics that may be associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age three. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder, not otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance.

(b) "Communication Disorder" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(c) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments.

(d) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems;

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(e) "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

(f) "Intellectual Disability" means significantly sub average general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

(g) "Orthopedic Impairment" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).

(h) "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and

(B) Adversely affects a child's educational performance.

(i) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.

(j) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(k) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(5) "Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or 581-015-2735.

(6) "Day" means calendar day unless otherwise indicated as:

(a) "Business day," which means Mondays through Fridays, other than holidays; or as

(b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including those with and without disabilities.

(7) "Department" means the Oregon Department of Education.

(8) "EI/ECSE" means early intervention/early childhood special education and refers to services or programs for preschool children with disabilities.

(9) "Elementary or secondary school or facility" means a school or facility with any combination of grades K through 12.

(10) "Evaluation" means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.

(11) "General education curriculum" means the same curriculum as for children without disabilities (children without disabilities). For preschool children with disabilities, the term means age-appropriate activities.

(12) "Health assessment statement" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant must be practicing within his or her area of specialty.

(13) "Homeless children" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a(2).

(14) "Identification" means the process of determining a child's disability and eligibility for special education and related services.

(15) "Individualized Education Program" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability.

(16) "Individualized Family Service Plan" (IFSP) is defined in OAR 581-051-2700.

(17) "Limited English proficient" has the same meaning as in the Elementary and Secondary Education Act, 20 USC § 9101(25).

(18) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such a time as a resolution is agreed to by the parties or the mediation process is terminated.

(19) "Medical statement" means a written statement issued by a physician licensed by a State Board of Medical Examiners.

(20) "Native language", when used with respect to a person who is limited English proficient, means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.

(21) "Parent" means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

(B) A foster parent of the child,

(C) A legal guardian, other than a state agency;

(D) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or 581-015-2760 for preschool children.

(b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

(22) "Participating agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(23) "Personally identifiable information" means information as defined in the Family Educational Rights and Privacy Act (FERPA), found at 34 CFR 99.3, which includes, but is not limited to:

(a) The name of the child, the child's parent or other family member;

(b) The address of the child or the child's family;

(c) A personal identifier, such as the child's social security number or student number, or biometric record; and

(d) Other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name;

(e) Other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or

(f) Other information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(24) "Placement" means educational placement, not social service placement by a state agency.

(25) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-2700.

(26) "Private school" means an educational institution or agency not operated by a public agency.

(27) "Public agency" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or subcontractor, responsible for early intervention, early childhood special education or special education.

(28) "Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

(29) "School age child or children" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.

(30) "Scientifically Based Research" is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended ESEA.

(31) "School district" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule or contract for providing education to children with disabilities.

(32) "Services plan" is defined in OAR 581-015-2450.

(33) "Sheltered Workshop" is a facility in which individuals based service that congregates more than eight adults with disabilities, including intellectual or developmental disabilities, are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A Sheltered Workshop primarily employs these individuals with the exception of service support staff. A Sheltered Workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with nondisabled individuals, except paid support staff. A Sheltered Workshop is not Small Group Employment in an Integrated Employment Setting as defined in Executive Order 15-01, and is not otherwise an Integrated Employment Setting as defined in Executive Order 15-01. are operated by service provider entities. In general, a sheltered workshop employs only individuals with an intellectual or developmental disability or other disabilities except for service or support staff. However, assessments, instruction, and activities that typically occur in public schools and that are provided either directly or by contract by public school districts, by public charter school, by an Educational Service District, or the Oregon Department of Education, in a school setting, are not considered sheltered workshops.

(34) "Short term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gauge, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

(a) Breaking down the skills described in the goal into discrete components, or

(b) Describing the amount of progress the child is expected to make within specified segments of the year.

(35) "Special education" means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability "Special education" includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.

(36) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(37) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

(38) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(39) "Surrogate parent" means an individual appointed under OAR 581-015-2320 for school age children or 581-015-2760 for preschool children who acts in place of a biological or adoptive parent in safeguarding a child's rights in the special education decision-making process.

(40) "Transition services" means a coordinated set of activities for a student with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(41) "Ward of the state" means child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court.

Stat. Auth.: ORS 343.041, 343.045, 343.155 & 343.223

Stats. Implemented: ORS 343.045, 343.155, 343.223, 34 CFR 300.5, 300.6, 300.8, 300.11, 300.15, 300.19, 300.22, 300.27, 300.28, 300.29, 300.30, 300.34, 300.37, 300.39, 300.42, 300.43 & 300.45

Hist.: 1EB 8-1978, f. & ef. 3-3-78; 1EB 35-1978, f. & ef. 10-5-78; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93; EB 18-1994, f. & cert. ef. 12-15-94; EB 22-1995, f. & cert. ef. 9-15-95; ODE 10-2000, f. & cert. ef. 5-3-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0005, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 13-2009, f. & cert. ef. 12-10-09; ODE 12-2011, f. & cert. ef. 10-31-11; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 29-2013, f. & cert. ef. 12-18-13; ODE 41-2014(Temp), f. & cert. ef. 9-8-14 thru 3-7-15; ODE 47-2014, f. & cert. ef. 12-17-14