

School District Responsibilities for Providing Appropriate Services for Students with Disabilities Ages 18-21

Purpose: The purpose of this technical assistance document is to outline a clear process to assist high school Individual Education Program (IEP) teams in making decisions regarding secondary transition services for students with disabilities ages 18-21.

Secondary transition should be a seamless process from high school to the next steps in life as an adult. The intent is to inform where school district responsibilities begin and end. Students may be eligible for further services from other agencies such as the Department of Human Services Brokerages and the Office of Vocational Rehabilitation Services (OVRs).

Individualized Program for Each Student: Special education and related services must be decided by the IEP team based on the individual needs of the student. School districts cannot, as a matter of course, offer reduced school days to all secondary transition students with disabilities. Whether a student requires more or less than a full day of school cannot be determined without individual consideration of each student's needs and performance level.

Procedural Safeguards: A district must enroll an otherwise eligible person who has not yet attained 21 years of age if the person is receiving special education services and has not yet received a regular high school diploma. During the ages of 18-21, students eligible for special education are protected by procedural safeguards under the Individuals with Disabilities Education Act (IDEA).

FAPE: A Free Appropriate Public Education (FAPE) is an educational right of children with disabilities that is guaranteed by the IDEA. As per ORS 339.115, the State must provide FAPE to all resident students who qualify for special education. FAPE is determined by the IEP team who design each student's individualized program including the required hours of specially designed instruction and related services.

School districts must follow the same evaluation/eligibility process, IEP process, and least restrictive environment determination as for younger students with disabilities. The IEP team must meet at least annually to determine what services will be provided to each individual student. The district is required to support student achievement of academic/functional goals; in addition, the district is expected to focus on preparation for completing the postsecondary goals.¹ The post secondary goals are informed by the student's preferences, interests, needs and strengths. Districts are required to provide instruction to the extent necessary for the student to progress toward their post secondary goal.

The IEP team determines what constitutes FAPE for each student with a disability based on the unique needs of that student. FAPE may consist of:

- a) Academic classes;
- b) Specialized Services (e.g. services provided in a Life Skills or Work Study Program);

¹ Appropriate, measurable post-secondary goals are based upon age-appropriate transition assessments and are related to training/education, employment, and, where appropriate, independent living skills. Post secondary goals refer to activities that will occur after the student leaves high school.

- c) Any other appropriate combination of services or programs for the student as determined by the IEP team (e.g. part-time general/special education and part-time supported employment provided by another agency such as OVRS or the Brokerage²).

To the extent appropriate, with consent of the parents or adult student, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. If the other agency representative does not attend, the IEP team should document their input. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the school district must reconvene the IEP Team to **identify alternative strategies** to meet the transition objectives for the student set out in the IEP. This does not mean that the school district must provide the identical services written on the IEP; it means the IEP Team must reconvene to identify alternative strategies to meet the transition objectives.

Getting parental or adult student permission for other agency representatives to attend the IEP meeting was included in IDEA 2004 specifically to address issues related to the confidentiality of information. *A public agency must obtain parental or adult student consent before inviting representatives from other participating agencies to attend an IEP Team meeting. The representatives of these agencies should not have access to all the student's records unless the parent or adult student gives consent for such a disclosure.*³

Transition Services: According to OAR 581-015-2000(38), transition services are defined as a coordinated set of activities for a student with a disability that is designed to be within a results-oriented process and that are focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post school life. Post school activities include postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition services must be based on the individual student's needs and must take into account the student's preferences and interests.

Transition services may include instruction, related services, community experiences, the development of employment and other post school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluations. Transition services may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

Additional resources for secondary transition in Oregon may be found at <http://www.ode.state.or.us/search/results/?id=266>. For further information regarding secondary transition, please contact Jackie Burr at 503-947-5639 or jackie.burr@state.or.us.

² Supported/integrated employment that is paid for or provided by OVR or the brokerages is NOT considered part of the provision of FAPE.

³ Excerpts from Federal Register Volume 71, No. 156, Rules and Regulations Comments pg 46672.

CITATIONS

RELEVANT FEDERAL IDEA REGULATIONS

§ 300.34 Related services.

(a) *General. Related services* means 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 speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Interpreting services* includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) *Orientation and mobility services*—

- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (ii) Includes teaching children the following, as appropriate:
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques, and tools.
- (8)(i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (9) *Physical therapy* means services provided by a qualified physical therapist.
- (10) *Psychological services* includes—
- (i) Administering psychological and educational tests, and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - (vi) Assisting in developing positive behavioral intervention strategies.
- (11) *Recreation* includes—
- (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*
- (13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- (14) *Social work services in schools* includes—
- (i) Preparing a social or developmental history on a child with a disability;
 - (ii) Group and individual counseling with the child and family;
 - (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - (v) Assisting in developing positive behavioral intervention strategies.
- (15) *Speech-language pathology services* includes—
- (i) Identification of children with speech or language impairments;
 - (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (16) *Transportation* includes—
- (i) Travel to and from school and between schools;

- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

§ 300.321 IEP Team.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

§ 300.324 Development, review, and revision of IEP

(c) *Failure to meet transition objectives—(1) Participating agency failure.*

If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) *Construction.* Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

§ 300.43 Transition services.

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child'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;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

RELEVANT ORS--ADMISSION OF STUDENTS:

ORS 339.115 Admission of students; waiver; denial.

(1) Except as provided in ORS 339.141, authorizing tuition for courses not part of the regular school program, the district school board shall admit free of charge to the schools of the district all persons between the ages of 5 and 19 who reside within the school district. A person whose 19th birthday occurs during the school year shall continue to be eligible for a free and appropriate public education for the remainder of the school year. A district school board may admit nonresident persons, determine who is not a resident of the district and fix rates of tuition for nonresidents.

(2)(a) A district must admit an otherwise eligible person who has not yet attained 21 years of age prior to the beginning of the current school year if the person is:

- (A) Receiving special education and has not yet received a high school diploma as described in ORS 329.451 (2); or
- (B) Receiving special education and has received a modified diploma, an extended diploma or an alternative certificate as described in ORS 329.451.

(b) A district may admit an otherwise eligible person who is not receiving special education and who has not yet attained 21 years of age prior to the beginning of the current school year if the person is shown to be in need of additional education in order to receive a high school diploma.

RELEVANT OARs

OAR 581-015-2040: Free Appropriate Public Education (FAPE) and Age Ranges

- (1) School districts must provide special education and related services to all resident school-age children with disabilities, except as provided in OAR 581-015-2045. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.
- (2) An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year.
- (3) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-2410 to 581-015-2440.
- (4) For purposes of this rule, residency is determined in accordance with ORS chapter 339.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.041, 339.115, 34 CFR 300.101

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0600, ODE 10-2007, f. & cert. ef. 4-25-07

OAR 581-015-2000(38) Definitions

- (38) "**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.

581-015-2210

IEP Team

- 2) If a purpose of the meeting will be consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals:
 - (a) The school district must invite the student. If the student does not attend the meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.
 - (b) To the extent appropriate, with consent of the parents or adult student, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

581-015-2235

School District and Participating Agency Responsibilities for Transition Services

- (1) If a participating agency, other than the school district, fails to provide agreed-upon transition services described in the IEP of a student with a disability, the school district must, as soon as possible, initiate an IEP meeting to identify alternative strategies to meet the transition objectives for the student set out in the IEP and, if appropriate, to revise the student's IEP.
- (2) Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Stat. Auth.: ORS 343.045, ORS 343.055

Stats. Implemented: ORS 343.045, ORS 343.155 & ORS 343.195, 34 CFR 300.324(c)

Hist.: EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0070, ODE 10-2007, f. & cert. ef. 4-25-07